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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

**UNITED STATES OF AMERICA and the
STATE OF CALIFORNIA *ex. rel.* LAURIE M.
HANVEY,**

Relator,

vs.

CASE NO. _____

**COMPLAINT FOR VIOLATION OF
FEDERAL FALSE CLAIMS ACT (31
U.S.C. § 3729 *et seq.*) AND**

SUTTER HEALTH;

SUTTER HEALTH SACRAMENTO SIERRA REGION d/b/a Sutter Medical Center, Sacramento, a/k/a Sutter Roseville Medical Center, a/k/a Sutter Amador Hospital, a/k/a Sutter Auburn Faith Hospital, a/k/a Sutter Davis Hospital, a/k/a Sutter Solano Medical Center;

SUTTER MEDICAL FOUNDATION;

SUTTER EAST BAY HOSPITALS d/b/a Alta Bates Summit Medical Center, a/k/a Sutter Delta Medical Center;

EAST BAY PERINATAL CENTER d/b/a Alta Bates Summit Perinatal Center;

EAST BAY CARDIAC SURGERY CENTER MEDICAL GROUP;

SUTTER MEDICAL CENTER, CASTRO VALLEY d/b/a Eden Medical Center;

EDEN MEDICAL CENTER d/b/a San Leandro Hospital;

SUTTER EAST BAY MEDICAL FOUNDATION;

SUTTER CENTRAL VALLEY HOSPITALS d/b/a Memorial Medical Center, a/k/a Memorial Hospital Los Banos, a/k/a Sutter Tracy Community Hospital;

SUTTER GOULD MEDICAL FOUNDATION;

SUTTER CONNECT, LLC d/b/a Sutter Physician Services;

SUTTER MEDICAL GROUP, A CALIFORNIA CORPORATION;

CALIFORNIA FALSE CLAIMS ACT (CAL. GOV'T CODE §§ 12650 *et seq.*)

FILED UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2) AND CAL. GOV'T CODE § 12652(c)(2)

[FALSE CLAIMS ACT –*QUI TAM*]

DEMAND FOR JURY TRIAL

**SUTTER INDEPENDENT PHYSICIANS, A
MEDICAL CORPORATION;**

**EAST BAY PHYSICIANS MEDICAL GROUP,
INC.;**

**SACRAMENTO CARDIOVASCULAR
SURGEONS MEDICAL GROUP, INC.;**

**EAST BAY PERINATAL MEDICAL
ASSOCIATES;**

**BAY AREA SURGICAL SPECIALISTS, INC.,
A MEDICAL CORPORATION, f/k/a East Bay
Vascular Group;**

**STEPHEN K. LIU, M.D., PROFESSIONAL
CORPORATION; and**

**CALIFORNIA EMERGENCY PHYSICIANS
MEDICAL GROUP, A PROFESSIONAL
CORPORATION, f/k/a Sutter Emergency
Medical Associates,**

Defendants.

COMPLAINT

COMES NOW, LAURIE M. HANVEY, (“Relator”) in the above-styled action, by and through her counsel of record, WILBANKS & BRIDGES, L.L.P., WITHROW, MCQUADE & OLSEN, LLP, and HIRST LAW GROUP, P.C., and states that this is an action brought on behalf of the United States of America and the State of California by Relator against SUTTER HEALTH; SUTTER HEALTH SACRAMENTO SIERRA REGION d/b/a Sutter Medical Center, Sacramento, a/k/a Sutter Roseville Medical Center, a/k/a Sutter Amador Hospital, a/k/a Sutter Auburn Faith Hospital, a/k/a Sutter Davis Hospital, a/k/a Sutter Solano Medical Center; SUTTER MEDICAL

FOUNDATION; SUTTER EAST BAY HOSPITALS d/b/a Alta Bates Summit Medical Center, a/k/a Sutter Delta Medical Center; EAST BAY PERINATAL CENTER d/b/a Alta Bates Summit Perinatal Center; SUTTER MEDICAL CENTER, CASTRO VALLEY d/b/a Eden Medical Center; EDEN MEDICAL CENTER d/b/a San Leandro Hospital; SUTTER EAST BAY MEDICAL FOUNDATION; SUTTER CENTRAL VALLEY HOSPITALS d/b/a Memorial Medical Center, a/k/a Memorial Hospital Los Banos, a/k/a Sutter Tracy Community Hospital; SUTTER GOULD MEDICAL FOUNDATION; and SUTTER CONNECT, LLC d/b/a Sutter Physician Services (hereinafter sometimes collectively referred to as “SUTTER HEALTH”), and against SUTTER MEDICAL GROUP, A CALIFORNIA CORPORATION; SUTTER INDEPENDENT PHYSICIANS, A MEDICAL CORPORATION; EAST BAY PHYSICIANS MEDICAL GROUP, INC.; SACRAMENTO CARDIOVASCULAR SURGEONS MEDICAL GROUP, INC.; EAST BAY PERINATAL MEDICAL ASSOCIATES; EAST BAY CARDIAC SURGERY CENTER MEDICAL GROUP; BAY AREA SURGICAL SPECIALISTS, INC., A MEDICAL CORPORATION, f/k/a East Bay Vascular Group; STEPHEN K. LIU, M.D., PROFESSIONAL CORPORATION; and CALIFORNIA EMERGENCY PHYSICIANS MEDICAL GROUP, A PROFESSIONAL CORPORATION, f/k/a Sutter Emergency Medical Associates (hereinafter sometimes collectively referred to as “PHYSICIAN ENTITIES”) pursuant to the *Qui Tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729-33 *et. seq.*, and the California False Claims Act (“CFCA”), Cal Gov’t Code §§ 12650 *et seq.*

As will be set forth hereafter with greater specificity, SUTTER HEALTH has routinely paid or provided unlawful kickbacks, excessive compensation, free employees and other illegal incentives to physicians who refer patients to SUTTER HEALTH in violation of federal and California law.

By knowingly submitting claims for reimbursement to government payers based on referrals generated by physicians who received kickbacks, compensation, free employees and other incentives under illegal financial relationships, SUTTER HEALTH violated 42 U.S.C. § 1395nn (commonly known as the “Stark Law”), 42 U.S.C. § 1320a-7b(b) (commonly known as the federal Anti-Kickback Statute or “AKS”), California Business and Professions Code, section 650 (prohibiting inducements for referring patients), California Welfare and Institutions, section 14107.2(b) (prohibiting payments for referrals for services to Medicaid patients), the FCA and the CFCA. PHYSICIAN ENTITIES conspired with SUTTER HEALTH regarding the fraudulent billing of Medicare and Medicaid and the improper payment or provision of excessive compensation and illegal incentives to physicians in a position to refer and/or influence referrals of Medicare and Medicaid patients to SUTTER HEALTH in violation of the FCA and CFCA.

I. NATURE OF ACTION AND SUMMARY OF FRAUD

1. Relator brings this action on behalf of the United States of America and the State of California (hereafter collectively “Government”) to recover treble damages and civil monetary penalties under the FCA and CFCA arising from false and fraudulent statements, records and claims made and caused to be made by Defendants to the Government.

2. Within the time frames detailed below, Defendants knowingly submitted thousands of false claims to the United States and the State of California which resulted in millions of dollars of government reimbursement that would not have been paid but for Defendants’ misconduct.

3. The fraudulent schemes described hereafter in greater specificity in this Complaint include:

A. SUTTER HEALTH knowingly paid Sacramento Cardiovascular Surgeons Medical Group, Inc., a group of three cardiovascular surgeons in Sacramento, over \$1.9 million annually to induce referrals by stacking preferential arrangements providing for exclusive cardiac call coverage and duplicative medical directorships and SUTTER HEALTH provided free employees in the form of payments for four full-time Physician Assistants who billed payers such as Medicare and Medicaid for the financial benefit of the physicians. See ¶¶86-120 below.

B. SUTTER HEALTH knowingly paid a fourth cardiovascular surgeon in Sacramento, Dr. David K. Roberts, up to \$392,040 annually to induce referrals through a duplicative medical directorship requiring 121 hours of service per month, although the physician continued to maintain a full-time private medical practice. See ¶¶121-127 below.

C. SUTTER HEALTH knowingly paid East Bay Perinatal Medical Associates, a group of six OB-GYN physicians in Oakland, over \$7 million annually to induce referrals by stacking preferential arrangements for exclusive hospital call coverage and exclusive professional services in a SUTTER HEALTH clinic, which included compensation that varied and increased with the volume of deliveries referred by the physicians to Alta Bates Summit Hospital campus in Berkeley. See ¶¶128-149 below.

D. SUTTER HEALTH knowingly paid East Bay Cardiac Surgery Center Medical Group, a group of two cardiothoracic surgeons in Oakland, \$1 million annually to induce referrals through a preferential arrangement providing for medical directorships, exclusive call coverage and payments for phantom and/or unspecified data collection services. See ¶¶150-161 below.

E. SUTTER HEALTH knowingly paid Bay Area Surgical Specialists, Inc., A Medical Corporation, a multi-specialty group of physicians based in Walnut Creek, compensation under exclusive hospital call coverage arrangements to reward the physician group for its high-volume referrers, including Dr. Rajiv Nagesetty who is a major referral source for SUTTER HEALTH and was the highest billing vascular surgeon in the entire State of California with 2012 Medicare billings of \$4,176,471.06. See ¶¶162-175 below.

F. SUTTER HEALTH knowingly paid Dr. Stephen K. Liu, Professional Corporation, the professional corporation of an interventional radiologist in Modesto, up to \$438,000 per year for exclusive call coverage for 24 hours per day for all 365 days of the year to reward Dr. Liu for his high-volume of referrals as the highest billing interventional radiologist in the entire State of California with 2012 Medicare billings of \$4,604,464.10. See ¶¶176-187 below.

G. SUTTER HEALTH knowingly paid excessive compensation to California Emergency Physicians Medical Group, A Professional Corporation, an emergency physician staffing company, to induce referrals to SUTTER HEALTH hospitals in Los Banos, Sacramento, Roseville, Antioch, Auburn and Davis. The compensation arrangement also expressly prevented emergency room physicians from providing services at competing hospitals. See ¶¶188-199 below.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1367(a) and 3732, the last of which specifically confers jurisdiction on this Court for actions brought under the FCA and related claims brought under the laws of any State. This Court has jurisdiction to entertain a *qui tam* action pursuant to 31 U.S.C. § 3730(b). Relator is an “original

source” and is otherwise authorized to maintain this action in the name of the United States as contemplated by the Civil False Claims Act, 31 U.S.C. § 3729-33.

5. This Court may exercise personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) and because one or more of the Defendants resides or transacts business in the Northern District of California.

6. Venue is proper in the Northern District of California under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) and (c) because one or more of the Defendants can be found in, resides in, or transacts business in this judicial district.

7. Relator has made voluntary disclosures to the United States Government prior to the filing of this lawsuit as required by 31 U.S.C. § 3730(b)(2), and to the California Attorney General on the same day as this Complaint is filed as required by Cal. Gov’t. Code § 12652(c)(3).

III. INTRADISTRICT ASSIGNMENT

8. Assignment to a particular division within the Northern District of California under Civil Local Rule 3.2(c) is based on the Courthouse serving the county in which the action arises. This action arises in Alameda County, California because a substantial part of the events or omissions which give rise to the claims in this Complaint occurred in Alameda County, California. According to Civil Local Rule 3-2(d), assignment is proper to the San Francisco Division or the Oakland Division.

IV. THE PARTIES

9. Plaintiff-Relator Laurie M. Hanvey is employed by SUTTER HEALTH as the Compliance Officer of Sutter Medical Center, Sacramento. She has worked with SUTTER HEALTH since December 2012, and previously worked for over 25 years with other hospitals in the

State of California. She reports directly to top executives at SUTTER HEALTH. Relator holds a Masters in Business Administration and is certified in Healthcare Compliance. She brings this *qui tam* action based upon direct personal knowledge gained during her employment as a corporate insider and executive with SUTTER HEALTH.

10. Defendant Sutter Health is a California not-for-profit corporation headquartered in Sacramento, California. Sutter Health serves as the parent of a health care delivery system that includes a centralized support group and various health care-related businesses operating primarily in five geographic regions, principally in Northern California. The SUTTER HEALTH system includes 24 acute care hospitals, over 5,000 physicians and over 48,000 employees. Sutter Health and its affiliates had consolidated gross revenues of \$9.6 billion in 2013, and held \$5.1 billion in cash and marketable securities as of December 31, 2013. As a large and sophisticated provider of health care services to Government beneficiaries, SUTTER HEALTH is charged with following the law and implementing policies and procedures that comply with the explicit requirements of the Stark Law, AKS and the FCA.

11. When this Court unseals this Complaint, Defendant Sutter Health may be served at its registered office located at 2200 River Plaza Drive, Sacramento, California 95833. Its registered agent is Bonnie George.

12. Defendant Sutter Health Sacramento Sierra Region is a California not-for-profit corporation with its principal place of business at 2700 Gateway Oaks Boulevard, Suite 2200, Sacramento, California 95833. Defendant Sutter Health Sacramento Sierra Region does business as Sutter Medical Center, Sacramento (two hospitals totaling 727 beds), Sutter Center for Psychiatry (69-bed hospital), Sutter Roseville Medical Center (328-bed hospital), Sutter Amador Hospital (52-

bed hospital), Sutter Auburn Faith Hospital (69-bed hospital), Sutter Davis Hospital (48-bed hospital) and Sutter Solano Medical Center (102-bed hospital).

13. Defendant Sutter Medical Foundation is a California not-for-profit corporation with its principal place of business at 2700 Gateway Oaks Boulevard, Suite 1200, Sacramento, California 95833. Defendant Sutter Medical Foundation is aligned with physicians and mid-level providers of Defendant Sutter Medical Group to provide primary care and specialty care to patients.

14. Defendant Sutter East Bay Hospitals is a California not-for-profit corporation with its principal place of business at 2450 Ashby Avenue, Berkeley, California 94705. Defendant Sutter East Bay Hospitals does business as Alta Bates Summit Medical Center (two hospitals totaling 819 beds) and Sutter Delta Medical Center (145-bed hospital).

15. Defendant East Bay Perinatal Center is a California not-for-profit corporation with its principal place of business at 350 30th Street, Suite 205, Oakland, California 94609. Defendant East Bay Perinatal Center does business as Alta Bates Summit Perinatal Center and operates a community clinic specializing in maternal-fetal medicine in Oakland, California that serves predominantly Medi-Cal patients.

16. Defendant Sutter Medical Center, Castro Valley is a California not-for-profit corporation with its principal place of business at 20103 Lake Chabot Road, #103, Castro Valley, California 94546. Defendant Sutter Medical Center, Castro Valley does business as Eden Medical Center (130-bed hospital).

17. Defendant Eden Medical Center is a California not-for-profit corporation with its principal place of business at 20103 Lake Chabot Road, Castro Valley, California 94546. Defendant Eden Medical Center formerly operated a hospital in Castro Valley which has been replaced by the

hospital operated by Defendant Sutter Medical Center, Castro Valley. Defendant Eden Medical Center continues to do business as San Leandro Hospital (93-bed hospital).

18. Defendant Sutter East Bay Medical Foundation is a California not-for-profit corporation with its principal place of business at 3687 Mt. Diablo Boulevard, #200, Lafayette, California 94549. Defendant Sutter East Bay Medical Foundation is aligned with physicians and mid-level providers of Defendant East Bay Physicians Medical Group, Inc., to provide primary care and specialty care to patients.

19. Defendant Sutter Central Valley Hospitals is a California not-for-profit corporation with its principal place of business at 1700 Coffee Road, Modesto, California 95355. Defendant Sutter Central Valley Hospitals does business as Memorial Medical Center (423-bed hospital), Memorial Hospital Los Banos (46-bed hospital) and Sutter Tracy Community Hospital (82-bed hospital).

20. Defendant Sutter Connect, LLC, d/b/a Sutter Physician Services is a California limited liability company with its principal place of business at 10470 Old Placerville Road, Suite 100, Sacramento, California 95827. Defendant Sutter Connect, LLC, d/b/a Sutter Physician Services provides physician billing and other services for physicians, foundations and other providers throughout Sutter Health's system service areas.

21. Defendant Sutter Medical Group, A California Corporation is a California for-profit professional corporation with its principal place of business at 2700 Gateway Oaks Drive, Suite 1230, Sacramento, California 95833. Defendant Sutter Medical Group, A California Corporation is a multi-specialty medical group including approximately 470 physicians and 120 allied health professionals.

22. Defendant Sutter Independent Physicians, A Medical Corporation is a California for-profit professional corporation with its principal place of business at 1201 Alhambra Boulevard, Suite 50, Sacramento, California 95816. Defendant Sutter Independent Physicians, A Medical Corporation is an independent practice association comprised of more than 500 primary care and specialist physicians.

23. Defendant East Bay Physicians Medical Group, Inc. is a California for-profit professional corporation with its principal place of business at 3687 Mt. Diablo Boulevard, Suite 200, Lafayette, California 94549. Defendant East Bay Physicians Medical Group, Inc., is a multi-specialty medical group comprised of physicians practicing in over 20 medical specialties.

24. Defendant Sacramento Cardiovascular Surgeons Medical Group, Inc., is a California for-profit professional corporation with its principal place of business at 5301 F Street, Suite 111, Sacramento, California 95819. Defendant Sacramento Cardiovascular Surgeons Medical Group, Inc., is a specialty physician group comprised of three cardiovascular surgeons: Dr. Michael T. Ingram, Dr. Robert Kincade and Dr. James Longoria.

25. Defendant East Bay Perinatal Medical Associates is a California professional general partnership with its principal place of business at 350 30th Street, Suite 208, Oakland, California 94609. Defendant East Bay Perinatal Medical Associates is a specialty physician group providing gynecological, obstetrics and perinatology medical services. Defendant East Bay Perinatal Medical Associates is comprised of six physicians as of July 1, 2014: Dr. Stuart Lovett, Dr. Jonathan Weiss, Dr. Ralph DePalma, Dr. David Marinoff, Dr. Janet Goldman and Dr. Leon Richmond.

26. Defendant East Bay Cardiac Surgery Center Medical Group is a California general partnership with its principal place of business at 3300 Webster Street, Suite 500, Oakland,

California 94610. Defendant East Bay Cardiac Surgery Center Medical Group is a specialty physician group comprised of two cardiovascular surgeons: Dr. Junaid H. Khan and Dr. Russell D. Stanten.

27. Defendant Bay Area Surgical Specialists, Inc., A Medical Corporation, f/k/a East Bay Vascular Group, is a California for-profit professional corporation with its principal place of business at 365 Lennon Lane, Suite 250, Walnut Creek, California 94598. Defendant Bay Area Surgical Specialists, Inc., A Medical Corporation is a multi-specialty medical group comprised of physicians practicing in over 10 medical specialties. The vascular surgeons comprising Defendant Bay Area Surgical Specialists, Inc., A Medical Corporation include Dr. Rajiv Nagesetty, Dr. Fernando R. Otero, Dr. John D. Bry, Dr. Gonzalo P. Obnial and Dr. Keshav K. Pandurangi. The thoracic surgeons comprising Defendant Bay Area Surgical Specialists, Inc., A Medical Corporation include Dr. Michaela Straznicka, Dr. Wilson Tsai and Dr. Saurin Shah.

28. Defendant Stephen K. Liu, M.D., Professional Corporation is a California for-profit professional corporation with its principal place of business at 1552 Coffee Road, Suite 4, Modesto, California 95355. Defendant Stephen K. Liu, M.D., Professional Corporation is a physician-owned corporation specializing in interventional radiology. Defendant Stephen K. Liu, M.D., Professional Corporation is comprised of one physician, Dr. Stephen K. Liu.

29. Defendant California Emergency Physicians Medical Group, A Professional Corporation f/k/a/ Sutter Emergency Medical Associates, is a California for-profit professional corporation with its principal place of business at 2100 Powell Street, Suite 900, Emeryville, California 94608. Defendant California Emergency Physicians Medical Group, A Professional Corporation f/k/a/ Sutter Emergency Medical Associates provides emergency room staffing services

for hospitals, including the SUTTER HEALTH hospitals located in Los Banos, Roseville, Antioch, Sacramento, Auburn and Davis, California.

V. THE FALSE CLAIMS ACT AND CALIFORNIA FALSE CLAIMS ACT

30. The FCA provides for the award of treble damages and civil penalties for, *inter alia*, knowingly causing the submission of false or fraudulent claims for payment to the United States government. 31 U.S.C. § 3729(a)(1). Claims to government payers for reimbursement for healthcare services rendered to patients referred by physicians in violation of the Stark Law (as hereinafter described) are false claims actionable under the FCA.

31. The FCA provides, in pertinent part, that a person who:

(a)(1)(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(a)(1)(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; . . .

(a)(1)(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains. . . .

31 U.S.C. § 3729.¹ For purposes of the FCA,

¹ The FCA was amended pursuant to Public Law 111-21, the Fraud Enforcement and Recovery Act of 2009 (“FERA”), enacted May 20, 2009. Defendant’s fraudulent scheme includes false claims made prior to and after that date. The four pre-amendment subsections relevant to this action are 31 U.S.C. §§ 3729(a)(1), (a)(2), (a)(3) and (a)(7). The relevant post-amendment sections relevant here are 3729(a)(1)(A), 3729(a)(1)(B), 3729(a)(1)(C) and 3729(a)(1)(G). Post-amendment section 3729(a)(1)(B) is applicable to all claims in this case by virtue of Section 4(f) of FERA, which makes the changes to that section applicable to all civil actions pending on or after June 7, 2008.

the term “knowing” and “knowingly” mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information; and require no proof of specific intent to defraud.

31 U.S.C. § 3729(b).

32. The Social Security Act was amended by the Patient Protection and Affordable Care Act, P.L. 111-148 effective March 23, 2010 (“PPACA”), in an important respect relating to the FCA. PPACA established a deadline for reporting and returning overpayments received or retained under Medicare or Medicaid (generally 60 days after the date on which the overpayment was identified), and PPACA provided that any overpayment retained by a person after the deadline for reporting and returning the overpayments is an obligation as defined in 31 U.S.C. § 3729(b)(3) of the FCA. PPACA § 6402(d), adding § 1128J to the Social Security Act [42 U.S.C. § 1320a-7k].

33. The CFCA has similar provisions to the FCA addressing the submission of false and fraudulent claims to the State of California. Cal. Gov't Code § 12651(a)(1), (2), (3) and (7). The CFCA was amended effective January 1, 2013 to reflect the amendments made to the FCA by FERA and PPACA. 2012 Cal. Legis. Serv. Ch. 647 (A.B. 2492) (WEST).

VI. THE MEDICARE PROGRAM

34. In 1965, Congress enacted Title XVIII of the Social Security Act, known as the Medicare program, to pay for the costs of healthcare services for certain individuals. The Department of Health and Human Services (“HHS”) is responsible for the administration and supervision of the Medicare program, which it does through the Centers for Medicare and Medicaid Services (“CMS”), an agency of HHS.

35. Entitlement to Medicare is based on age, disability or affliction with end-stage renal disease. *See* 42 U.S.C. §§ 426, 426A. Part A of the Medicare Program authorizes payment for institutional care, including hospital, skilled nursing facility and home health care. *See* 42 U.S.C. §§ 1395c-1395i-4. Part B of the Medicare program primarily covers physician and other ancillary services. *See* 42 U.S.C. § 1395k.

36. To assist in the administration of Medicare Part A, CMS contracted with “fiscal intermediaries.” 42 U.S.C. § 1395h. Fiscal intermediaries (typically insurance companies) were responsible for processing and paying claims and cost reports.

37. To assist in the administration of Medicare Part B, CMS contracted with “carriers.” Carriers, typically insurance companies, were responsible for processing and paying Part B claims.

38. Beginning in November 2006, Medicare Administrative Contractors (“MACs”) began replacing both the fiscal intermediaries and carriers. *See* Fed. Reg. 67960, 68181 (Nov. 2006). The MACs generally act on behalf of CMS to process and pay Part A and Part B claims and perform administrative functions on a regional level. *See* 42 § C.F.R. 421.5(b).

39. Noridian Healthcare Solutions, LLC, became the MAC for the California region in September 2013. Palmetto GBA served as the MAC for the California region from September 2008 to August 2013. Prior to September 2008, National Government Services served as the Part A fiscal intermediary and National Heritage Insurance Company served as the Part B carrier for the California region.

40. Providers who wish to be eligible to participate in Medicare Part A must periodically sign an application to participate in the program. The application, which must be signed by an authorized representative of the provider, contains an express certification that states, “I agree to

abide by the Medicare laws, regulations and program instructions that apply to this provider. . . . I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including but not limited to, the Federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.”

41. Under the Medicare program, CMS makes payments retrospectively (after the services are rendered) to hospitals for inpatient and outpatient services.

42. Upon discharge of Medicare beneficiaries from a hospital, the hospital submits Medicare Part A claims for interim reimbursement for inpatient and outpatient items and services delivered to those beneficiaries during their hospital stays. 42 C.F.R. §§ 413.1, 413.60, 413.64. Hospitals submit patient-specific claims for interim payments on a Form UB-92 or UB-04.

43. As detailed below, at all relevant times, Defendant SUTTER HEALTH was enrolled as a Medicare and Medicaid provider and submitted or caused to be submitted claims to Medicare and Medicaid both for specific inpatient and outpatient services provided to individual beneficiaries as well as claims for general and administrative costs incurred in treating Medicare and Medicaid beneficiaries.

44. As a prerequisite to payment under Medicare Part A, CMS requires hospitals to submit annually a form CMS-2552, more commonly known as the hospital cost report. Cost reports are the final claim that a provider submits to the fiscal intermediary or MAC for items and services rendered to Medicare beneficiaries.

45. After the end of each hospital's fiscal year, the hospital files its hospital cost report with the fiscal intermediary or MAC, stating the amount of Part A reimbursement the provider

believes it is due for the year. *See* 42 U.S.C. § 1395g(a); 42 C.F.R. § 413.20. *See also* 42 C.F.R. § 405.1801(b)(1). Medicare relies upon the hospital cost report to determine whether the provider is entitled to more reimbursement than already received through interim payments, or whether the provider has been overpaid and must reimburse Medicare. *See* 42 C.F.R. §§ 405.1803, 413.60 and 413.64(f)(1).

46. Defendant SUTTER HEALTH was, at all times relevant to this Complaint, required to submit annually hospital cost reports to the fiscal intermediary or MAC.

47. During the relevant time period, Medicare Part A payments for hospital services were determined by the claims submitted by the provider for particular patient discharges (specifically listed on government forms UB-92 and UB-04) during the course of the fiscal year. On the hospital cost report, this Medicare Part A liability to the hospital for services is then combined with any Medicare Part A liabilities owed to Medicare from the hospital to determine whether Medicare or the hospital owes the other any funds related to treatment of Medicare Part A beneficiary patients during the course of a fiscal year.

48. Under the rules applicable at all times relevant to this Complaint, Medicare, through its fiscal intermediaries, carriers and MACs, had the right to audit the hospital cost reports and to investigate representations made by SUTTER HEALTH in its claims for reimbursement and its cost reports to ensure their accuracy and preserve the integrity of the Medicare Trust Funds. This right includes the right to make retroactive adjustments to hospital cost reports previously submitted by a provider if any overpayments have been made, such as payments for services rendered by physicians and hospitals which are not in compliance with the Stark Law or the AKS. *See* 42 C.F.R. § 413.64(f).

49. Every hospital cost report contains a “Certification” that must be signed by the chief administrator of the provider or a responsible designee of the administrator.

50. For all relevant years, SUTTER HEALTH was required to expressly certify, and did certify, in relevant part:

to the best of my knowledge and belief, it [the hospital cost report] is a true, correct and complete statement prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

51. For the entire period at issue, the hospital cost report certification page also included the following notice:

Misrepresentation or falsification of any information contained in this cost report may be punishable by criminal, civil and administrative action, fine and/or imprisonment under federal law. Furthermore, if services identified in this report were provided or procured through the payment directly or indirectly of a kickback or where otherwise illegal, criminal, civil and administrative action, fines and/or imprisonment may result.

52. Thus, the provider was required to certify that the filed hospital cost report is (1) truthful, i.e., that the cost information contained in the report is true and accurate; (2) correct, i.e., that the provider is entitled to reimbursement for the reported costs in accordance with applicable instructions; (3) complete, i.e., that the hospital cost report is based upon all information known to the provider; and (4) that the services provided in the cost report were billed in compliance with applicable laws and regulations, including the Stark Statute (described below).

53. For each of the years at issue, SUTTER HEALTH submitted cost reports to its fiscal intermediary attesting, among other things, to the certification quoted above.

54. A hospital is required to disclose all known errors and omissions in its claims for Medicare Part A reimbursement (including its cost reports) to its fiscal intermediary or MAC.

55. In addition to Part A claims, hospitals, doctors or other providers submit Medicare Part B claims to the carrier or MAC for payment.

56. Under Part B, Medicare will generally pay 80 percent of the “reasonable” charge for medically necessary items and services provided to beneficiaries. *See* 42 U.S.C. §§ 1395l(a)(1), 1395y(a)(1). For most services, the reasonable charge has been defined as the lowest of (a) the actual billed charge, (b) the provider’s customary charge, or (c) the prevailing charge for the service in the locality. *See* 42 C.F.R. §§ 405.502-504.

VII. THE MEDICAID PROGRAM

57. Medicaid is a joint federal-state program that provides health care benefits for certain groups, primarily the poor and disabled. The federal involvement in Medicaid is largely limited to providing matching funds and ensuring that states comply with minimum standards in the administration of the program.

58. The federal Medicaid statute sets forth the minimum requirements for state Medicaid programs to qualify for federal funding, which is called federal financial participation (FFP). 42 U.S.C. §§ 1396 et seq.

59. In order to qualify for FFP, each state’s Medicaid program must meet certain minimum requirements, including the provision of hospital services to Medicaid beneficiaries. 42 U.S.C. § 1396a(10)(A), 42 U.S.C. § 1396d(a)(1)-(2).

60. In the State of California, provider hospitals participating in the Medicaid program (known as “Medi-Cal”) submit claims for hospital services rendered to beneficiaries to the California Department of Health Care Services (“DHCS”) for payment.

61. In addition, DHCS requires hospitals participating in the Medi-Cal program to file a copy of their Medicare cost report with DHCS.

62. DHCS uses Medi-Cal patient data and the Medicare cost report to determine the reimbursement to which the facility is entitled based in part on the number of Medi-Cal patients treated at the facility.

VIII. THE STARK LAW

63. Enacted as amendments to the Social Security Act, 42 U.S.C. § 1395nn (commonly known as the “Stark Statute” or “Stark Law”) prohibits a hospital (or other entity providing designated health services) from submitting Medicare claims for designated health services (as defined in 42 U.S.C. § 1395nn(h)(6)) based on patient referrals from physicians having a “financial relationship” (as defined in the Statute) with the hospital, and prohibits Medicare from paying any such claims.

64. The Stark Statute establishes that the United States will not pay for designated health services prescribed by physicians who have improper financial relationships with other providers. The Statute was designed specifically to prevent losses that might be suffered by the Medicare program due to questionable or improper utilization of designated health services.

65. The Stark Statute explicitly states that Medicare may not pay for any designated health service provided in violation of the Stark Statute. *See* 42 U.S.C. § 1395nn(g)(1). In addition, the regulations implementing the Stark Statute expressly require that any entity collecting payment

for a healthcare service “performed under a prohibited referral must refund all collected amounts on a timely basis.” 42 C.F.R. § 411.353 (2006).

66. Congress enacted the Stark Statute in two parts, commonly known as Stark I and Stark II. Enacted in 1989, Stark I applied to referrals of Medicare patients for clinical laboratory services made on or after January 1, 1992, by physicians with a prohibited financial relationship with the clinical lab provider unless a statutory or regulatory exception applies. *See* Omnibus Budget Reconciliation Act of 1989, P.L. 101-239, § 6204.

67. In 1993, Congress passed Stark II, which extended the Stark Statute to referrals for ten additional designated health services. *See* Omnibus Reconciliation Act of 1993, P.L. 103-66, § 13562, Social Security Act Amendments of 1994, P.L. 103-432, § 152.

68. The Stark Statute prohibits a hospital from submitting a claim to Medicare for “designated health services” that were referred to the hospital by a physician with whom the hospital has a “financial relationship,” unless a statutory exception applies. “Designated health services” include inpatient and outpatient hospital services reimbursable under Medicare Part A or Part B. *See* 42 U.S.C. § 1395nn(h)(6).

69. In pertinent part, the Stark Statute provides:

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician . . . has a financial relationship with an entity specified in paragraph (2), then –

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

42 U.S.C. § 1395nn(a)(1).

70. Moreover, the Stark Statute provides that Medicare will not pay for designated health services billed by a hospital when the designated health services resulted from a prohibited referral under subsection (a). *See* 42 U.S.C. § 1395nn(g)(1). Numerous physician compensation arrangements orchestrated by Defendant SUTTER HEALTH violate the Stark Law in multiple ways as set forth below.

71. “Financial relationship” includes a “compensation arrangement,” which includes any arrangement involving any remuneration paid directly or indirectly to a referring physician. *See* 42 U.S.C. §§ 1395nn(h)(1)(A) and (h)(1)(B).

STARK EXCEPTIONS

72. The Stark Statute and companion regulations contain exceptions for certain compensation arrangements. These exceptions include, among others, “personal services arrangements,” “fair market value arrangements,” and “indirect compensation relationships.”

73. In order to qualify for the Stark Statute’s exception for personal services arrangements, a compensation arrangement must meet, *inter alia*, both of the following statutory requirements: (A) the compensation does not exceed fair market value (“FMV”), *and* (B) is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties (unless it falls within a further “physician incentive plan” exception as described in the statute). *See* 42 U.S.C. § 1395nn(e)(3)(A)(v).

74. A “physician incentive plan” under § 1395nn(e)(3) is defined very narrowly, and only applies to compensation arrangements that “may directly or indirectly have the effect of reducing or

limiting services provided with respect to individuals enrolled with the entity.” 42 U.S.C. § 1395nn(e)(3)(B)(ii).

75. To qualify for the Stark Statute’s exception for FMV compensation, the arrangement must satisfy each of the following conditions: There must be an agreement in writing; the written agreement must set forth all services to be furnished; all compensation must be set in advance and consistent with FMV; the agreement must not take into consideration the volume or value of referrals or other business generated by the referring physician; and the agreement must not violate federal or state law. *See* 42 C.F.R. § 411.357(l).

76. To qualify for the Stark Statute’s exception for indirect compensation arrangements, defined as any instance where compensation flows from the entity providing designated health services through an intervening entity and then to the referral source (*see* 42 C.F.R. § 411.354(c)(2)), there must be a written agreement, the compensation must be consistent with FMV, the compensation may not take into consideration the volume or value of referrals or other business generated by the referring physician, and the agreement cannot violate the Anti-Kickback Statute. *See* 42 C.F.R. § 411.357(p).

77. The Stark Statute applies to claims for payment under Medicare and Medicaid. *See* 42 U.S.C. § 1396b(s).

IX. FEDERAL ANTI-KICKBACK STATUTE

78. The AKS makes it a crime to knowingly and willfully offer, pay, solicit or receive any remuneration to induce a person:

(1) to refer an individual to a person for the furnishing of any item or service covered under a federal health care program; or

(2) to purchase, lease, order, arrange for or recommend any good, facility, service, or item covered under a federal health care program.

42 U.S.C. § 1320a-7b(b)(1)-(2). The term “any remuneration” encompasses any kickback, bribe, or rebate, direct or indirect, overt or covert, cash or in kind. 42 U.S.C. § 1320a-7b(b)(1).

79. The AKS “address[es] Congress’ concern that health care decision-making can be unduly influenced by a profit motive.” Medicare and Medicaid Programs; Physicians’ Referrals to Health Care Entities With Which They Have Financial Relationships, 63 Fed. Reg. 1659, 1662 (Jan. 9, 1998).

80. Any claim submitted to Medicare or Medicaid for items or services resulting from a violation of the AKS constitutes a “false or fraudulent claim” under the FCA. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6402(f)(1), 124 Stat. 119 (2010), adding 42 U.S.C. § 1320a-7b(g); *see also McNutt ex rel. U.S. v. Haleyville Med. Supplies, Inc.*, 423 F.3d 1256, 1260 (11th Cir. 2005).

81. The AKS covers any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. *United States v. Kats*, 871 F.2d 105 (9th Cir. 1989); *United States v. Greber*, 760 F.2d 68 (3d Cir.), *cert. denied*, 474 U.S. 988 (1985); *United States v. McClatchey*, 217 F.3d 823, 835 (10th Cir. 2000); *United States v. Davis*, 132 F.3d 1092, 1094 (5th Cir. 1998). The AKS is “violated, even if the payments were also intended to compensate for professional services.” *United States v. Borrasi*, 639 F.3d 774, 782 (7th Cir. 2011) (quoting *United States v. Greber*, 760 F.2d 68, 72 (3d Cir. 1985)).

82. The Patient Protection and Affordable Care Act of 2010 clarified the intent requirement of the AKS by adding a provision stating that actual knowledge of an AKS violation or

the specific intent to commit a violation of the AKS is not necessary for conviction under the statute. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6402(f)(2), 124 Stat. 119 (2010). The AKS now expressly provides: “With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.” 42 U.S.C. § 1320a-7b(h).

83. HHS has published safe harbor regulations that define practices not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. *See* 42 C.F.R. § 1001.952. The safe harbors set forth specific conditions that, if met, assure entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. However, safe harbor protection is only afforded to those arrangements that precisely meet all of the conditions set forth in the safe harbor.

84. The interplay between the AKS and the Stark Statute has been summarized as follows:

Both the anti-kickback statute and [Stark] address Congress' concern that health care decisionmaking can be unduly influenced by a profit motive. When physicians have a financial incentive to refer, this incentive can affect utilization, patient choice, and competition. Physicians can overutilize by ordering items and services for patients that, absent a profit motive, they would not have ordered. A patient's choice can be affected when physicians steer patients to less convenient, lower quality, or more expensive providers of health care, just because the physicians are sharing profits with, or receiving remuneration from, the providers. And lastly, where referrals are controlled by those sharing profits or receiving remuneration, the medical marketplace suffers since new competitors can no longer win business with superior quality, service, or price. Although the purposes behind the anti-kickback statute and [Stark] are similar, it is important to analyze them separately. In other words, to operate lawfully under Medicare and Medicaid, one must comply with both statutes.

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships, 63 Fed. Reg. 1659, 1662 (Jan. 9, 1998).

X. THE FRAUD SCHEME

85. Beginning July 1, 2002 and continuing to the present, SUTTER HEALTH devised and implemented a scheme by which it:

- a. entered into compensation arrangements with physicians in violation of the Stark Statute and the AKS, specifically by paying or providing unlawful kickbacks, excessive compensation, free employees and other illegal incentives to physicians who refer patients to SUTTER HEALTH in violation of federal law; and
- b. submitted and/or caused others to submit false and fraudulent claims for payment to Medicare and Medicaid in violation of FCA, which included claims relating to inpatient and outpatient designated health services rendered to patients referred to SUTTER HEALTH by physicians who had improper financial relationships with Defendant violating the Stark Statute and the AKS.

A. Sacramento Cardiovascular Surgeons Medical Group, Inc. (“SCSMG”)

86. Beginning July 1, 2006, SUTTER HEALTH entered into a series of agreements with Defendant Sacramento Cardiovascular Surgeons Medical Group, Inc. (“SCSMG”) that provided free physician assistants to and for the direct benefit of SCSMG, one purpose of which was to induce referrals from the SCSMG physicians for inpatient and outpatient hospital services at SUTTER HEALTH. The current version of the agreement for physician assistants is attached as **Exhibit 1** (the “Physician Assistants Agreement”).

87. The Physician Assistants Agreement obligates SUTTER HEALTH to pay SCSMG for four physician assistants at the current rate of \$170,000.00 per full time equivalent, or a total of \$680,000.00 per year. **Exhibit 1**, ¶1(a). The compensation is payable in monthly installments of \$56,666.66 each, subject to submission of monthly time reports. **Exhibit 1**, ¶3(a).

88. Physician assistants that were paid for by SUTTER HEALTH under the Physician Assistants Agreement include (without limitation): Christopher J. Davis, Alan J. Fribourg, Mark B. Jones, and Teresa E. North (the “SCSMG Physician Assistants”).

89. The three physicians illegally benefiting from the payments made by SUTTER HEALTH under the Physician Assistants Agreement for the free physician assistants are: Dr. Michael T. Ingram, Dr. Robert Kincade and Dr. James Longoria (the “SCSMG Physicians”).

90. The Physician Assistants Agreement expressly provides:

c. **No Billing to Patients or Other Payors.** The parties anticipate that the services to be provided by the Assistants are not chargeable to patients or third party payors. In the event Group and Hospital determine that some or all of Assistants services are billable to third party payors, the parties shall meet and confer as to what compensation adjustments may be warranted to assure that patients and/or third party payors are not billed for services that are paid for by Hospital pursuant to this Agreement.

Exhibit 1, ¶3(c).

91. Despite the contractual provision to the contrary, SCSMG did in fact bill third party payers, including Medicare, for some of the SCSMG Physician Assistants’ services, with the payments on such claims accruing to the benefit of SCSMG and thereby indirectly benefiting the SCSMG Physicians. See **Exhibit 2** for 2012 Medicare payments for SCSMG Physician Assistants’ services paid to SCSMG.

92. SUTTER HEALTH intended to reward SCSMG for its high-volume referrals with the preferential Physician Assistants Agreement.

93. Additionally, beginning October 1, 2006, SUTTER HEALTH entered into a series of three Medical Director Agreements with SCSMG that paid SCSMG up to a total of \$318,264.00 annually for services allegedly performed by each of the SCSMG Physicians as the “Medical Director” of various services lines.

94. Dr. Michael T. Ingram is the Medical Director of the Cardiac Intensive Care Unit and the Assistant Medical Director of the Sutter Heart Institute. SUTTER HEALTH pays SCSMG for Dr. Ingram’s services as Medical Director at the hourly rate of \$330.55 for up to 120 hours per quarter, or a total of \$158,664.00 per year. **Exhibits 3-1 and 3-2**. The compensation is payable in monthly installments, subject to submission of monthly time reports. **Exhibit 3-2**, ¶3(a).

95. Dr. Robert Kincade is the Medical Director of the Transplant Ventricular Assist Device Program. SUTTER HEALTH pays SCSMG for Dr. Kincade’s services as Medical Director at the hourly rate of \$332.50 for up to 20 hours per month, or a total of \$79,800.00 per year. **Exhibit 4**. The compensation is payable in monthly installments, subject to submission of monthly time reports. **Exhibit 4**, ¶3(a).

96. Dr. James Longoria is the Medical Director of the Surgical Ablation Program. SUTTER HEALTH pays SCSMG for Dr. Longoria’s services as Medical Director at the hourly rate of \$332.50 for up to 20 hours per month, or a total of \$79,800.00 per year. **Exhibit 5**. The compensation is payable in monthly installments, subject to submission of monthly time reports. **Exhibit 5**, ¶3(a).

97. SUTTER HEALTH intended to reward SCSMG for its high-volume referrals with the lucrative and duplicative Medical Director Agreements.

98. Also, beginning July 1, 2008, SUTTER HEALTH entered into a series of Call Coverage Agreements with SCSMG that currently pays SCSMG up to a total of \$912,500.00 annually. The purpose of the Call Coverage Agreements is ostensibly to assure the availability of cardiovascular surgeons to provide emergency services on a 24-hour basis. See **Exhibits 6-1, 6-2 and 6-3**.

99. The rate for call coverage paid by SUTTER HEALTH to SCSMG jumped **more than 200 percent** from \$1,140 per 24-hour shift in the 2008 Call Coverage Agreement (**Exhibit 6-1**) to \$2,500 per 24-hour shift in the 2010 Call Coverage Agreement (**Exhibit 6-2**), and remained at \$2,500 per 24-hour shift in the 2012 Call Coverage Agreement (**Exhibit 6-3**). The rate of \$2,500 per 24-hour shift exceeds fair market value and exceeds the rates paid by SUTTER HEALTH to other similar cardiovascular surgeons for call coverage during the same timeframes.

100. Although not stated in the Call Coverage Agreements, SUTTER HEALTH pays call coverage for cardiovascular surgeons in the Sacramento area exclusively to SCSMG, to the exclusion of all other cardiovascular surgeons who are members of the medical staff at Sutter Memorial Center, Sacramento. As a result, SUTTER HEALTH pays SCSMG at the rate of \$2,500 per shift for all 365 days of the calendar year. See **Exhibit 7** for example of July 2013 call coverage payment.

101. SUTTER HEALTH intends to reward SCSMG for its high-volume referrals with a preferential and above-market Call Coverage Agreement.

102. The Call Coverage Agreement specifies that SCSMG Physicians may separately bill and collect charges for any professional services rendered, in addition to the \$2,500 per shift. **Exhibit 6-3**, ¶1(h). Essentially, SCSMG is being paid twice for professional services rendered under the Call Coverage Agreements.

103. In addition to the compensation paid to SCSMG under the Physician Assistants Agreement, the Medical Director Agreements and the Call Coverage Agreement, SUTTER HEALTH pays SCSMG for medical services provided by SCSMG to patients pursuant to a Specialty Care Clinician Agreement for each of the SCSMG Physicians. See **Exhibit 8** for example of Specialty Care Agreement for Dr. Michael T. Ingram. Defendant Sutter Medical Foundation is the entity that actually bills Medicare for the services provided by the SCSMG Physicians. Defendant Sutter Medical Foundation in turn contracts with various medical groups, including Defendant Sutter Independent Physicians, to obtain physician services. SCSMG is a member of Defendant Sutter Independent Physicians and receives payments for patient care services through Defendant Sutter Medical Foundation and Sutter Independent Physicians.

104. SUTTER HEALTH pays SCSMG for patient care services under the Specialty Care Clinician Agreement. In addition, SUTTER HEALTH pays SCSMG the following compensation under current agreements:

SCSMG Compensation – Excluding Patient Care Services

<u>Agreement</u>	<u>Total Annual Compensation</u>
Physician Assistants Agreement	\$ 680,000.00
Medical Director Agreements	318,264.00

Call Coverage Agreement	<u>912,500.00</u>
TOTAL ANNUAL COMPENSATION	<u>\$1,910,764.00</u>

105. By stacking the Physician Assistants Agreement, Medical Director Agreements and Call Coverage Agreements with aggregate annual compensation exceeding \$1.9 million (excluding patient care services performed by the SCSMG Physicians), SUTTER HEALTH created a financial relationship with the SCSMG Physicians that was commercially unreasonable, grossly in excess of fair market value, and a financial relationship that violates the Stark Statute because no exception applied.

1. SUTTER HEALTH Knew the SCSMG Agreements Were Illegal.

106. On November 7, 2013, Brooke Haynes, Contract Specialist in Accounts Payable, copied Relator, as Compliance Officer of Sutter Medical Center, Sacramento, on an e-mail sent to Vickie Sexton, who was the Administrative Assistant to Rick Harrell, the cardiovascular service line administrator for SUTTER HEALTH. Ms. Haynes had questioned payments to SCSMG under the Physician Assistants Agreement because the SCSMG Physician Assistants had not documented the minimum number of hours required under the agreement, and payment would need to be adjusted for the hours actually documented instead of the full payment for each month in the quarter. **Exhibit 9.**

107. Rick Harrell, the cardiovascular service line administrator for SUTTER HEALTH, requested that the SCSMG Physician Assistants review and revise their timesheets for missing documentation of the services provided and resubmit the timesheets. On November 25, 2013, Rick Harrell then sent the revised timesheets to the payment approvers in Accounts Payable for payment,

without involving Relator as Compliance Officer even though Relator had asked Rick Harrell to provide her with the revised timesheets before submitting them for payment.

108. When Relator learned that the revised timesheets had been submitted to the payment approvers in Accounts Payable without her review, Relator requested copies of the revised timesheets for her review. Therein, she discovered that the SCSMG Physician Assistants had billed more than 40 hours for 5 full weeks in each month. She also discovered the timesheets had falsely recorded non-work items such as vacations as being time spent at work. After review, Relator concluded that the timesheets contained false information that was not supported by accurate data. As a result of Relator's review of the timesheets and after discussion with her superiors, SUTTER HEALTH placed a hold on payments under the Physician Assistants Agreement beginning with the payment for the month of January 2014 pending further investigation.

109. On February 14, 2014, Relator met with Rick Harrell to discuss her review of the resubmitted timesheets. As a result of the meeting, Rick Harrell requested a third set of timesheets from the SCSMG Physician Assistants. The third set of timesheets included estimates of additional duties and hours not historically recorded, such as patient rounding and pre/post procedure time. Relator questioned why payment for the claimed Physician Assistant's services were necessary as the services claimed by the SCSMG Physician Assistants appeared to be compensable duties and part of the surgical global fee paid to the surgeon. Rick Harrell agreed with Relator that the Physician Assistants' services were compensable as part of the surgical global fee. Nevertheless, SUTTER HEALTH resumed the \$56,666.66 monthly payments to SCSMG under the Physician Assistants Agreement in April 2014.

110. Relator continued to investigate the billing issues associated with the SCSMG Physician Assistants and discovered that SCSMG was able to bill third party payers, including Medicare, for services provided by the physician assistants. In March and April 2014, Relator worked with Malcolm Macleod, a reimbursement manager at Defendant Sutter Medical Foundation, to prepare the spreadsheet (Exhibit 2) showing that SCSMG could in fact bill under Medicare rules for the work of physician assistants. Relator presented the information about Medicare rules governing billing for physician assistants to her superiors at SUTTER HEALTH.

111. On or about July 24, 2014, Rick Harrell queried the CMS Physician Payment Data for 2012 and confirmed that SCSMG had billed Medicare for services performed by the SCSMG Physician Assistants which SUTTER HEALTH funded, in breach of the Physician Assistant Agreement. Rick Harrell reported this information to his superiors at SUTTER HEALTH. SUTTER HEALTH decided to issue another hold on further payments under the Physician Assistants Agreement pending further investigation. Relator issued the payment hold on the Physician Assistants Agreement by e-mail on Monday, July 28, 2014 at 9:59 a.m. Exhibit 10. SCSMG was being provided free employees and SCSMG was in fact billing Medicare for the Physician Assistant's services and retaining the payments. This illegal benefit to SCSMG allowed them to profit from these services which were not connected to personally performed physician services.

112. Relator also reviewed the timesheets supporting the payments to SCSMG under the Medical Director Agreements. Relator found duplicative supervision of Dr. Daren Danielson, a Travis Air Force Base physician who is fully credentialed, and duplicative supervision of other ICU staff. On June 19, 2014, after discussion with Relator's superiors at SUTTER HEALTH, Relator

issued a hold on further payments under the Medical Director Agreements pending further investigation. **Exhibit 11.**

2. SUTTER HEALTH Knowingly Paid Kickbacks To Induce Referrals.

113. On Thursday, July 31, 2014, Dr. James Longoria called Carol Spangler, Assistant to Patrick Fry, the President and Chief Executive Officer of Sutter Health. Dr. Longoria left a message with Ms. Spangler because Mr. Fry was not in the office. Dr. Longoria threatened to shut down the Operating Rooms if the payment stop was not lifted.

114. SUTTER HEALTH gave in to Dr. Longoria's threat. Later on Thursday, July 31, 2014, SUTTER HEALTH made a knowing, willful and conscious decision to reissue the \$56,666.66 payment for June 2014 to subsidize the SCSMG Physician Assistants who were billing third party payers, including Medicare, for the benefit of the referring SCSMG Physicians in breach of the Physician Assistants Agreement. One purpose of reissuing the \$56,666.66 payment to SCSMG for June 2014 was to continue to induce future referrals to SUTTER HEALTH operating rooms and to maintain the status quo of referrals from SCSMG. .

115. Eric Dalton, VP Finance of Sutter Shared Services, ordered Brooke Haynes in Accounts Payable to reissue the check due on the Physician Assistants Agreement and send it to SCSMG via Federal Express immediately. SUTTER HEALTH sent the \$56,666.66 check to SCSMG on July 31, 2014 under Federal Express Tracking Number 770738076893. **Exhibit 12.**

116. Given that SUTTER HEALTH paid SCSMG to subsidize the SCSMG Physician Assistants, unrelated to the personally performed services of the SCSMG Physicians, SUTTER HEALTH could not reasonably have concluded that the payments under the Physician Assistants Agreement did not violate the Stark Statute. SUTTER HEALTH knew it was in violation of the

Stark Law and still knowingly made the payments to SCSMG and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

117. Based on the contractual and actual financial relationships between the SCSMG Physicians and SUTTER HEALTH, the Stark Statute was violated because SCSMG and the SCSMG Physicians had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply to the compensation arrangements.

118. Given that SUTTER HEALTH paid SCSMG to subsidize the SCSMG Physician Assistants, one purpose of which was to induce future referrals to SUTTER HEALTH, SUTTER HEALTH could not reasonably have concluded that the payments under the Physician Assistants Agreement did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly continued to submit tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

119. Based on the contractual and actual financial relationships between the SCSMG Physicians and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and SCSMG and the SCSMG Physicians received, remuneration to induce the SCSMG Physicians to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

120. **Exhibit 13** is a redacted sample of actual patients referred by SCSMG Physicians to SUTTER HEALTH for inpatient hospital services, some of which resulted in false claims for reimbursement made by SUTTER HEALTH to Medicare on prohibited referrals from the SCSMG Physicians.

B. Dr. David K. Roberts

121. In addition to the cardiovascular medical directorships paid to the three SCSMG Physicians, SUTTER HEALTH also pays hundreds of thousands of dollars per year to a fourth cardiovascular surgeon, Dr. David K. Roberts. SUTTER HEALTH pays Defendant Sutter Medical Foundation for Dr. Roberts' services as Regional Medical Director at the hourly rate of \$270.00 for up to 121 hours per month, or a total of \$392,040.00 per year. **Exhibit 14**. The compensation is payable in monthly installments, subject to submission of monthly time reports. **Exhibit 14**, ¶3(a).

122. Dr. Roberts' Medical Director Agreement specifies that Dr. Roberts and Defendant Sutter Medical Group shall not bill or assert any claim for payment against any patient or payer for services performed during the 121 hours per month that Physician is performing his medical directorship duties. **Exhibit 14**, ¶3(c). Nonetheless, Dr. Roberts maintains a very active medical practice in his limited spare time, and billed Medicare over \$200,000 during the year 2012.

123. SUTTER HEALTH intended to reward Dr. Roberts for his high-volume referrals with the lucrative and duplicative Regional Medical Director Agreement.

124. By stacking four cardiovascular Medical Director Agreements (three with SCSMG Physicians and another with Dr. Roberts) with aggregate annual compensation for the four medical directorships exceeding \$700,000 (excluding patient care services performed by the SCSMG Physicians and Dr. Roberts), SUTTER HEALTH created a financial relationship with Dr. Roberts that was commercially unreasonable, grossly in excess of fair market value, and violative of the Stark Statute because no exception applied.

125. Based on the contractual and actual financial relationships between Defendant Sutter Medical Foundation on behalf of Dr. Roberts and SUTTER HEALTH, the Stark Statute was violated

because Dr. Roberts had a compensation arrangement with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

126. Given that SUTTER HEALTH paid Dr. Roberts excessive amounts for his medical directorship, one purpose of which was to induce future referrals to SUTTER HEALTH operating rooms, SUTTER HEALTH could not reasonably have concluded that the payments under Dr. Roberts' Medical Director Agreement did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

127. Based on the contractual and actual financial relationships between Dr. Roberts and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and Defendant Sutter Medical Foundation and Dr. Roberts Physicians received, remuneration to induce Dr. Roberts to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

C. East Bay Perinatal Medical Associates ("EBPMA")

128. SUTTER HEALTH perpetrates similar fraud schemes using stacked compensation and financial agreements that pay or provide unlawful kickbacks, excessive compensation, free employees, preferential medical directorship and call coverage arrangements, and other illegal incentives to physicians in the East Bay region to selectively reward high-volume referrers to SUTTER HEALTH.

129. Beginning with the effective date of the merger of Alta Bates Medical Center and Summit Medical Center on or about July 1, 2002 and continuing through August 31, 2014, SUTTER

HEALTH entered into a series of agreements with Defendant East Bay Perinatal Medical Associates, Inc. (“EBPMA”) that restrict patient choice and competition, and reward high-volume referrers with preferential medical directorships and call coverage agreements for the Women and Infants Service Programs, one purpose of which was to induce referrals from the EBPMA physicians for inpatient and outpatient hospital services at SUTTER HEALTH. The current version of the agreement for perinatal and obstetrical coverage and administrative services agreement is attached as **Exhibit 15** (the “Perinatal Coverage Agreement”).

130. The current version of the Perinatal Coverage Agreement obligates SUTTER HEALTH to pay EBPMA for the administrative services of Dr. Stuart M. Lovett as Medical Director, and an unnamed Chief Obstetrical Generalist to be appointed by Dr. Lovett, for a combined maximum of 131 hours per month at the rate of \$150 per hour, or a total of \$235,800.00 per year. **Exhibit 15**, ¶1.3, ¶3.1(d). The compensation is payable in monthly installments of \$19,650.00 each, subject to submission of monthly time reports. **Exhibit 15**, ¶3(d).

131. In addition to the compensation for administrative services, the current version of the Perinatal Coverage Agreement obligates SUTTER HEALTH to pay EBPMA an aggregate annual amount of **\$6,412,561.32** for exclusive call coverage services encompassing all 24-hour periods for 365 days a year for OB Generalists, Perinatologists and Certified Nurse Midwives. **Exhibit 15**, ¶1.1, ¶3.1(a). The compensation is payable in monthly installments of \$534,380.11 each, without any accounting of time reports documenting the call coverage services actually rendered. **Exhibit 15**, ¶3(a). Moreover, SUTTER HEALTH agrees to pay EBPMA additional compensation for additional coverage services due to a strike or *force majeure* at the rate of \$150 per hour for each OB Generalist and \$72 per hour for each Certified Nurse Midwife. **Exhibit 15**, ¶1.2, ¶3.1(c).

132. SUTTER HEALTH has paid EBPMA for both administrative fees and call coverage fees under the Perinatal Coverage Agreements since July 1, 2002. The contractual amounts payable have varied over the years as follows:

EBPMA Compensation – Perinatal Coverage Agreement (Excl. Patient Care Services)

<u>Perinatal Coverage Agreement</u>	<u>Medical Directorships</u>	<u>Call Coverage</u>	<u>Total Annual Compensation</u>
Effective July 1, 2002	\$ 429,000.00	\$4,496,000.00	\$4,925,000.00
Effective August 28, 2007	\$ 144,000.00	\$4,345,000.00	\$4,489,000.00
Effective December 4, 2009	\$ 234,915.00	\$5,165,085.00	\$5,400,000.00
Effective June 1, 2014	\$ 235,800.00	\$6,412,561.32	\$6,648,361.32

Exhibits 16-1, 16-2, 16-3 and 15.

133. Each version of the Perinatal Coverage Agreements allowed EBPMA to separately bill patients and their insurers for all professional fees rendered by on-call physicians and other covering providers. For example, see **Exhibit 15**, ¶3.2(b). EBPMA did in fact receive all professional fees rendered by on-call physicians and other covering providers, in addition to the millions paid annually by SUTTER HEALTH for administrative services and call coverage under the Perinatal Coverage Agreements.

134. In August 2007, SUTTER HEALTH acquired the assets of East Bay Perinatal Center from EBPMA. SUTTER HEALTH placed the acquired assets in a separate non-profit, tax-exempt corporation which was renamed East Bay Perinatal Center. East Bay Perinatal Center operated a

community clinic specializing in maternal-fetal medicine in Oakland, California that served predominantly Medi-Cal patients (the “Clinic”).

135. Simultaneously with the acquisition of East Bay Perinatal Center effective August 28, 2007, SUTTER HEALTH caused East Bay Perinatal Center to enter into an exclusive Professional Services Agreement with EBPMA. See **Exhibit 17-1**. Under the Professional Services Agreement, SUTTER HEALTH pays EBPMA for the services of Dr. Stuart M. Lovett as Medical Director of the Clinic at the hourly rate of \$150.00 for up to 20 hours per quarter, or a total of \$36,000.00 per year. **Exhibit 17-1** (Exhibit 6.2, ¶3). In addition, SUTTER HEALTH pays EBPMA for patient care services based on Medicare rates for Work Relative Value Units, a method that ensures EBPMA is paid for all patient care services regardless of the patient’s ability to pay. **Exhibit 17-1** (Exhibit 6.2, ¶2). SUTTER HEALTH caused Sutter East Bay Hospitals to subsidize East Bay Perinatal Center so that EBPMA received full compensation for all services rendered in the Clinic.

136. The Professional Services Agreement granted EBPMA the exclusive right to provide physician staffing to the Clinic:

IV EXCLUSIVITY AND COMPETITION

4.1 **Exclusivity in Physician Staffing of the Clinic.** So long as the Clinic’s physician staffing needs are met in compliance with this Agreement, MEDICAL GROUP shall be the sole provider of physician services at the Clinic. ABSPC may participate, and may require MEDICAL GROUP to participate (solely with respect to services delivered at the Clinic), in shared risk contracting arrangements with one or more Independent Practice Associations, as deemed necessary to effectively and efficiently participate in Sutter Health’s system-wide or regional managed care contracting arrangements with third-party payors.

Exhibit 17-1, ¶4.1.

137. SUTTER HEALTH intended to reward EBPMA for its high-volume referrals with the exclusive Professional Services Agreement.

138. SUTTER HEALTH last renewed the Professional Services Agreement effective July 1, 2014. **Exhibit 17-2**. The physician comprising EBPMA as of July 1, 2014 are Dr. Stuart Lovett, Dr. Jonathan Weiss, Dr. Ralph DePalma, Dr. David Marinoff, Dr. Janet Goldman and Dr. Leon Richmond (the “EBPMA Physicians”). **Exhibit 17-2**, (Exhibit 1.3(i)).

139. In 2008, the first full calendar year of the Professional Services Agreement, SUTTER HEALTH (through East Bay Perinatal Clinic) paid EBPMA a total of \$1,336,395, and SUTTER HEALTH (through Sutter East Bay Hospitals) paid EBPMA another \$6,000,322. In 2008, SUTTER HEALTH paid EBPMA a grand total of **\$7,336,717**.

140. Incredibly, EBPMA thought \$7.3 million per year was not enough and in 2008 EBPMA requested even more funding from SUTTER HEALTH. A SUTTER HEALTH memorandum dated August 19, 2008, reports that “EBPMA believes that the agreements do not adequately compensate them for their cost or the needs of the partners.” **Exhibit 18**.

141. The same August 19, 2008 memorandum shows that SUTTER HEALTH intended to induce referrals when it later acquiesced to EBPMA’s demands for increased compensation: “EBPMA has also been a valuable partner to [Alta Bates Summit Medical Center] in expanding its high risk consulting practice to areas outside the primary footprint of [Alta Bates Summit Medical Center], into the San Ramon, Martinez, Fremont and other geographical areas.” **Exhibit 18**.

142. SUTTER HEALTH bowed to EBPMA’s monetary demands and increased the total compensation payable to EBPMA under the Perinatal Coverage Agreement effective December 4, 2009 by \$911,000.00 per year, from \$4,489,000.00 under the August 28, 2007 version to \$5,400,000.00 under the December 4, 2009 version.

143. The Perinatal Coverage Agreements specified that EBPMA compensation would vary if monthly delivery volume substantially increases or decreases from a baseline average. The baseline average in the August 28, 2007 version was 273 deliveries per month. **Exhibit 16-2**, ¶2.2(d)(5). The baseline average in the December 4, 2009 version was 300 deliveries per month. **Exhibit 16-3**, ¶2.2.4(f). Thus, the higher compensation paid by SUTTER HEALTH to EBPMA under the December 4, 2009 version of the Perinatal Coverage Agreement expressly and unequivocally varied with the volume of referrals for deliveries at SUTTER HEALTH's Alta Bates Summit Medical Center.

144. SUTTER HEALTH intentionally rewarded EBPMA for its high-volume referrals by adding \$911,000.00 in annual compensation under the December 4, 2009 version of the Perinatal Coverage Agreement (**Exhibit 16-3**), and by adding \$1,248,361.32 under the June 1, 2014 version of the Perinatal Coverage Agreement (**Exhibit 15**).

145. By stacking the preferential Perinatal Coverage Agreement with Sutter East Bay Hospitals, the exclusive Professional Services Agreement with East Bay Perinatal Center, and other contractual arrangements directly or indirectly benefiting EBPMA or the EBPMA physicians, with aggregate annual compensation exceeding \$7 million per year, SUTTER HEALTH created a financial relationship with the EBPMA Physicians that was commercially unreasonable, grossly in excess of fair market value, and a financial relationship that violates the Stark law because no exception applied.

146. Given that SUTTER HEALTH paid EBPMA excessive amounts under the Perinatal Coverage Agreements that intentionally increased with the volume of referrals from EBPMA Physicians, SUTTER HEALTH could not reasonably have concluded that the payments under the

Perinatal Coverage Agreements did not violate the Stark Statute. SUTTER HEALTH knew it was in violation of the Stark Law and still knowingly made the payments to EBPMA and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

147. Based on the contractual and actual financial relationships between the EBPMA Physicians and SUTTER HEALTH, the Stark Statute was violated because EBPMA and the EBPMA Physicians had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

148. Given that SUTTER HEALTH increased the compensation payable EBPMA under the Perinatal Coverage Agreement effective December 4, 2009 by \$911,000.00 in response to EBPMA's demands, and one purpose of such increase was to reward and induce referrals of deliveries to SUTTER HEALTH's Alta Bates Summit Medical Center and the resulting Medicaid-covered inpatient hospital services, SUTTER HEALTH could not reasonably have concluded that the payments under the Perinatal Coverage Agreements did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

149. Based on the contractual and actual financial relationships between the EBPMA Physicians and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and EBPMA and the EBPMA Physicians received remuneration, to induce the EBPMA Physicians to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH hospitals for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

D. East Bay Cardiac Surgery Center Medical Group ("EBCSCMG")

150. SUTTER HEALTH similarly used preferential agreements with its cardiac surgeons in the East Bay region to pay or provide unlawful kickbacks, excessive compensation, preferential medical directorships and call coverage arrangements, and other illegal incentives to restrict patient choice and competition and to selectively reward high-volume referrers.

151. From June 1, 2007 and continuing through August 31, 2014, SUTTER HEALTH entered into a series of Administrative and Coverage Agreements (“Coverage Agreements”) with Defendant East Bay Cardiac Surgery Center Medical Group (“EBCSCMG”). The Coverage Agreement effective June 1, 2007 obligated SUTTER HEALTH to pay EBCSCMG an annual amount of \$15,000.00 for a medical directorship and administrative services, plus a flat annual amount of \$485,000.00 for 24-hour, 365 days a year call coverage and for an unspecified number of hours performing data collection services, for a grand total of \$500,000.00 per year. **Exhibit 19-1**, ¶¶3.1 and 3.2. The Coverage Agreement effective February 4, 2009 obligated SUTTER HEALTH to pay EBCSCMG a flat annual amount of \$1,000,000.00 for administrative services, call coverage and data collection services, without specifically identifying the time required to perform the purported data collection services. **Exhibit 19-2**, ¶3.2. The net effect was to literally double the payments to EBCSCMG from \$500,000 to \$1,000,000 per year.

152. SUTTER HEALTH intended to reward EBCSCMG for its high-volume referrals by adding \$500,000.00 in annual compensation under the February 4, 2009 version of the Coverage Agreement (**Exhibit 19-2**), SUTTER HEALTH knew that EBCSCMG was not performing additional services to justify the exorbitant increase.

153. SUTTER HEALTH knew it was paying illegal compensation to EBCSCMG and tried to conceal the illegal scheme in later versions of the Coverage Agreement. The current version of

the Coverage Agreement between Sutter East Bay Hospitals and EBCSCMG is attached as **Exhibit 19-3**. The current agreement stacks compensation for administrative services (\$108,000.00), coverage and indigent care services (\$862,000.00) and data collection services (\$385,000.00 - \$1,100 per case up to 350 cases per year), for a grand total of \$1,355,000.00 per year. The physicians named to serve as Medical Director under the each version of the Coverage Agreement are Dr. Junaid H. Khan and Dr. Russell D. Stanten (the “EBCSCMG Physicians”).

154. In addition to the Coverage Agreements with Defendant Sutter East Bay Hospitals, SUTTER HEALTH pays the EBCSCMG Physicians for call coverage at Eden Medical Center in Castro Valley at the rate of \$850 per shift through Defendant Sutter Medical Center, Castro Valley d/b/a Eden Medical Center.

155. Even after attempting to conceal some of the additional compensation as “data collection services,” SUTTER HEALTH and EBCSCMG admitted that EBCSCMG was not fully performing the data collection services for which SUTTER HEALTH allegedly paid EBCSCMG under the revised Coverage Agreement. Rather than immediately recovering the overpayments from EBCSCMG which should not have been paid under the revised Coverage Agreement, SUTTER HEALTH waived and abandoned its contractual right to collect the overpayment from EBCSCMG within thirty days. In fact, SUTTER HEALTH allowed EBCSCMG to be paid for over four months with the benefit of the additional compensation payable for purported data collection services under the current February 1, 2014 version of the Coverage Agreement. See **Exhibit 19.4**.

156. SUTTER HEALTH intended to reward EBCSCMG for its high-volume referrals by adding more compensation under the February 1, 2014 version of the Coverage Agreement (**Exhibit**

19-3), and knew that EBCSCMG was not performing data collection services to justify the compensation for data collection services.

157. By stacking compensation for administrative services, call coverage and data collection services in the Coverage Agreements with EBCSCMG, with aggregate annual compensation exceeding \$1 million per year, SUTTER HEALTH created a financial relationship with the EBCSCMG Physicians that was commercially unreasonable, grossly in excess of fair market value, and a financial relationship that violates the Stark law because no exception applied.

158. Given that SUTTER HEALTH knowingly paid EBCSCMG excessive amounts under the Coverage Agreements that included compensation for purported data collection services that were not performed, SUTTER HEALTH could not reasonably have concluded that the payments under the Coverage Agreements did not violate the Stark Statute. SUTTER HEALTH knew it was in violation of the Stark Law and still knowingly made the payments to EBCSCMG and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

159. Based on the contractual and actual financial relationships between the EBCSCMG Physicians and SUTTER HEALTH, the Stark Statute was violated because EBCSCMG and the EBCSCMG Physicians had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

160. Given that SUTTER HEALTH increased the compensation payable EBCSCMG under the Coverage Agreement effective February 4, 2009 by \$500,000.00 and knowingly paid EBCSCMG under the Coverage Agreements for services that were not performed, and one purpose of such payments was to reward and induce referrals of patients by EBCSCMG Physicians to SUTTER HEALTH's Alta Bates Summit Medical Center for inpatient and outpatient hospital

services covered by Medicare and Medicaid, SUTTER HEALTH could not reasonably have concluded that the payments under the Coverage Agreements did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

161. Based on the contractual and actual financial relationships between the EBCSCMG Physicians and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and EBCSCMG and the EBCSCMG Physicians received remuneration, to induce the EBCSCMG Physicians to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH hospitals for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

E. Bay Area Surgical Specialists f/k/a East Bay Vascular Group (“BASS”)

162. SUTTER HEALTH used preferential agreements with its vascular and thoracic surgeons in the East Bay region to pay or provide unlawful kickbacks, excessive compensation, preferential medical directorships and call coverage arrangements, and other illegal incentives to restrict patient choice and competition, and to selectively reward high-volume referrers.

163. SUTTER HEALTH entered into multiple medical directorship and call coverage agreements with Defendant East Bay Surgical Specialists, Inc., A Medical Corporation f/k/a East Bay Vascular Group (“BASS”), including a Call Coverage Agreement for Vascular Surgery at Alta Bates Summit Medical Center (**Exhibit 20-1**) and a Call Coverage Agreement for Thoracic Surgery at Eden Medical Center (**Exhibit 20-2**) (the “BASS Call Coverage Agreements”). The BASS Call Coverage Agreements obligated SUTTER HEALTH to pay BASS call coverage at the rate of \$650 per shift for vascular surgery coverage at each of the two Alta Bates Summit Medical Center

campuses, and at the rate of \$850 per shift for thoracic surgery coverage for both of the campuses at Castro Valley and San Leandro. **Exhibit 20-1**, ¶3(a); **Exhibit 20-2**, ¶3(a).

164. Both of the BASS Call Coverage Agreements ensure the physicians serve as on-call physicians pursuant to a rotation on-call schedule established and amended from time to time by the hospital. **Exhibit 20-1**, ¶1(a); **Exhibit 20-2**, ¶1(a). Both of the BASS Call Coverage Agreements provide that BASS will separately bill and collect charges for any professional fees rendered during the coverage shifts. **Exhibit 20-1**, ¶1(j); **Exhibit 20-2**, ¶1(l).

165. In actual practice, Alta Bates Summit Medical Center rewards BASS for its high volume referrals with the preferential right to cover all shifts during the year for both hospital campuses. For example, for the month of March 2014, SUTTER HEALTH paid BASS a total of \$40,300.00, which included 31 shifts at the Alta Bates campus at \$650 per shift, and 31 shifts at the Summit campus at \$650 per shift. **Exhibit 21-1**. Over a full year, SUTTER HEALTH pays BASS a total of \$474,500.00 ($\$650 \times 2 \times 365$ days) for vascular surgery call coverage.

166. The BASS physicians appearing on the March 2014 call coverage report for Alta Bates Summit Medical Center are: Dr. Rajiv Nagesetty, Dr. Fernando R. Otero, Dr. John D. Bry, Dr. Gonzalo P. Obnial and Dr. Keshav K. Pandurangi (the “BASS Vascular Surgeons”). Dr. Rajiv Nagesetty was far-and-away the highest-billing vascular surgeon in the entire State of California for 2012 with Medicare billings of **\$4,176,471.06**. Dr. Nagesetty and BASS referred hundreds of Medicare patients each year to SUTTER HEALTH hospitals for inpatient and outpatient hospital services relating to expensive cardiovascular procedures.

167. SUTTER HEALTH intended to reward BASS and the BASS Vascular Physicians for their high-volume referrals with the preferred vascular surgery call coverage arrangement for the two campuses of Alta Bates Summit Medical Center.

168. At Eden Medical Center in Castro Valley, the thoracic surgery call coverage is shared between two medical groups: (1) BASS, the sole provider of vascular surgery call coverage at Alta Bates Summit Medical Center; and (2) EBCSCMG, the sole provider of cardiac surgery call coverage Alta Bates Summit Medical Center. For example, for the month of June 2014, SUTTER HEALTH paid BASS a total of \$11,900.00, which included 14 shifts at \$850 per shift, and SUTTER HEALTH paid EBCSCMG a total of \$13,600.00, which included 16 shifts at \$850 per shift.

Exhibit 21-2.

169. The BASS physicians appearing on the June 2014 call coverage report for Eden Medical Center are Dr. Michaela Straznicka, Dr. Wilson Tsai and Dr. Saurin Shah (the “BASS Thoracic Surgeons”). The EBCSCMG physicians appearing on the June 2014 call coverage report for Eden Medical Center are Dr. Junaid H. Khan and Dr. Russell D. Stanten, the same two physicians that SUTTER HEALTH richly compensates for supposedly providing cardiac surgery call coverage at Alta Bates Summit Medical Center every single day of the year. See Complaint ¶¶151-154 above. SUTTER HEALTH was double paying the same EBCSCMG Physicians for call coverage.

170. SUTTER HEALTH intended to reward BASS, the BASS Thoracic Physicians, EBCSCMG and the EBCSCMG Physicians for their high-volume referrals with the preferred thoracic surgery call coverage arrangement for Eden Medical Center.

171. By stacking compensation for vascular and thoracic surgery call coverage at Eden Medical Center with the various preferential agreements and compensation schemes at Alta Bates Summit Medical Center, SUTTER HEALTH created a financial relationship with the BASS Vascular Physicians and the BASS Thoracic Physicians and that was commercially unreasonable, grossly in excess of fair market value, and a financial relationship that violates the Stark law because no exception applied.

172. Given that SUTTER HEALTH knowingly paid BASS excessive amounts under the preferential BASS Coverage Agreements that included vascular surgery call coverage for all 365 days of the year, SUTTER HEALTH could not reasonably have concluded that the payments under the BASS Coverage Agreements did not violate the Stark Statute. SUTTER HEALTH knew it was in violation of the Stark Law and still knowingly made the payments to BASS and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

173. Based on the contractual and actual financial relationships between the BASS Vascular Physicians, the BASS Thoracic Physicians and SUTTER HEALTH, the Stark Statute was violated because BASS, the BASS Vascular Physicians and the BASS Thoracic Physicians had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

174. Given that SUTTER HEALTH knowingly assigned vascular and thoracic call coverage to BASS and EBCSCMG on a preferential basis and paid BASS and EBCSCMG based on such assignments, and one purpose of such preferential assignments and payments was to reward and induce referrals of patients by BASS Vascular Physicians, BASS Thoracic Physicians and EBCSCMG Physicians to SUTTER HEALTH's Alta Bates Summit Medical Center and Eden

Medical Center for inpatient and outpatient hospital services covered by Medicare and Medicaid, SUTTER HEALTH could not reasonably have concluded that the payments under the BASS Coverage Agreements did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

175. Based on the contractual and actual financial relationships between the BASS Vascular Physicians, the BASS Thoracic Physicians and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and BASS, the BASS Vascular Physicians and the BASS Thoracic Physicians received remuneration, to induce the BASS Vascular Physicians and the BASS Thoracic Physicians to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH hospitals for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

F. Dr. Stephen K. Liu

176. SUTTER HEALTH used preferential agreements with its physicians in the Central Valley region to pay or provide unlawful kickbacks, excessive compensation, preferential medical directorships and call coverage arrangements, and other illegal incentives to restrict patient choice and competition, and selectively reward high-volume referrers.

177. Beginning September 1, 2008, SUTTER HEALTH entered into a series of exclusive call coverage agreements for with Defendant Stephen K. Liu, M.D., Professional Corporation (“Liu MD PC”) for Interventional Radiology at Memorial Medical Center in Modesto, California. **Exhibit 22-1** (the “Liu Call Coverage Agreement”). The initial Liu Call Coverage Agreement expressly provided that Liu MD PC “shall be the exclusive provider of the specific interventional radiology

Services set forth at Exhibit A, attached hereto,” and Liu MD PC shall provide coverage services “on a twenty-four (24) hour basis every day of the calendar year.” **Exhibit 22-1**, ¶1(a) and (b).

Initially, the call coverage rate was \$500 per shift. **Exhibit 22-1**, ¶3(a).

178. SUTTER HEALTH has since **quadrupled** the call coverage compensation from \$500 to \$2,000 per shift in the current version of the Liu Call Coverage Agreement effective April 4, 2014. **Exhibit 22-2**, ¶3(a).

179. The Liu Call Coverage Agreement provides that Liu MD PC will separately bill and collect charges for any professional fees rendered during the coverage shifts. **Exhibit 22-1**, ¶3(b); **Exhibit 22-2**, ¶1(q).

180. Under the Liu Call Coverage Agreement, Memorial Medical Center rewards Liu MD PC and Dr. Stephen Liu individually for his high volume referrals with the exclusive right to cover all shifts for every day of the calendar year. For example, for the month of March 2014, SUTTER HEALTH paid Liu MD PC a total of \$37,200.00, which included all 31 shifts of the month at the Memorial Medical Center at \$1,200 per shift. **Exhibit 23**. Over a full year at the rate of \$1,200 per shift, SUTTER HEALTH paid Liu MD PC a total of \$438,000.00 (\$1,200 x 365 days) for interventional radiology call coverage.

181. Dr. Stephen Liu was far-and-away the highest-billing diagnostic radiologist in the entire State of California for 2012 with Medicare billings of **\$4,604,464.10**. Dr. Liu and Liu MD PC referred hundreds of Medicare patients each year to SUTTER HEALTH hospitals for inpatient and outpatient hospital services relating to expensive cardiovascular procedures.

182. SUTTER HEALTH intended to reward Liu MD PC and Dr. Liu individually for their high-volume referrals with the exclusive interventional radiology call coverage arrangement for Memorial Medical Center.

183. By providing Liu MD PC with preferential call coverage assignments and payments for all 365 days of the year, SUTTER HEALTH created a financial relationship with Liu MD PC and Dr. Stephen Liu individually that was commercially unreasonable, grossly in excess of fair market value, and a financial relationship that violates the Stark law because no exception applied.

184. Given that SUTTER HEALTH knowingly paid Liu MD PC excessive amounts under the preferential Liu Coverage Agreement that included interventional radiology call coverage for all 365 days of the year, SUTTER HEALTH could not reasonably have concluded that the payments under the Liu Coverage Agreement did not violate the Stark Statute. SUTTER HEALTH knew it was in violation of the Stark Law and still knowingly made the payments to Liu MD PC and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

185. Based on the contractual and actual financial relationships between Dr. Stephen Liu and SUTTER HEALTH, the Stark Statute was violated because Liu MD PC and Dr. Stephen Liu individually had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

186. Given that SUTTER HEALTH knowingly assigned interventional radiology call coverage to Liu MD PC on a preferential basis and paid Liu MD PC based on such assignments, and one purpose of such preferential assignments and payments was to reward and induce referrals of patients by Dr. Stephen Liu to SUTTER HEALTH's Memorial Medical Center for inpatient and

outpatient hospital services covered by Medicare and Medicaid, SUTTER HEALTH could not reasonably have concluded that the payments under the Liu Coverage Agreements did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

187. Based on the contractual and actual financial relationships between Dr. Stephen Liu and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and Liu MD PC and Dr. Stephen Liu individually received remuneration, to induce Dr. Liu to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH hospitals for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

G. California Emergency Physicians Medical Group, A Professional Corporation f/k/a/ Sutter Emergency Medical Associates (“CEPMG”)

188. Beginning February 1, 2008, SUTTER HEALTH entered into a series of agreements with Defendant California Emergency Physicians Medical Group f/k/a Sutter Emergency Medical Associates (“CEPMG”) for emergency department coverage services at Memorial Hospital Los Banos that provided compensation for CEPMG’s mid-level practitioners to and for the direct benefit of CEPMG, one purpose of which was to induce referrals from the CEPMG physicians for inpatient and outpatient hospital services at SUTTER HEALTH. The current version of the agreement for emergency department coverage services is attached as **Exhibit 24** (the “ED Coverage Agreement”).

189. The ED Coverage Agreement obligates SUTTER HEALTH to pay for CEPMG for its Mid-Level Practitioners (defined to include Physician Assistants and Nurse Practitioners) working in the Emergency Department at Memorial Hospital Los Banos at the rate of \$60.33 per hour. **Exhibit**

24, ¶3.1(c). The ED Coverage Agreement allowed CEPMG to bill and collect all charges for the professional component of medical services delivered to all patients by CEPMG, including services delivered by the Mid-Level Practitioners funded by SUTTER HEALTH. **Exhibit 24**, ¶3.2(b). The payment for Mid-Level Practitioners varied with the volume and value of inpatient hospital services referred by the CEPMG Physicians to the CEPMG Mid-Level Practitioners. The revenues and profits made by CEPMG rise directly in correlation to the referrals made by CEPMG physicians to the Mid-Level Practitioners.

190. Mid-Level Practitioners that were paid for by SUTTER HEALTH under the ED Coverage Agreement include (without limitation): Lani Antonio, Alysee Michalosky, David Belshaw, Philip Sampson and Elmer Santos (the “CEPMG Mid-Level Practitioners”).

191. Physicians that provided services under the ED Coverage Agreement and that illegally benefited from the payments made by SUTTER HEALTH for Mid-Level Practitioners under the ED Coverage include (without limitation): Dr. Joseph Chiang, Dr. Henry W. Turkel, Dr. Byron F. Carcelen and Dr. Philip Silverstein (the “CEPMG Physicians”).

192. In addition to the payments for Mid-Level Practitioners, the ED Coverage Agreement expressly obligated SUTTER HEALTH to pay CEPMG \$12,000.00 per year for Medical Director administrative duties and a “Disproportionate Share Subsidy” of \$300,000.00 per year. **Exhibit 24**, ¶3.1(a) and (b). The purpose of the Disproportionate Share Subsidy was supposedly “to compensate Group fairly for its treatment of a disproportionate number of Hospital patients who either lack a third-party payment source or whose third-party payor reimbursement is insufficient to cover Group’s costs of providing services hereunder.” **Exhibit 24**, ¶3.1(b). It is important to note that the

ED Coverage Agreement provided for no accounting of the actual number of indigent patients seen by the CEPMG Physicians.

193. The ED Coverage Agreement restricted competition and patient choice: “no Physician assigned to provide services to Hospital shall also be assigned at any time throughout this Agreement to provide services to Doctors Medical Center in Modesto, California.” **Exhibit 24**, ¶1.1. Doctors Medical Center is a 394-bed hospital in Modesto which competes with SUTTER HEALTH’s Memorial Medical Center, also located in Modesto. Thus, one purpose of the various compensation arrangements under the ED Coverage Agreement was to restrict competition and induce CEPMG Physicians to refer patients exclusively to SUTTER HEALTH.

194. SUTTER HEALTH also has similar emergency room coverage agreements with CEPMG for its hospitals located in Roseville, Antioch, Sacramento, Auburn and Davis, California.

195. By stacking compensation for Mid-Level Practitioners, Medical Director administrative services and the \$300,000.00 annual Disproportionate Share Subsidy (excluding patient care services performed by the CEPMG) for Memorial Hospital Los Banos, and entering similar agreements for emergency room coverage for its hospitals in Roseville, Antioch, Sacramento, Auburn and Davis, California, SUTTER HEALTH created a financial relationship with the CEPMG that was commercially unreasonable, in excess of fair market value, varied with volume and value of referrals, and a financial relationship that violates the Stark law because no exception applied.

196. Given that SUTTER HEALTH knowingly paid CEPMG excessive amounts under the preferential ED Coverage Agreement that included payment for Mid-Level Practitioners that varied with volume and value of referrals, SUTTER HEALTH could not reasonably have concluded that the payments under the ED Coverage Agreement did not violate the Stark Statute. SUTTER

HEALTH knew it was in violation of the Stark Law and still knowingly made the payments to CEPMG and submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

197. Based on the contractual and actual financial relationships between CEPMG and SUTTER HEALTH, the Stark Statute was violated because CEPMG had compensation arrangements with SUTTER HEALTH and none of the statutory or regulatory exceptions to the Stark Statute apply.

198. Given that SUTTER HEALTH knowingly paid for Mid-Level Practitioners and provided other compensation under the ED Coverage Agreement, and one purpose of such compensation was to restrict competition and induce referrals of patients by CEPMG Physicians to Memorial Hospital Los Banos, instead of Doctors Memorial Hospital in Modesto, for inpatient and outpatient hospital services covered by Medicare and Medicaid, SUTTER HEALTH could not reasonably have concluded that the payments under the ED Coverage Agreements did not violate the AKS. SUTTER HEALTH knew it was in violation of the AKS and still knowingly submitted tainted illegal claims for reimbursement to the Government in violation of the FCA and CFCA.

199. Based on the contractual and actual financial relationships between CEPMG and SUTTER HEALTH, the AKS was violated because SUTTER HEALTH paid, and CEPMG received remuneration, to induce CEPMG Physicians to refer patients, including Medicare and Medicaid patients, to SUTTER HEALTH hospitals for the furnishing of inpatient and outpatient hospital services covered by Medicare and Medicaid and none of the statutory or regulatory safe harbors to the AKS apply.

XI. FALSE CLAIMS AND FRAUDULENT CLAIMS AND STATEMENTS

200. The physicians with whom SUTTER HEALTH entered into financial relationships specified in paragraphs 85-199, above, referred patients, including Medicare and Medicaid patients, to SUTTER HEALTH in violation of the Stark Statute.

201. SUTTER HEALTH, in turn, presented, or caused to be presented through the fiscal intermediary and MAC, claims for payment to the Medicare program for designated health services provided to patients of the physicians with whom they had entered into prohibited financial relationships as set forth in paragraphs 85-199.

202. SUTTER HEALTH also presented, or caused to be presented through the State of California's DHCS, claims for payment to the Medicaid program for designated health services provided to patients of the physicians with whom they had entered into prohibited financial relationships as set forth in paragraphs 85-199. SUTTER HEALTH thereby obtained payments from the United States and the State of California in violation of the Stark Statute.

203. Under the FCA (31 U.S.C. § 3729(a)(1), now 31 U.S.C. § 3729 (a)(1)(A)) and the CFCA (Cal. Gov't Code § 12651(a)(1)), the claims submitted by SUTTER HEALTH in paragraphs 85-199 above were false and/or fraudulent because SUTTER HEALTH was prohibited by the Stark Statute from obtaining payment from the United States and the State of California upon claims for designated health services provided on referrals from the physicians with whom they had entered into prohibited financial relationships.

204. Under the AKS (42 U.S.C. § 1320a-7b(g)), the FCA (31 U.S.C. § 3729(a)(1), now 31 U.S.C. § 3729 (a)(1)(A)), and the CFCA (Cal. Gov't Code § 12651(a)(1)), the claims submitted by SUTTER HEALTH in paragraphs 85-199 above were false and/or fraudulent because SUTTER HEALTH knowingly and willfully paid remuneration to physicians and their professional

corporations set forth in paragraphs 85-199 to induce referrals to SUTTER HEALTH in violation of the AKS, Cal Bus. & Prof. Code §§ 650 and 650.1 and Cal. Welf. & Inst. Code § 14107.2.

205. SUTTER HEALTH also violated the FCA (31 U.S.C. § 3729(a)(2), now 3729(a)(1)(B)), and the CFCA (Cal. Gov't Code § 12651(a)(2)), by making false statements, or causing false statements to be made by the fiscal intermediary and MAC, to get claims paid by Medicare for designated health services provided on referrals from the physicians with whom they had entered into prohibited financial relationships as set forth in paragraphs 85-199. SUTTER HEALTH's certifications on its cost reports that its statements were "true" and/or "correct" and that it was entitled to payment of its claims for such services were false or fraudulent because the Stark Statute prohibited SUTTER HEALTH from receiving payments from the United States and the State of California for those claims.

206. SUTTER HEALTH and PHYSICIAN ENTITIES conspired with one another to get false and fraudulent claims allowed and paid by Medicare and Medicaid, and to retain such overpayments, in violation of the FCA and CFCA. SUTTER HEALTH and PHYSICIAN ENTITIES also conspired to pay physicians excessive compensation and remuneration in violation of the Stark Statute and AKS laws. SUTTER HEALTH and PHYSICIAN ENTITIES acted in a concerted fashion to defraud Medicare and Medicaid, and acted with others in keeping the facts necessary to investigate the fraud and the damages caused by the fraud away from the United States and the State of California. Accordingly, the SUTTER HEALTH and PHYSICIAN ENTITIES violated the FCA (31 U.S.C. § 3729(a)(3), now § 3729(a)(1)(C)) and the CFCA (Cal. Gov't Code § 12651(a)(3)).

207. SUTTER HEALTH knowingly made, used, and caused to be made or used false records and statements to conceal, avoid or decrease its obligations to pay or transmit money to the United States and the State of California (*i.e.*, to avoid refunding payments made in violation of the Stark Statute) by certifying on their annual cost reports that the services were provided in compliance with federal law, all in violation of the FCA (31 U.S.C. § 3729(a)(7), now § 3729(a)(1)(G)) and the CFCA (Cal. Gov't Code § 12651(a)(7)). The false certifications, made with each annual cost report submitted to the government, were part of SUTTER HEALTH's unlawful and orchestrated scheme to defraud Medicare and Medicaid.

208. All claims submitted to Medicare or Medicaid by SUTTER HEALTH for designated health services referred by any of the physicians identified in paragraphs 85-199 above were false claims that were knowingly submitted to the United States. SUTTER HEALTH submitted and caused others to submit false and fraudulent claims for payment to Medicare and Medicaid, which included claims relating to inpatient and outpatient designated health services rendered to patients who were referred to the hospital by the physicians affiliated with SUTTER HEALTH who had improper contracts which violated the Stark Statute and the AKS.

209. SUTTER HEALTH presented, or caused to be presented, all of said false claims with actual knowledge of their falsity, or in deliberate ignorance or reckless disregard that such claims were false and fraudulent. The illegal scheme implemented by SUTTER HEALTH involved thousands of prohibited referrals made by the physicians identified in paragraphs 85-199 above.

COUNT ONE

(False Claims Act: Presentation of False Claims)

(31 U.S.C. § 3729(a)(1) now (a)(1)(A))

210. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

211. SUTTER HEALTH knowingly presented, or caused to be presented, false and fraudulent claims for payment or approval to the United States, including those claims for reimbursement (identified in paragraphs 85-199 above) for designated health services rendered to patients who were referred by physicians with whom SUTTER HEALTH had entered into prohibited financial relationships in violation of the Stark Statute.

212. Said claims were presented with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

COUNT TWO

(False Claims Act: Using False Statements to Get False Claims Paid)

(31 U.S.C. § 3729(a)(2), now 3729(a)(1)(B))

213. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

214. SUTTER HEALTH made, used, and caused to be made or used, false records or statements — *i.e.*, the false certifications and representations made and caused to be made by SUTTER HEALTH when initially submitting the false claims for payments and the false certifications made by SUTTER HEALTH in submitting the cost reports — to get false or fraudulent claims paid and approved by the United States.

215. SUTTER HEALTH's false certifications and representations were made for the purpose of getting false or fraudulent claims paid and payment of the false or fraudulent claims was a reasonable and foreseeable consequence of SUTTER HEALTH's statements and actions.

216. The false certifications and representations made and caused to be made by SUTTER HEALTH were material to the United States' payment of the false claims.

217. Said false records or statements were made with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

COUNT THREE

(False Claims Act: False Record Material to Obligation to Pay)

(31 U.S.C. § 3729(a)(7), now (a)(1)(G))

218. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

219. SUTTER HEALTH made and used or caused to be made or used false records or statements material to an obligation to pay or transmit money to the United States, or knowingly concealed, avoided, or decreased an obligation to pay or transmit money to the United States.

220. Said false records or statements were made with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

COUNT FOUR

(False Claims Act: Conspiracy to Violate False Claims Act)

(31 U.S.C. § 3729(a)(3), now 3729(a)(1)(C))

221. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

222. SUTTER HEALTH and PHYSICIAN ENTITIES conspired with one another to get false and fraudulent claims allowed and paid by the United States in violation of 31 U.S.C. § 3729(a)(1)(A) and/or (B) and to retain overpayments in violation of 31 U.S.C. § 3729(a)(1)(G).

SUTTER HEALTH and PHYSICIAN ENTITIES also conspired to pay physicians excessive compensation and remuneration in violation of the *Stark* and AKS laws.

223. SUTTER HEALTH and PHYSICIAN ENTITIES acted in a concerted fashion to defraud the United States, and acted with others in keeping the facts necessary to investigate the fraud and the damages caused by the fraud away from the United States. Accordingly, the SUTTER HEALTH and PHYSICIAN ENTITIES violated 31 U.S.C. § 3729(a)(1)(C).

224. As a result of the actions of SUTTER HEALTH and PHYSICIAN ENTITIES, the United States have been severely damaged.

COUNT FIVE

(California False Claims Act: Presentation of False Claims)

(Cal. Gov't Code § 12651(a)(1))

225. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

226. Cal. Gov't Code § 12651(a)(1) provides liability for any person who “[k]nowingly presents or causes to be presented a false or fraudulent claim for payment or approval.”

227. In addition, the payment or receipt of bribes or kickbacks is prohibited under Cal. Bus. & Prof. Code §§ 650 and 650.1, and is also specifically prohibited in treatment of Medi-Cal patients pursuant to Cal. Welf. & Inst. Code § 14107.2.

228. SUTTER HEALTH violated Cal Bus. & Prof. Code §§ 650 and 650.1 and Cal. Welf. & Inst. Code § 14107.2 from at least July 1, 2002 to the present by engaging in the fraudulent and illegal practices described herein.

229. SUTTER HEALTH furthermore violated Cal. Gov't Code § 12651(a)(1) and knowingly caused hundreds of thousands of false claims to be made, used and presented to the State of California from at least July 1, 2002 to the present by its violation of federal and state laws, including Cal. Bus. & Prof. Code §§ 650 and 650.1 and Cal. Welf. & Inst. Code § 14107.2, the Stark Act and the AKS, as described herein.

230. The State of California, by and through the Medi-Cal program, and unaware of SUTTER HEALTH's fraudulent and illegal practices, paid the claims submitted by health care providers.

231. Compliance with applicable Medicare, Medi-Cal and the various other federal and state laws cited herein was implied, and also was an express condition of payment of claims submitted to the State of California.

232. Had the State of California known that SUTTER HEALTH was violating the federal and state laws cited herein, it would not have paid the claims submitted by health care providers and third party payers in connection with SUTTER HEALTH's fraudulent and illegal practices.

233. SUTTER HEALTH and PHYSICIAN ENTITIES conspired with one another to get false and fraudulent claims allowed and paid by the State of California in violation of Cal. Gov't Code § 12651(a)(1). SUTTER HEALTH and PHYSICIAN ENTITIES also conspired to pay kickbacks in violation of Cal. Bus. & Prof. Code §§ 650 and 650.1, and Cal. Welf. & Inst. Code § 14107.2.

234. SUTTER HEALTH and PHYSICIAN ENTITIES acted in a concerted fashion to defraud the State of California, and acted with others in keeping the facts necessary to investigate the fraud and the damages caused by the fraud away from the State of California. Accordingly, the

SUTTER HEALTH and PHYSICIAN ENTITIES violated Cal. Gov't Code § 12651(a).

235. As a result of SUTTER HEALTH and PHYSICIAN ENTITIES violations of Cal. Gov't Code § 12651(a)(1), the State of California has been severely damaged.

COUNT SIX

(California False Claims Act: Using False Statements to Get False Claims Paid)

(Cal. Gov't Code § 12651(a)(2))

236. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

237. SUTTER HEALTH made, used, and caused to be made or used, false records or statements — *i.e.*, the false certifications and representations made and caused to be made by SUTTER HEALTH when initially submitting the false claims for payments and the false certifications made by SUTTER HEALTH in submitting the cost reports — to get false or fraudulent claims paid and approved by the State of California.

238. SUTTER HEALTH's false certifications and representations were made for the purpose of getting false or fraudulent claims paid and payment of the false or fraudulent claims was a reasonable and foreseeable consequence of SUTTER HEALTH's statements and actions.

239. The false certifications and representations made and caused to be made by SUTTER HEALTH were material to the State of California's payment of the false claims.

240. Said false records or statements were made with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

COUNT SEVEN

(California False Claims Act: False Record Material to Obligation to Pay)

(Cal. Gov't Code § 12651(a)(7))

241. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

242. SUTTER HEALTH made and used or caused to be made or used false records or statements material to an obligation to pay or transmit money to the State of California, or knowingly concealed, avoided, or decreased an obligation to pay or transmit money to the State of California.

243. Said false records or statements were made with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

COUNT EIGHT

(California False Claims Act: Conspiracy to Violate False Claims Act)

(Cal. Gov't Code § 12651(a)(3))

244. Relator incorporates by reference all paragraphs of this Complaint set out above as if fully set forth.

245. SUTTER HEALTH and PHYSICIAN ENTITIES conspired with one another to get false and fraudulent claims allowed and paid by the State of California in violation of (Cal. Gov't Code § 12651(a)(1) or (2) and to retain overpayments in violation of Cal. Gov't Code § 12651(a)(7).

SUTTER HEALTH and PHYSICIAN ENTITIES also conspired to pay physicians excessive compensation and remuneration in violation of the Stark Law, AKS laws, Cal Bus. & Prof. Code §§ 650 and 650.1 and Cal. Welf. & Inst. Code § 14107.2.

246. SUTTER HEALTH and PHYSICIAN ENTITIES acted in a concerted fashion to defraud the State of California, and acted with others in keeping the facts necessary to investigate the

fraud and the damages caused by the fraud away from the State of California. Accordingly, the SUTTER HEALTH and PHYSICIAN ENTITIES violated Cal. Gov't Code § 12651(a)(3).

247. As a result of the actions of SUTTER HEALTH and PHYSICIAN ENTITIES, the State of California have been severely damaged.

WHEREFORE, Relator prays for judgment against SUTTER HEALTH as follows:

1. On Count One under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

2. On Count Two under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

3. On Count Three under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) Dollars per claim as are authorized by law, together with all such further relief as may be just and proper; and

4.. On Count Four under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

5. On Count Five under the California False Claims Act, for the amount of the State of

California's damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

6. On Count Six under the California False Claims Act, for the amount of the State of California's damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

7. On Count Seven under the California False Claims Act, for the amount of the State of California's damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

8. On Count Eight under the California False Claims Act, for the amount of the State of California's damages, trebled as required by law, and such civil penalties of not less than Five Thousand Five Hundred Dollars (\$5,500.00), and no more than Eleven Thousand Dollars (\$11,000.00) per claim as are authorized by law, together with all such further relief as may be just and proper; and

9. That Relator be awarded the maximum Relator share amount permissible according to 31 U.S.C. § 3730(c) and Cal. Gov't Code § 12652; and

10. That judgment be granted for the United States of America, State of California and

Relator and against Defendants for any costs, including, but not limited to, court costs, expert fees, and all attorneys' fees incurred by Relator in the prosecution of this case, including, but not limited to, all attorney fees and costs available pursuant to 31 U.S.C. § 3730(d) and Cal. Gov't Code § 12652; and

11. That the United States, State of California and Relator be granted such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Relator demands a jury trial in this case.

Respectfully submitted this 10th day of September, 2014.

/s/ Michael A. Hirst
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EXHIBIT 1 to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER MEDICAL CENTER SACRAMENTO
CARDIOLOGY CASE MANAGEMENT
PHYSICIAN ASSISTANTS**

This Agreement (this "Agreement") is entered into as of **May 1, 2013** (the "Effective Date"), by and between Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation, doing business as **Sutter Medical Center Sacramento** ("Hospital") and **Sacramento Cardiovascular Surgeons Medical Group**, a California professional corporation ("Group").

R E C I T A L S

A. Hospital operates an acute care general hospital known as Sutter Memorial Hospital in Sacramento, California and in conjunction therewith maintains a Cardiovascular Surgery service (the "Service").

B. Hospital has obtained a variance from the California Department of Public Health allowing it to meet its Title 22 obligations for the Service via use of physician assistants in lieu of surgeons. Hospital is in need of experienced, qualified physician assistants to assist the Service.

C. Group employs duly qualified physician assistants with specialty training in the specialty of Cardiovascular Surgery (the "Specialty").

D. By the terms of this Agreement, Group agrees to provide physician assistants ("Assistant(s)") for cardiology case management in the Service.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF GROUP AND ASSISTANT(S)

During the term of this Agreement, Group shall perform and comply with, or, as applicable, cause Assistant(s) to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Services.** Group shall provide four (4) FTE Assistants and shall cause such Assistants to perform the specific duties and responsibilities set forth in Exhibit A attached hereto. The number of Assistant FTEs provided under this section may be adjusted from time to time based on patient/clinical need at a rate of One Hundred Seventy Thousand Dollars (\$170,000) per year per FTE (subject to hourly proration in the event fewer hours of service are actually provided as described in Section 3.a

(Monthly Payments)), upon mutual agreement of the parties and a written amendment signed by both parties.

b. **Coordination of Services.** The Assistants shall report to the Service Line Executive, Cardiovascular Services (the "Administrator") for performance of the services required by this Agreement. Assistant(s) shall receive functional guidance and work direction (including all physician supervision required by law for physician assistants) from physicians employed by Group, at no cost to Hospital. Hospital through its Administrator and the Assistants shall coordinate their activities in connection with the Services and Assistant(s) shall inform the Administrator of any extended periods (i.e. one week or more) during which the Assistant(s) will be unavailable due to vacation, or other personal or professional commitments.

c. **Time Reports.** Each Assistant shall record the actual number of hours and a description of the actual services provided on a monthly time report (the "Time Report") in the form attached hereto as Exhibit B, as modified from time to time by Hospital. Assistants shall deliver to the Administrator completed and signed copies of the time reports within ten (10) days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Assistants shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

d. **Assistant Licensure and Certification.** Each Assistant shall at all times be and remain appropriately licensed to practice as a physician assistant by the Physician Assistant Committee of the Medical Board of California, and shall maintain in good standing a Drug Enforcement Administration number.

e. **Allied Health Professional Status.** During the term of this Agreement, all Assistant(s) must remain in good standing of Hospital's medical staff as Allied Health Professionals ("AHPs") of Hospital, with practice parameters, not medical staff membership and privileges, and except as provided at Section 1.e.2, below, shall be subject to all of the attendant privileges, responsibilities, and conditions as are associated with AHPs at Hospital.

1. **Medical Staff Credentialing.** When the Assistants are credentialed through the medical staff AHP process, their qualifications, etc. will be verified by medical staff services on behalf of the Interdisciplinary Practices Subcommittee.

2. **No Procedural Rights.** Assistants who are qualified AHPs shall be entitled to the procedural rights of AHPs as provided in Hospital's medical staff bylaws for those adverse actions for medical disciplinary causes or reasons. However, continuation of this Agreement does not confer nor provide membership status on Hospital's medical staff. Therefore, this Agreement may be terminated in accordance

with Section 4 below, or an Assistant may be removed from providing services pursuant to Section 5 below, each without necessity of a hearing before the Hospital's Board of Directors, a committee of the medical staff, or any other body. Group represents and warrants that Assistants are aware of and accept this condition.

f. **Notice of Failure to Meet Qualifications.** Group shall promptly notify Hospital of any event causing or likely to cause a failure by any Assistant(s) to meet the qualifications set forth in Sections 1.d (Assistant Licensure and Certification) and 1.e (Allied Health Professional Status), or any other breach of the terms of this Agreement by Group or any Assistant.

g. **Representations and Warranties.** Group represents and warrants to Hospital that:

1. Neither Group nor any Assistant is bound by any agreement or arrangement which would preclude Group from entering into this Agreement, or Group or any Assistant from fully performing the services covered by this Agreement;
2. No Assistant's license to practice as a physician assistant nor his/her DEA number has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
3. No Assistant's clinical privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
4. No Assistant has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation; and
5. Group has no information that would reasonably indicate that any Assistant is not able to perform the services required under this Agreement.

h. **Compliance with Rules and Laws.** Each Assistant and, to the extent applicable, Group shall at all times comply with all policies, bylaws, rules and regulations of Hospital (including, but not in any way limited to, any supervision or other requirements), applicable standards and recommendations of The Joint Commission, and all applicable federal, state and local laws, rules and regulations.

i. **Compliance Program.** Group and each Assistant shall comply with Hospital's corporate compliance program. Group and each Assistant shall cooperate with any corporate compliance audits, reviews and investigations which relate to Group or any Assistant and/or any of the services provided by Group or any Assistant under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all documents and/or information related to Group or any Assistant, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Assistants shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

j. **Insurance.** Group shall maintain for each Assistant professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable), in the above amounts, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

k. **Use of Hospital Facilities.** Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Assistant(s) solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. This Agreement shall not be construed as a lease to Group or any Assistant of any portion of Hospital's facilities; insofar as Assistants may use a portion of Hospital's facilities, Assistants do so as licensees only, and Hospital shall at all times have full and free access to the same.

l. **Expenses.** Neither Group nor any Assistant shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Assistants shall be solely responsible for the following: (a) Assistants' compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings; (d) professional liability insurance; and (e) all compensation attributable to any employees, subcontractors, or back-up assistants engaged by Group.

m. **Expert Witness Conflict of Interest.** Neither Group nor any Assistant shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of

such employee within the scope of such employee's employment . Notwithstanding the foregoing, nothing herein shall prevent Group and/or Assistants from testifying as a factual witness in an action in which both Assistants and Hospital or Group and Hospital (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

n. **Nondiscrimination.** Group and each Assistant shall provide services under this Agreement without regard to any Hospital patient's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or other basis protected by law.

o. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Equipment, Supplies, Etc.** Hospital shall provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Service. The parties acknowledge and agree that the Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital. Group acknowledges and agrees that if Group or Assistant alleges any breach by Hospital of this Section 2.a., Group's sole and exclusive remedy shall be termination of this Agreement.

b. **Responsibility for Service.** To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Service.

c. **Performance Assessment.** Hospital shall assess Assistant's performance annually in April using the form attached hereto as Exhibit C, as modified by Hospital from time to time.

3. COMPENSATION

a. **Monthly Payments.** For all services rendered by Group and Assistant(s) under this Agreement, Hospital shall pay Group Fifty-Six Thousand Six

Hundred Sixty-Six Dollars and Sixty-Six Cents (\$56,666.66) per month; provided, however, that in the event Assistants provide fewer than One Thousand Eight Hundred Eighty (1,880) hours of service in the aggregate in a given quarter, such payment shall be prorated at a rate of \$90.43 per hour for actual hours worked and documented pursuant to Section 1.c. (Time Reports). Compensation shall be payable monthly within thirty (30) days after the Administrator receives completed and signed Time Reports for the applicable month. In the event of an overpayment, Group shall promptly repay Hospital the amount due, or Hospital may, at its election, withhold amounts overpaid from future payments under this or any successor agreement between the parties.

b. **Tax Reporting.** To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

c. **No Billing to Patients or Other Payors.** The parties anticipate that the services to be provided by the Assistants are not chargeable to patients or third party payors. In the event Group and Hospital determine that some or all of Assistants services are billable to third party payors, the parties shall meet and confer as to what compensation adjustments may be warranted to assure that patients and/or third party payors are not billed for services that are paid for by Hospital pursuant to this Agreement.

4. **TERM**

a. **Term.** The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) the death or disability of any Assistant; (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Assistant(s) from carrying out one or more of the essential functions of Assistant's position, with or without reasonable accommodation, for a continuous period of ninety (90) days);

(b) An Assistant uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on

duty, unless in accordance with a physician's prescription, or is otherwise in violation of Hospital's drug-free workplace rules;

(c) the occurrence of an event causing or likely to cause a failure by an Assistant to meet the requirements in Section 1.d (Assistant License and Certification) and Section 1.e. (Allied Health Professional Status) hereof;

(d) the inaccuracy of any representation of Group in Section 1.g. (Representations and Warranties) hereof;

(e) Group's or any Assistant's failure to obtain or maintain professional liability insurance for Assistants as required in Section 1.j. (Insurance);

(f) failure by Group to remove an Assistant in accordance with Section 4;

(g) Group's or any Assistant's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 8 (Confidentiality); or

(h) violation by an Assistant of other Hospital policies requiring immediate termination of such Assistant; or

(i) closure of the Service or sale or closure of the hospital at which the Service is located.

(2) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of any Assistant to deliver Time Reports in a timely manner; (ii) failure to satisfy the requirements of Section 8 (Confidentiality); or (iii) any act or omission by an Assistant that jeopardizes the quality of care provided to Hospital's patients.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new

terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(4) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon ninety (90) days' written notice to the other party.

c. **Effect of Expiration or Termination.**

(1) **Termination of Obligations.** Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(2) **Pre-Termination Services.** Hospital shall pay Group any unpaid monthly payment due for any period prior to the termination date, with such monthly payment prorated on a daily basis if the termination date occurs on a day other than the last day of a month.

(3) **Liability for Breach.** Except as specified at Section 2.a (Equipment, Supplies, Etc.), termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(4) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, all Assistants shall immediately vacate Hospital premises and remove any and all of Assistants' personal property. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(5) **Survival.** The provisions of Sections 1.c. (Time Reports), 1.e.2. (No Procedural Rights), 1.i. (Compliance Program), 1.j. (Insurance), 4.c. (Effect of Expiration or Termination), 4.d. (Renewal, Extensions, New Agreements), 6 (Independent Contractor Relationship), 7 (Access to Books and Records), 8 (Confidentiality and Intellectual Property), 9 (Indemnity), 10 (Dispute Resolution), 11 (Notices) and 12 (Miscellaneous) shall survive termination of this Agreement.

d. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Assistants prior to the first anniversary of the date of this Agreement.

5. **Removal of an Assistant.**

a. **Cause for Removal.** Hospital may require the immediate cessation of services by any Assistant for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

1. Failure of Assistant to meet any of the requirements at Sections 1.d (Assistant Licensure and Certification) or 1.e (Allied Health Professional Status);
2. The disability of Assistant (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Assistant from carrying out one or more of the essential functions of Assistant's position, with or without reasonable accommodation, for a continuous period of ninety (90) days);
3. Assistant becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;
4. Any act or omission by Assistant that appears to create the risk of imminent danger to the health of any individual pursuant to Medical Staff bylaws, as determined by Hospital; or
5. Failure to abide by any of the terms and conditions of this Agreement applicable to Assistant.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In performing the services described in this Agreement, Assistants and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Assistants shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of each Assistant, and neither Group nor any Assistant shall have any claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group agrees that it shall do the following: withhold FICA (Social Security) from payments to each Assistant; make state or federal unemployment insurance contributions on each Assistant's behalf; withhold state and federal income tax from payments to each

Assistant; make disability insurance contributions on behalf of each Assistant; and obtain workers' compensation insurance on behalf of each Assistant. Group and/or each Assistant, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to any Assistant.

7. ACCESS TO BOOKS AND RECORDS

a. **Access.** Group shall maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to said Section 1861(v)(1)(I), Group agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of such services under this Agreement, Group shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, this Agreement and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

(2) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month (12) period, such subcontract shall contain, and Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

b. **Limits.** The availability of Group's Agreements, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

8. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Assistants and Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Neither Assistants nor Group will at any time disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Assistants' duties hereunder, any confidential or proprietary information of Hospital.

Confidential or proprietary information shall include, but not be limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or Assistants' legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Assistant shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Neither Assistants nor Group shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Assistants and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

e. **Intellectual Property Ownership and Assignment.** Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Assistants or Group, or to which Assistants or

Group are given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Assistants or Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Assistants nor Group shall have any interest in such Intellectual Property. Accordingly, Group and each Assistant hereby assign to Hospital all of Assistants' and/or Group's right, title and interest in and to the Intellectual Property. Assistants and Group further acknowledge their obligation to assist Hospital or its designee, at its expense, in every proper way to secure Hospital's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to Hospital or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to Hospital or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Physician or Group during the course of this Agreement.

9. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

10. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including any Assistant) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 10.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 10.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 10 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 10.d. (Powers of Arbitrator).

11. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the

address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819

Attn: Rick Harrell, Service Line Executive

With a copy to: Sutter Health – Office of the General Counsel
2200 River Plaza Drive
Sacramento, CA 95833

Attn: Penny G. Westfall, Esq., VP and Regional Counsel

If to Group: Sacramento Cardiovascular Surgeons Medical Group, Inc.
5301 F Street, Rm. 312
Sacramento, CA 95819

Attn: Michael Ingram, MD

12. MISCELLANEOUS

- a. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.
- b. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
- c. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of the parties and to their respective successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights and obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting person or entity and the services provided by that subcontracting person or entity on all time reports submitted to Hospital, and (ii) pay the subcontracting person or entity at the same rate specified in Section 3 (Compensation).

d. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

e. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

f. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

g. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

h. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

i. **Amendments.** Amendments to this Agreement shall be made only in writing duly executed by both parties hereto.

j. **Other Service Agreements.** Hospital represents that its TractManager database includes copies of all other agreements or arrangements under which Group, or any physician employed by Group (or any immediate family member of any such physician), provides services to Hospital.

k. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement.

l. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

[Signature page follows]


SIGNATURES

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

HOSPITAL:

Sutter Health Sacramento Sierra Region,
dba Sutter Medical Center Sacramento

Date: 4/24/13

By: 
Name: James Conforti
Title: Sutter Health Sacramento Sierra
Region President

GROUP:

Sacramento Cardiovascular Surgeons
Medical Group, Inc.

Date: 4/17/13

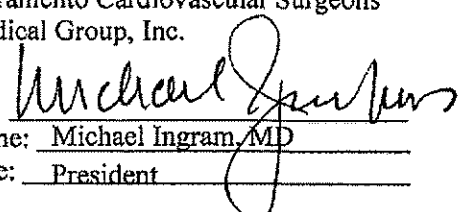
By: 
Name: Michael Ingram, MD
Title: President

EXHIBIT A

ASSISTANT(S) DUTIES AND SERVICES

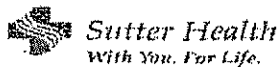
Group shall ensure that Assistants perform the services set forth below:

- Provide coverage for the Cardiovascular Surgery Department including Pediatric CV Surgery.
- Provide First and Second Assist to the Department of Surgery for CV Cases (including, but not in any way limited to, minimally invasive vein harvesting procedures).
- Round on all patients on the telemetry, CVIU and ICU's on a daily basis to establish daily plan of care. The parties understand and agree that this rounding shall not replace the accountability of the physician to make daily rounds and document progress of patient.
- Provide general quality review of cases.
- Assist Hospital's data collectors with the Society for Thoracic Surgeons ("STS") database by interpreting the clinical information and otherwise assisting as needed.
- Work within the boundaries of the scope of practice of a physician assistant.

EXHIBIT E

TIME REPORT

[Form Attached]

**ASSISTANT TIME REPORT**Contract #: _____ Effective Date: 5/1/2013 Expiration Date: 4/30/2015Department: _____ ☐ On-Call ☐ Medical Director ☒ OtherPrint Name: Sacto Cardiovascular Surgeons Med Grp Month/Year: _____ / _____

PMT Assistant Name: _____

CASE MANAGEMENT SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
First and second assist to Department of Surgery						
Round on all patients						
Quality review of cases						
Assist with STS database						
TOTAL HOURS						

*Each Assistant must submit a separate monthly time report.

By signing below or transmitting this time report electronically, I am certifying that this Time Report is a true and accurate record of my services and hours during the week indicated.

Date: _____

Assistant SignatureDate: _____
Signature_____
Department Director or Administrator

Date: _____

Name of Department Director or Administrator☐ Please see "Key Terms" section of contract in Tract-Manager for compensation formula /or computation

EXHIBIT C

PERFORMANCE ASSESSMENT

[MODIFY AS APPROPRIATE]

<p>Performance Assessment Period</p> <p>From: ____ / ____ To: ____ / ____</p>	<p>Facility: _____</p>
<p>Physician Assistant: _____</p>	<p>Reviewer: _____</p>

<p>Rating Determination:</p> <p>Meets: Meets or Exceeds Expectations</p> <p>Does Not Meet: Does not meet minimum expectations and improvement required</p>

ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures _____ Services functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure _____ resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees _____ Services competency assessment program.		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project.		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that _____ Services technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain _____ license, The Joint Commission accreditation, and Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the _____ personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form, adhering to defined reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to Administration and Medical Staff as appropriate.		
Comments:		

Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction as to benefit medical staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for _____ personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of _____ Services (i.e., clinical guidelines, clinical pathways, patient-driven protocols).		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health.		
❖ Participates on hospital and Medical Staff committees as requested by Administration and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with _____ Services to review program needs and referring physician requests.		
Comments:		

Technical Procedures	Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.		
❖ Ensures that _____ Services are consistent with written policies, processes and procedures.		
❖ Provides consultation as requested to Sutter Health technical workgroups and performance improvement committees.		
❖ Effectively collaborates with Administration and Medical Staff to identify and evaluate new _____ services.		
Comments:		

Strategic Initiatives	Meets	Does Not Meet
❖ Actively participates in _____ Department's annual planning process.		
❖ Promotes and participates in Sutter Health and system-wide integration efforts.		
❖ Supports and facilitates change management efforts with key stakeholders.		
❖ Promotes and participates in ongoing efforts related to standardization and implementation of _____ Services as identified by the _____ Management Team.		
❖ Supports the operating and capital equipment budgeting process.		
Comments:		

Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

_____ Operations Manager: _____

_____ Operations Manager: _____

_____ Nursing Director: _____

Regional Director: _____

EXHIBIT 4
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

npes_provider_last_or_name	npes_provider_first_name	npes_provider_mi	npes_credentials	npes_provider_gender	npes_entity_code	npes_provider_street1	npes_provider_street2	npes_provider_city	npes_provider_zip	npes_provider_state	provider_type	medicare_participation_indicator	place_of_service	hcpcs_code	hcpcs_description	line	line_svc_cnt	line_unique_cnt	line_day_svc_cnt	average_medicare_allowed_amt	stdev_Medicare_allowed_amt	average_submitted_chrg_amt	stdev_submitted_chrg_amt	average_Medicare_payment_amt	stdev_Medicare_payment_t_amt	Total Avg Pay	Count
11849066:DAVIS	CHRISTOPHER	PA	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33405	Replacement of aortic valve	27	27	27	\$296.32	\$49.30	\$723.15	\$28.81	\$237.06	\$39.44	\$	6,400.50			
11849066:DAVIS	CHRISTOPHER	PA	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33508	Endoscopic vein harvest	37	37	37	\$2.20	\$0.00	\$8.00	\$0.00	\$1.76	\$0.00	\$	65.12			
11849066:DAVIS	CHRISTOPHER	PA	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33519	Cabg artery-vein three	18	18	18	\$74.09	\$0.00	\$148.28	\$5.27	\$59.27	\$0.00	\$	1,066.86			
11849066:DAVIS	CHRISTOPHER	PA	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33533	Cabg arterial single	36	36	36	\$229.35	\$53.63	\$733.03	\$66.90	\$183.48	\$42.91	\$	6,605.44			
11849066:DAVIS	CHRISTOPHER	PA	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	99231	Subsequent hospital care	67	13	44	\$33.04	\$0.00	\$83.00	\$0.00	\$26.43	\$0.00	\$	1,770.86			
																185								\$	15,908.78		
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33405	Replacement of aortic valve	48	48	48	\$281.07	\$63.71	\$724.17	\$30.40	\$222.52	\$52.26	\$	10,681.00			
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33508	Endoscopic vein harvest	65	65	65	\$2.20	\$0.00	\$8.00	\$0.00	\$1.76	\$0.00	\$	114.40			
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33518	Cabg artery-vein two	28	28	28	\$55.94	\$0.00	\$119.93	\$5.57	\$44.75	\$0.00	\$	1,253.00			
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33519	Cabg artery-vein three	16	16	16	\$74.09	\$0.00	\$147.00	\$0.00	\$59.27	\$0.00	\$	948.32			
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33530	Coronary artery bypass/reop	15	15	15	\$71.32	\$0.00	\$147.00	\$0.00	\$57.06	\$0.00	\$	855.90			
12957350:FRIBOURG ALAN	J	PA-C	M	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33533	Cabg arterial single	55	55	55	\$229.87	\$53.28	\$736.45	\$56.32	\$183.90	\$42.63	\$	10,114.58			
																227								\$	23,967.20		
11443709:JONES	MARK	B	PA-C	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33405	Replacement of aortic valve	21	21	21	\$291.34	\$54.89	\$720.24	\$23.43	\$233.07	\$43.92	\$	4,894.50		
11443709:JONES	MARK	B	PA-C	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33508	Endoscopic vein harvest	42	42	42	\$2.20	\$0.00	\$8.00	\$0.00	\$1.76	\$0.00	\$	73.92		
11443709:JONES	MARK	B	PA-C	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33518	Cabg artery-vein two	18	18	18	\$55.94	\$0.00	\$119.00	\$4.12	\$44.75	\$0.00	\$	805.50		
11443709:JONES	MARK	B	PA-C	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33519	Cabg artery-vein three	14	14	14	\$74.09	\$0.00	\$147.00	\$0.00	\$59.27	\$0.00	\$	829.78		
11443709:JONES	MARK	B	PA-C	M	I	5301 F ST SUITE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33533	Cabg arterial single	38	38	38	\$237.65	\$47.04	\$745.92	\$30.47	\$190.12	\$37.63	\$	7,224.70		
																133								\$	13,828.40		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33266	Ablate atria x10sv endo	17	17	17	\$253.02	\$0.00	\$455.00	\$0.00	\$202.42	\$0.00	\$	3,441.14		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33405	Replacement of aortic valve	27	27	27	\$278.89	\$65.22	\$719.07	\$20.77	\$223.11	\$52.18	\$	6,024.00		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33508	Endoscopic vein harvest	45	45	45	\$2.20	\$0.00	\$8.00	\$0.00	\$1.76	\$0.00	\$	79.20		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33518	Cabg artery-vein two	14	14	14	\$55.94	\$0.00	\$118.00	\$0.00	\$44.75	\$0.00	\$	626.50		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33519	Cabg artery-vein three	14	14	14	\$74.09	\$0.00	\$147.00	\$0.00	\$59.27	\$0.00	\$	829.78		
15684607:NORTH	TERESA	E	P.A.-C	F	I	5301 F ST STE 111	SACRAMENTO	958193221	CA	US	Physician / Y	F	33533	Cabg arterial single	45	45	45	\$226.48	\$55.44	\$737.00	\$0.00	\$181.19	\$44.36	\$	8,153.59		
																162								\$	19,154.21		
																707								\$	72,858.59		

EXHIBIT 3-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER HEALTH SACRAMENTO SIERRA REGION
dba SUTTER MEDICAL CENTER SACRAMENTO**

**CARDIAC INTENSIVE CARE UNIT SERVICE
MEDICAL DIRECTOR AGREEMENT
AND
ASSISTANT MEDICAL DIRECTOR, SUTTER HEART INSTITUTE**

Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Cardiac Intensive Care Unit Service Medical Director Agreement and Assistant Medical Director, Sutter Heart Institute Agreement (this "Agreement") is entered into as of **September 1, 2012**, (the "Effective Date") by and between **Sutter Health Sacramento Sierra Region**, a California nonprofit public benefit corporation doing business as **Sutter Medical Center Sacramento** ("Hospital"), and **Sacramento Cardiovascular Surgeons Medical Group, Inc.**, a California professional corporation ("Group").

R E C I T A L S

A. Hospital operates a general acute care hospital in Sacramento, California, and in conjunction therewith maintains a cardiac intensive care unit and the Sutter Heart Institute. Hospital is in need of an experienced, qualified physician to serve as medical director of the cardiac intensive care unit and assistant medical director of the Sutter Heart Institute (collectively, the Service").

B. Group employs **Michael T. Ingram, M.D.**, ("Physician") who is a physician duly licensed to practice medicine in the State of California and qualified in the specialty of Cardiovascular Surgery (the "Specialty").

C. Hospital wishes to contract with Group to provide Physician to serve as medical director of the Service, and Group wishes to so contract with Hospital.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF GROUP AND PHYSICIAN

During the term of this Agreement, Group shall perform and comply with, or, as applicable, cause Physician to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Services.** Physician shall serve as medical director of the Service, shall be responsible for the overall supervision of the Service and shall perform the specific duties and responsibilities set forth in **Exhibit A** attached hereto. The services provided under this Agreement shall be limited to administrative and teaching services provided

to Hospital and shall not include any professional services to patients or any other services.

b. **Coordination of Services.** Hospital, through its Assistant Administrator (the "Administrator"), and Physician shall coordinate their activities in connection with the Service, and Physician shall inform the Administrator of any extended periods (i.e., one [1] week or more) during which Physician will be unavailable due to vacation, professional meetings, or other personal or professional commitments. If requested by Hospital, Group shall engage and provide a substitute medical director ("Substitute Physician"), approved in writing by Hospital, to perform the services required of Physician under this Agreement during all periods of Physician's unavailability. Group shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform all duties of Physician under this Agreement. It is expressly understood that all rights, duties and responsibilities of Physician in this Agreement shall also apply to Substitute Physician.

c. **Time Requirements.** Physician shall devote a **minimum average of eighteen (18) hours per month** performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that Physician shall in no event devote less than three (3) times the minimum average monthly hours (54) during any quarter during the term of this Agreement. However, the monthly compensation paid to Group shall be capped as provided in Section 3.a. (Monthly Payments) of this Agreement, regardless of the number of hours expended by Physician above eighteen (18) hours in any given month.

d. **Time Reports.** Physician shall contemporaneously record the hours and actual services provided on a monthly basis using Hospital's electronic time reporting system for administrative services ("Electronic Time Report"), or if an exception to using the electronic system is granted by Hospital, a form substantially similar to **Exhibit B** ("Paper Time Report"), as modified from time to time by Hospital. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Physician or Group shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within seven (7) days after the end of each calendar month, or as otherwise requested by Accounts Payable during the term of this Agreement, to allow for Hospital's verification of services. Hospital shall have no obligation to pay Group for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Physician and Group shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

e. **Professional Qualifications.** Physician shall at all times:

- (1) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice in the Specialty;
- (2) Be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;
- (3) Be a member in good standing of Hospital's Medical Staff; and
- (4) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

f. **Representations and Warranties.** Group represents and warrants to Hospital that:

- (1) Neither Group nor Physician is bound by any agreement or arrangement that would preclude Group from entering into, or Group or Physician from fully performing the services required under, this Agreement;
- (2) Physician's license to practice medicine in the State of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
- (3) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
- (4) Physician has never been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and
- (5) Group has no information that would reasonably indicate that Physician is not able to perform the services required under this Agreement.

g. **Notice of Failure to Meet Professional Qualifications.** Group shall promptly notify Hospital of any event causing or likely to cause a failure by Physician to meet the requirements set forth in Section I.e. (Professional Qualifications) and Section I.f. (Representations and Warranties) hereof, and any of the following:

- (1) Any investigation of Physician or disciplinary proceeding against Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);
- (2) Any malpractice action against Physician or other action against Physician in connection with Physician's administrative or professional services;

(3) Any investigation of Physician or disciplinary action against Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by Physician; or

(4) Any other material breach of the terms of this Agreement.

h. **Working Cooperatively with Others.** Physician shall at all times work cooperatively with others toward enhancing the quality of patient care. Physician shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

i. **Compliance with Rules and Laws.** Physician and, to the extent applicable, Group shall at all times comply with all policies, bylaws, rules and regulations of Hospital and Hospital's Medical Staff, applicable standards and recommendations of The Joint Commission, and all applicable federal, state and local laws, rules and regulations.

j. **Compliance Program.** Group and Physician shall comply with Hospital's corporate compliance program. Group and Physician shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group and/or Physician and/or any of the services provided by Group and Physician under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all documents and/or information related to Group or Physician, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physician shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

k. **System-wide Clinical Integration.** Physician shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

l. **Insurance.** Group shall maintain for Group and Physician (and any Substitute Physician) professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable) in the above amounts for a period of five (5) years, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

m. **Use of Hospital Facilities.** Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever.

This Agreement shall not be construed as a lease to Group or Physician of any portion of Hospital's facilities. No part of Hospital's premises shall be used at any time by Group or Physician for its own purposes or as an office for the general practice of medicine.

n. **Expert Witness Conflict of Interest.** Neither Group nor Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Group and/or Physician from testifying as a factual witness in an action in which both Physician and Hospital or Group and Hospital (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

o. **Nondiscrimination.** Group and Physician shall both provide services under this Agreement without regard to any person's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law.

p. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital. This Agreement is not intended to influence Group's or Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or in any way restrict Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Equipment, Supplies, Etc.** Hospital shall provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Service. The parties acknowledge and agree that the Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital, after consultation with the Physician when reasonably possible. Group acknowledges and agrees that if Group or Physician alleges any breach by Hospital of

this Section 2.a., Group's sole and exclusive remedy shall be termination of this Agreement.

b. **Insurance for Administrative Services.** With respect to administrative services provided under this Agreement, Physician shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to Physician's administrative services and not to professional services provided to Physician's patients.

c. **Responsibility for Services.** To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Service.

d. **Performance Assessment.** Hospital shall assess Physician's performance annually in August and from time to time as otherwise deemed appropriate or necessary, using the form attached hereto as Exhibit C, as modified by Hospital from time to time.

3. **COMPENSATION AND EXPENSES**

a. **Monthly Payments.** For all services rendered by Group and Physician under this Agreement, Hospital shall pay Group **Three Hundred Thirty and 55/100 Dollars (\$330.55) per hour** for actual hours worked and documented pursuant to Section 1.d. (Time Reports), **up to a maximum of Five Thousand Nine Hundred Fifty Dollars (\$5,950) per month.** Compensation shall be payable monthly within seven (7) days after the Administrator receives completed and signed Time Reports for the applicable month.

b. **Expense Approval.** Neither Group nor Physician shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Physician shall be solely responsible for the following: (i) professional license fees and professional association membership fees and dues; (ii) professional conventions and meetings; (iii) professional liability insurance; and (iv) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or Physician.

c. **Tax Reporting.** To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

d. **No Billing of Patients.** Physician's provision of professional services to patients is not covered by this Agreement, and neither Group nor Physician shall bill or assert any claim for payment against any patient or payor for services performed by

Physician under this Agreement. Group and Physician shall be solely responsible for billing for professional services provided to their patients.

4. **TERM**

a. **Term.** The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) the death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to Hospital);

(b) Physician uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of Hospital's drug-free workplace rules;

(c) the occurrence of an event causing or likely to cause a failure by Physician to meet the professional qualification requirements in Section 1.e. (Professional Qualifications) hereof;

(d) the inaccuracy of any representation of Group in Section 1.f. (Representations and Warranties) hereof;

(e) Group's or Physician's failure to obtain or maintain professional liability insurance for Physician as required in Section 1.i. (Insurance), or Hospital's inability to maintain insurance for Physician's administrative services as specified in Section 2.b. (Insurance for Administrative Services);

(f) failure of Physician to comply with Section 1.h. (Working Cooperatively with Others);

(g) Group's or Physician's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 7 (Confidentiality and Intellectual Property);

(h) violation by Physician of other Hospital policies requiring immediate termination of Physician; or

(i) closure of the Service or sale or closure of the hospital at which the Service is located.

(2) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Physician to deliver Time Reports in a timely manner; (ii) failure to satisfy the time requirements set forth in Section 1.c. (Time Requirements) hereof; (iii) failure to satisfy the requirements of Section 7 (Confidentiality and Intellectual Property); or (iv) any act or omission by Physician that jeopardizes the quality of care provided to Hospital's patients.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status under state or federal law or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(4) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon thirty (30) days' written notice to the other party.

(5) **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon the written concurrence of the parties.

c. **Effect of Expiration or Termination.**

(1) **Termination of Obligations.** Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(2) **Pre-Termination Services.** Hospital shall pay Group any unpaid amount due for services rendered prior to the termination date.

(3) **Liability for Breach.** With the exception of a termination pursuant to Section 2.a. (Equipment, Supplies, Etc.), a termination by either party as a result of a material breach by the other party shall not be an exclusive remedy, and the

non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(4) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Physician shall immediately vacate Hospital premises and remove any and all of Physician's personal property. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(5) **Survival.** The provisions of Sections 1.d. (Time Reports), 1.j. (Compliance Program), 1.l. (Insurance), 2.b. (Insurance for Administrative Services), 4.c. (Effect of Expiration or Termination), 4.d. (No Procedural Rights), 4.e. (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality and Intellectual Property), 8 (Indemnity), 9 (Dispute Resolution), 10 (Notices) and 11 (Miscellaneous) shall survive termination of this Agreement.

d. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body. Group represents and warrants that Physician and all other physicians providing services on behalf of Physician are aware of and accept this condition.

e. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Physician prior to the first anniversary of the Effective Date of this Agreement.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In performing the services described in this Agreement, Physician and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physician shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physician, and neither Group nor Physician shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group agrees that it shall do the following:

withhold FICA (Social Security) from payments to Physician; make state or federal unemployment insurance contributions on Physician's behalf; withhold state and federal income tax from payments to Physician; make disability insurance contributions on behalf of Physician; and obtain workers' compensation insurance on behalf of Physician. Group and/or Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to Physician or any other physician employed or engaged by Group.

6. ACCESS TO BOOKS AND RECORDS

a. **Access.** Group shall maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to said Section 1861(v)(1)(I), Group agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of services under this Agreement, Group shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

(2) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period, such subcontract shall contain, and Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

b. **Limits.** The availability of Group's Agreement, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Physician and Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Neither Physician nor Group will at any time disclose to others, use,

copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Physician's duties hereunder, any confidential or proprietary information of Hospital. Confidential or proprietary information shall include, but not be limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or Physician's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor Physician shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Neither Physician nor Group shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Physician and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

e. **Intellectual Property Ownership and Assignment.** Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar

laws, within the foregoing: (i) furnished to Physician or Group, or to which Physician or Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Physician or Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Physician nor Group shall have any interest in such Intellectual Property. Accordingly, Group and Physician hereby assign to Hospital all of Physician's and/or Group's right, title and interest in and to the Intellectual Property. Physician and Group further acknowledge their obligation to assist Hospital or its designee, at its expense, in every proper way to secure Hospital's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to Hospital or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to Hospital or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Physician or Group during the course of this Agreement.

8. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including Physician) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 10 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

10. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the

address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819
Attn: Margaret Mette
Assistant Administrator

With a copy to: Sutter Health Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.
VP and Regional Counsel

If to Group: Sacramento Cardiovascular Surgeons Medical
Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95819
Attn: Michael T. Ingram, M.D.
President

11. MISCELLANEOUS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including Section 1654 of the California Civil Code or any other similar federal or state statute) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable, and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.

d. **Severability.** Except as provided in Section 4.b.(3) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its

rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all Time Reports submitted to Hospital, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation and Expenses).

f. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

g. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by either party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and terminates and supersedes any prior written or oral agreement of the parties with respect to the subject matter.

j. **Amendments and Extensions.** Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

k. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any Group physician (or any immediate family member of any such Group physician), provides services to Hospital.

l. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement.

m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.


SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION, dba Sutter Medical
Center Sacramento**

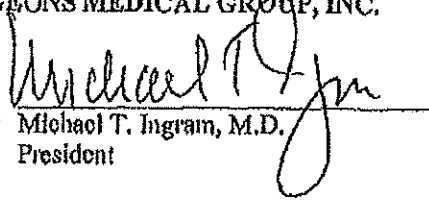
Date: 8/31/12

By: 
Name: Faraz Yousuf
Title: Chief Operating Officer

GROUP:

**SACRAMENTO CARDIOVASCULAR
SURGEONS MEDICAL GROUP, INC.**

Date: 8/30/12

By: 
Name: Michael T. Ingram, M.D.
Title: President

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

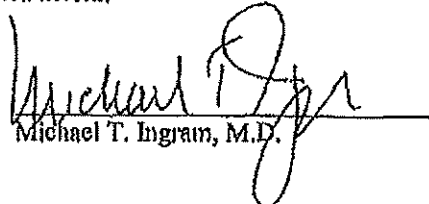
By: 
Name: Michael T. Ingram, M.D.

EXHIBIT A

PHYSICIAN DUTIES AND SERVICES

Physician shall be responsible to perform the administrative services set forth below.

- a. **License and Accreditation.** Physician shall provide such professional guidance and supervision as necessary to obtain and maintain the Service's license and accreditation.
- b. **Policies and Procedures.** Physician shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Service. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies shall be approved by the Board of Directors, and procedures shall be approved by Administration and the Medical Staff where appropriate.
- c. **Call Schedule.** Physician shall develop a system for assuring physician coverage of the Service 24 hours per day, seven days per week. Physicians scheduled to provide this coverage must:
 - (1) Be members in good standing of the Medical Staff, with full privileges to provide necessary patient care services;
 - (2) Comply with Hospital's nondiscrimination policies, and be eligible to and agree to treat Medicare and Medi-Cal patients; and
 - (3) Provide services in accordance with Hospital's standards of quality and efficiency and in accordance with all applicable Medical Staff and Hospital bylaws, rules, regulations, and policies.
- d. **Personnel.** Physician shall advise Hospital in the recruiting, evaluation, and retention of key Hospital personnel working in the Service.
- e. **Supervision.** Physician shall provide clinical supervision of technical personnel in the Service.
- f. **Training and Education.** Physician shall train or arrange for the training of Service personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and Physician.
- g. **Budgets.** Physician shall assist Hospital's administration in the development of operating and capital expenditure budgets for the proper and efficient

operation of the Service. Physician shall assist Hospital in operating the Service efficiently and in accordance with approved budgets and shall exercise diligence in keeping controllable costs of the Service to a minimum.

h. **Planning.** Upon request of Hospital, Physician shall participate in Hospital's planning process as it relates to the operation of the Service.

i. **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, Physician shall develop and implement appropriate quality assurance activities for the Service. In addition, Physician shall monitor utilization and quality of services, and shall refer any potential deficiencies to the appropriate Medical Staff Peer Review Committee. These activities shall be conducted through Hospital's Medical Staff committee structure; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.

j. **Equipment.** Physician shall advise Hospital on the selection, maintenance, and repair of equipment for the Service, and shall arrange for or advise Hospital on the need for maintenance or repair of equipment within the Service.

k. **Reimbursement.** Physician shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the Service.

l. **Committees.** Physician shall participate on Hospital and Medical Staff committees at the request of the Administrator or the Medical Staff.

m. **Community Education.** Physician shall assist in developing and implementing Hospital's marketing plan as it relates to the Service. Physician shall maintain the confidentiality of such marketing plan and shall not participate in any other aspects of the marketing plan.

n. **Other Responsibilities.** Physician shall perform such other responsibilities as reasonably necessary for the proper operation of the Service.

o. **Other Services.**

1. Provide leadership as it relates to ICU Care
 - Comply with TJC requirements
 - Critical Care Standards
2. Participate in SHI meetings to maintain standards of care for Cardiovascular ICU.

EXHIBIT B

TIME REPORT

[Form Attached]

EXHIBIT C
PERFORMANCE ASSESSMENT

Performance Assessment Period From: ____ / ____ To: ____ / ____	Facility: _____
Medical Director: <u>Michael T. Ingram, M.D.</u>	Reviewer: _____

<p style="text-align: center;">Rating Determination:</p> <p>Meets: Meets or Exceeds Expectations</p> <p>Does Not Meet: Does not meet minimum expectations and improvement required</p>

ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures Cardiac Intensive Care Unit Services functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key Cardiac Intensive Care Unit services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure Cardiac Intensive Care Unit resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees Cardiac Intensive Care Unit Services competency assessment program		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that Cardiac Intensive Care Unit Services technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain the Cardiac Intensive Care Unit's license, The Joint Commission accreditation, and Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the Cardiac Intensive Care Unit personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form, adhering to defined reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to Administration and Medical Staff as appropriate.		
Comments:		

Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction as to benefit medical staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for Cardiac Intensive Care Unit personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing Cardiovascular expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of Cardiac Intensive Care Unit Services (i.e., clinical guidelines, clinical pathways, patient-driven protocols)		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health Sacramento Sierra Region.		
❖ Participates on hospital and Medical Staff committees as requested by Administration and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with Cardiac Intensive Care Unit Services to review program needs and referring physician requests.		
Comments:		

Technical Procedures		Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.			
❖ Ensures that Cardiac Intensive Care Unit Services are consistent with written policies, processes and procedures.			
❖ Provides consultation as requested to Sutter Health Sacramento Sierra Region technical workgroups and performance improvement committees.			
❖ Effectively collaborates with Administration and Medical Staff to identify and evaluate new Cardiac Intensive Care Unit services.			
Comments:			

Strategic Initiatives		Meets	Does Not Meet
❖ Actively participates in Cardiac Intensive Care Unit's annual planning process.			
❖ Promotes and participates in Sutter Health Sacramento Sierra Region and system-wide integration efforts.			
❖ Supports and facilitates change management efforts with key stakeholders.			
❖ Promotes and participates in ongoing efforts related to standardization and implementation of Cardiac Intensive Care Unit Services as identified by the Management Team.			
❖ Supports the operating and capital equipment budgeting process.			
Comments:			

Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

Operations Manager: _____

Operations Manager: _____

Nursing Director: _____

Regional Director: _____

EXHIBIT 5/4
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER HEALTH SACRAMENTO SIERRA REGION
Dba SUTTER MEDICAL CENTER SACRAMENTO**

**FIRST AMENDMENT TO
CARDIAC INTENSIVE CARE UNIT SERVICE
MEDICAL DIRECTOR AGREEMENT
AND
ASSISTANT MEDICAL DIRECTOR, SUTTER HEART INSTITUTE**

This First Amendment to Cardiac Intensive Care Unit Service Medical Director Agreement and Assistant Medical Director, Sutter Heart Institute Agreement ("First Amendment") is entered into as of **December 1, 2013** (the "Effective Date"), by and between **Sutter Health Sacramento Sierra Region** ("SHSSR"), a California nonprofit public benefit corporation doing business as **Sutter Medical Center Sacramento** ("Hospital"), and **Sacramento Cardiovascular Surgeons Medical Group, Inc.**, a California professional corporation ("Group").

RECITALS

A. Hospital and Group entered into a Medical Director Agreement related to Hospital's cardiac services, including administrative services at the Sutter Heart Institute, dated as of September 1, 2012 attached hereto as **Exhibit A** (the "Agreement"). Group provides Michael T. Ingram, M.D. as Medical Director ("Physician").

B. Hospital and Group wish to amend the terms of the Agreement, upon the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. The parties wish Physician to assist in the development of a new program ("Heart Surgery Valve Center") within the cardiac service line of Hospital. Therefore, additional monthly hours are necessary to reach this goal.

2. This First Amendment therefore modifies the Agreement by the following:

a. Deleting Section 1.c Time Requirement in its entirety and replacing it with the following:

"c. **Time Requirements.** Physician shall devote an average of forty (40) hours per month performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, however, the monthly compensation paid to Group shall be capped on a quarterly basis as provided in Section 3.a. (Monthly Payments) of

this Agreement, regardless of the number of hours expended by Physician above one hundred twenty (120) hours in any given contract quarter.”

b. Deleting Section 3.a Monthly Payments in its entirety and replacing it with the following:

“a. **Monthly Payments.** For all services rendered by Group and Physician under this Agreement, Hospital shall pay Group **Three Hundred Thirty and 55/100 Dollars (\$330.55) per hour** for actual hours worked and documented pursuant to Section 1.d. (Time Reports), **up to a maximum of Thirty-Nine Thousand Six Hundred Sixty-Six Dollars (\$39,666) per contract quarter.** Compensation shall be payable monthly within twenty (20) days after the Administrator receives completed and signed Time Reports for the applicable month.”

c. Adding the attached **Exhibit A-2** to the Agreement to show the additional duties that Physician will be required to perform for the development of the new program.

3. **Extended Term.** The term of the Agreement, as amended by this First Amendment, shall be extended for **one (1) year** from the Effective Date of this First Amendment.

4. **No Other Changes.** Except as set forth in this First Amendment, no other modifications are being made to the Agreement, and the Agreement shall remain in full force and effect.

5. **Counterparts.** This First Amendment may be executed in multiple counterparts, and counterpart signature pages may be assembled to form a single, fully executed document.

(Signature page to follow)

IN WITNESS WHEREOF, the parties have executed this First Amendment on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL: Sutter Health Sacramento
Sierra Region dba Sutter Medical Center
Sacramento

Date:

11/26/13

By:

Name: Faraz Yousuf
Title: Chief Operating Officer

GROUP: Sacramento Cardiovascular
Surgeons Medical Group, Inc.

Date:

11-26-2013

By:

Name: Michael T. Ingram, M.D.
Title: President

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

By:

Name: Michael T. Ingram, M.D.

EXHIBIT A
AGREEMENT
[Attached]

EXHIBIT A-2

PHYSICIAN DUTIES AND HEART SURGERY VALVE CENTERS

Physician shall be responsible to perform the administrative duties for the Heart Surgery Valve Centers as set forth below.

- (1) **License and Accreditation.** Physician shall provide such professional guidance and supervision as necessary to obtain and maintain the Heart Surgery Valve Center's license and accreditation.
- (2) **Policies and Procedures.** Physician shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Heart Surgery Valve Center. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. The Board of Directors shall approve policies, and procedures shall be approved by Administration and the Medical Staff where appropriate. Annual review or system review requirement
- (3) **Personnel.** Physician shall advise Hospital in the recruiting, evaluation, and retention of key Hospital personnel working in the Heart Surgery Valve Center.
- (4) **Supervision.** Physician shall provide clinical supervision of technical personnel in the Heart Surgery Valve Center.
- (5) **Training and Education.** Physician shall train or arrange for the training of Heart Surgery Valve Center personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and Physician. Including annual review
- (6) **Budgets.** Physician shall assist Hospital's administration in the development of operating and capital expenditure budgets for the proper and efficient operation of the Heart Surgery Valve Center. Physician shall assist Hospital in operating the Heart Surgery Valve Center efficiently, in accordance with approved budgets, and shall exercise diligence in keeping controllable costs of the Heart Surgery Valve Center to a minimum.
- (7) **Planning.** Upon request of Hospital, Physician shall participate in Hospital's planning process as it relates to the operation of the Heart Surgery Valve Center and its relationship to Percutaneous Valve Program.
- (8) **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, Physician shall develop and implement appropriate quality assurance activities for the Heart Surgery Valve Center. In addition, Physician shall monitor

utilization and quality of Heart Surgery Valve Centers, and shall refer any potential deficiencies to the appropriate Medical Staff Peer Review Committee. These activities shall be conducted through Hospital's Medical Staff committee structure; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.

(9) **Equipment.** Physician shall advise Hospital on the selection, maintenance, and repair of equipment for the Heart Surgery Valve Center, and shall arrange for or advise Hospital on the need for maintenance or repair of equipment within the Heart Surgery Valve Center.

(10) **Reimbursement.** Physician shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the Heart Surgery Valve Center.

(11) **Committees.** Physician shall participate on Hospital and Medical Staff committees at the request of the Administrator or the Medical Staff.

(12) **Community Education/Business Development.** Physician shall assist in developing and implementing the community education components for Hospital's marketing plan as it relates to the Heart Surgery Valve Center. The physician will provide community education events throughout the SHSSR at the request of administration. Physician shall maintain the confidentiality of such marketing plan and shall not participate in any other aspects of the marketing plan.

(13) **Other Responsibilities.** Physician shall perform such other responsibilities as reasonably necessary for the proper operation of the Heart Surgery Valve Center.

(14) **Other Heart Surgery Valve Centers.** Physician shall perform such other responsibilities as reasonably necessary for the proper operation of the Heart Surgery Valve Center, including but not limited to:

1. Development of Heart Valve Surgery Center program within SHSSR including protocol for patient selection and education of physicians.
2. Remodel Project of the SGH and participation in the Master Plan project for the CV surgical hybrid suite.
3. Development of Pathways based on best practice and clinical practice guidelines for the care of patients, and patient selection with aortic, mitral, pulmonic, etc. patients who would benefit from surgery or percutaneous. To reduce variations in care, and control cost.
4. Education of the general cardiologists associated with SHSSR on the Heart Surgery Valve Center.

5. Development of a follow-up clinic for the Heart Surgery Valve Center including Patient Support Group Program.

6. Participate in value analysis process to control supply cost.

7. Role model best practices and assist in standardization in the region.

EXHIBIT 4
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER HEALTH SACRAMENTO SIERRA REGION
dba SUTTER MEDICAL CENTER SACRAMENTO**

**SURGICAL DIRECTOR ADVANCED HEART FAILURE
TRANSPLANT VENTRICULAR ASSIST DEVICE PROGRAM
MEDICAL DIRECTOR AGREEMENT**

Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Medical Director Agreement (this "Agreement") is entered into as of **September 1, 2012**, (the "Effective Date") by and between **Sutter Health Sacramento Sierra Region**, a California nonprofit public benefit corporation doing business as **Sutter Medical Center Sacramento** ("Hospital"), and **Sacramento Cardiovascular Surgeons Medical Group, Inc.**, a California professional corporation ("Group").

R E C I T A L S

Hospital operates a general acute care hospital in Sacramento, California, and in conjunction therewith maintains a heart transplant program (the "Service"). In order for Service to remain viable, Hospital needs a Ventricular Assist Device Program to support critically ill cardiac surgical candidates for heart transplant. Hospital is in need of an experienced, qualified physician to serve as medical director of the Service.

Group employs **Robert Kincade M.D.**, ("Physician") who is a physician duly licensed to practice medicine in the State of California and qualified in the specialty of Cardiovascular Surgery (the "Specialty").

Hospital wishes to contract with Group to provide Physician to serve as medical director of the Service, and Group wishes to so contract with Hospital.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF GROUP AND PHYSICIAN

During the term of this Agreement, Group shall perform and comply with, or, as applicable, cause Physician to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

- a. **Services.** Physician shall serve as medical director of the Service, shall be responsible for the overall supervision of the Service and shall perform the specific duties and responsibilities set forth in **Exhibit A** attached hereto. The services provided under this Agreement shall be limited to administrative and teaching services provided to Hospital and shall not include any professional services to patients or any other services.

b. **Coordination of Services.** Hospital, through its Director of Transplant Services and Assistant Administrator (the "Administrator"), and Physician shall coordinate their activities in connection with the Service, and Physician shall inform the Administrator of any extended periods (i.e., one [1] week or more) during which Physician will be unavailable due to vacation, professional meetings, or other personal or professional commitments. If requested by Hospital, Group shall engage and provide a substitute medical director ("Substitute Physician"), approved in writing by Hospital, to perform the services required of Physician under this Agreement during all periods of Physician's unavailability. Group shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform all duties of Physician under this Agreement. It is expressly understood that all rights, duties and responsibilities of Physician in this Agreement shall also apply to Substitute Physician.

c. **Time Requirements.** Physician shall devote a **minimum average of twenty (20) hours per month** performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that Physician shall in no event devote less than three (3) times the minimum average monthly hours (60) during any quarter during the term of this Agreement. However, the monthly compensation paid to Group shall be capped as provided in Section 3.a. (Monthly Payments) of this Agreement, regardless of the number of hours expended by Physician above twenty (20) hours in any given month.

d. **Time Reports.** Physician shall contemporaneously record the hours and actual services provided on a monthly basis using Hospital's electronic time reporting system for administrative services ("Electronic Time Report"), or if an exception to using the electronic system is granted by Hospital, a form substantially similar to **Exhibit B** ("Paper Time Report"), as modified from time to time by Hospital. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Physician or Group shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within seven (7) days after the end of each calendar month, or as otherwise requested by Accounts Payable during the term of this Agreement, to allow for Hospital's verification of services. Hospital shall have no obligation to pay Group for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Physician and Group shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

e. **Professional Qualifications.** Physician shall at all times:

(1) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice in the Specialty;

(2) Be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;

(3) Be a member in good standing of Hospital's Medical Staff; and

(4) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

f. **Representations and Warranties.** Group represents and warrants to Hospital that:

(1) Neither Group nor Physician is bound by any agreement or arrangement that would preclude Group from entering into, or Group or Physician from fully performing the services required under, this Agreement;

(2) Physician's license to practice medicine in the State of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(3) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(4) Physician has never been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and

(5) Group has no information that would reasonably indicate that Physician is not able to perform the services required under this Agreement.

g. **Notice of Failure to Meet Professional Qualifications.** Group shall promptly notify Hospital of any event causing or likely to cause a failure by Physician to meet the requirements set forth in Section 1.e. (Professional Qualifications) and Section 1.f. (Representations and Warranties) hereof, and any of the following:

(1) Any investigation of Physician or disciplinary proceeding against Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(2) Any malpractice action against Physician or other action against Physician in connection with Physician's administrative or professional services;

(3) Any investigation of Physician or disciplinary action against Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by Physician; or

(4) Any other material breach of the terms of this Agreement.

h. **Working Cooperatively with Others.** Physician shall at all times work cooperatively with others toward enhancing the quality of patient care. Physician shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

i. **Compliance with Rules and Laws.** Physician and, to the extent applicable, Group shall at all times comply with all policies, bylaws, rules and regulations of Hospital and Hospital's Medical Staff, applicable standards and recommendations of The Joint Commission, and all applicable federal, state and local laws, rules and regulations.

j. **Compliance Program.** Group and Physician shall comply with Hospital's corporate compliance program. Group and Physician shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group and/or Physician and/or any of the services provided by Group and Physician under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all documents and/or information related to Group or Physician, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physician shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

k. **System-wide Clinical Integration.** Physician shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

l. **Insurance.** Group shall maintain for Group and Physician (and any Substitute Physician) professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable) in the above amounts for a period of five (5) years, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

m. **Use of Hospital Facilities.** Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. This Agreement shall not be construed as a lease to Group or Physician of any portion of Hospital's facilities. No part of Hospital's premises shall be used at any time by Group or Physician for its own purposes or as an office for the general practice of medicine.

n. **Expert Witness Conflict of Interest.** Neither Group nor Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Group and/or Physician from testifying as a factual witness in an action in which both Physician and Hospital or Group and Hospital (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

o. **Nondiscrimination.** Group and Physician shall both provide services under this Agreement without regard to any person's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law.

p. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital. This Agreement is not intended to influence Group's or Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or in any way restrict Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Equipment, Supplies, Etc.** Hospital shall provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Service. The parties acknowledge and agree that the Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital, after consultation with the Physician when reasonably possible. Group acknowledges and agrees that if Group or Physician alleges any breach by Hospital of this Section 2.a., Group's sole and exclusive remedy shall be termination of this Agreement.

b. **Insurance for Administrative Services.** With respect to administrative services provided under this Agreement, Physician shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to Physician's administrative services and not to professional services provided to Physician's patients.

c. **Responsibility for Services.** To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Service.

d. **Performance Assessment.** Hospital shall assess Physician's performance annually in August and from time to time as otherwise deemed appropriate or necessary, using the form attached hereto as Exhibit C, as modified by Hospital from time to time.

3. **COMPENSATION AND EXPENSES**

a. **Monthly Payments.** For all services rendered by Group and Physician under this Agreement, Hospital shall pay Group **Three Hundred Thirty-Two and 50/100 Dollars (\$332.50) per hour** for actual hours worked and documented pursuant to Section 1.d. (Time Reports), **up to a maximum of Six Thousand Six Hundred Fifty Dollars (\$6,650) per month.** Compensation shall be payable monthly within seven (7) days after the Administrator receives completed and signed Time Reports for the applicable month.

b. **Expense Approval.** Neither Group nor Physician shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Physician shall be solely responsible for the following: (i) professional license fees and professional association membership fees and dues; (ii) professional conventions and meetings; (iii) professional liability insurance; and (iv) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or Physician.

c. **Tax Reporting.** To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

d. **No Billing of Patients.** Physician's provision of professional services to patients is not covered by this Agreement, and neither Group nor Physician shall bill or assert any claim for payment against any patient or payor for services performed by Physician under this Agreement. Group and Physician shall be solely responsible for billing for professional services provided to their patients.

4. **TERM**

a. **Term.** The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) the death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to Hospital);

(b) Physician uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of Hospital's drug-free workplace rules;

(c) the occurrence of an event causing or likely to cause a failure by Physician to meet the professional qualification requirements in Section 1.e. (Professional Qualifications) hereof;

(d) the inaccuracy of any representation of Group in Section 1.f. (Representations and Warranties) hereof;

(e) Group's or Physician's failure to obtain or maintain professional liability insurance for Physician as required in Section 1.i. (Insurance), or Hospital's inability to maintain insurance for Physician's administrative services as specified in Section 2.b. (Insurance for Administrative Services);

(f) failure of Physician to comply with Section 1.h. (Working Cooperatively with Others);

(g) Group's or Physician's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 7 (Confidentiality and Intellectual Property);

(h) violation by Physician of other Hospital policies requiring immediate termination of Physician; or

(i) closure of the Service or sale or closure of the hospital at which the Service is located.

(2) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Physician to deliver Time Reports in a timely manner; (ii) failure to satisfy the time requirements set forth in Section 1.c. (Time Requirements) hereof; (iii) failure to satisfy the requirements of Section 7 (Confidentiality and Intellectual Property); or (iv) any act or omission by Physician that jeopardizes the quality of care provided to Hospital's patients.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status under state or federal law or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(4) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon thirty (30) days' written notice to the other party.

(5) **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon the written concurrence of the parties.

c. **Effect of Expiration or Termination.**

(1) **Termination of Obligations.** Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(2) **Pre-Termination Services.** Hospital shall pay Group any unpaid amount due for services rendered prior to the termination date.

(3) **Liability for Breach.** With the exception of a termination pursuant to Section 2.a. (Equipment, Supplies, Etc.), a termination by either party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(4) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Physician shall immediately vacate Hospital premises and remove any and all of Physician's personal property. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(5) **Survival.** The provisions of Sections 1.d. (Time Reports), 1.j. (Compliance Program), 1.l. (Insurance), 2.b. (Insurance for Administrative Services), 4.c. (Effect of Expiration or Termination), 4.d. (No Procedural Rights), 4.e. (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality and Intellectual Property), 8 (Indemnity), 9 (Dispute Resolution), 10 (Notices) and 11 (Miscellaneous) shall survive termination of this Agreement.

d. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body. Group represents and warrants that Physician and all other physicians providing services on behalf of Physician are aware of and accept this condition.

e. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Physician prior to the first anniversary of the Effective Date of this Agreement.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In performing the services described in this Agreement, Physician and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physician shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physician, and neither Group nor Physician shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group agrees that it shall do the following: withhold FICA (Social Security) from payments to Physician; make state or federal unemployment insurance contributions on Physician's behalf; withhold state and federal income tax from payments to Physician; make disability insurance contributions on

behalf of Physician; and obtain workers' compensation insurance on behalf of Physician. Group and/or Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to Physician or any other physician employed or engaged by Group.

6. ACCESS TO BOOKS AND RECORDS

a. **Access.** Group shall maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to said Section 1861(v)(1)(I), Group agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of services under this Agreement, Group shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

(2) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period, such subcontract shall contain, and Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

b. **Limits.** The availability of Group's Agreement, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Physician and Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Neither Physician nor Group will at any time disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Physician's duties hereunder, any confidential or proprietary information of Hospital. Confidential or proprietary information shall include, but not be limited to,

information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or Physician's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor Physician shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Neither Physician nor Group shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Physician and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

e. **Intellectual Property Ownership and Assignment.** Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Physician or Group, or to which Physician or Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored,

developed or generated in connection with performance of this Agreement by Physician or Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Physician nor Group shall have any interest in such Intellectual Property. Accordingly, Group and Physician hereby assign to Hospital all of Physician's and/or Group's right, title and interest in and to the Intellectual Property. Physician and Group further acknowledge their obligation to assist Hospital or its designee, at its expense, in every proper way to secure Hospital's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to Hospital or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to Hospital or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Physician or Group during the course of this Agreement.

8. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including Physician) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution

exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 10 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

10. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819
Attn: Margaret Mette
Assistant Administrator

With a copy to: Sutter Health Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.
VP and Regional Counsel

If to Group: Sacramento Cardiovascular Surgeons Medical
Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95819
Attn: Michael T. Ingram, M.D.
President

11. MISCELLANEOUS

- a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.
- b. **Ambiguities.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including Section 1654 of the California Civil Code or any other similar federal or state statute) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable, and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.
- c. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.
- d. **Severability.** Except as provided in Section 4.b.(3) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
- e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the

subcontracting physician and the services provided by that physician on all Time Reports submitted to Hospital, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation and Expenses).

f. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

g. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by either party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and terminates and supersedes any prior written or oral agreement of the parties with respect to the subject matter.

j. **Amendments and Extensions.** Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

k. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any Group physician (or any immediate family member of any such Group physician), provides services to Hospital.

l. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement.

m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Signature Page follows


SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

SUTTER HEALTH SACRAMENTO
SIERRA REGION, dba Sutter Medical
Center Sacramento

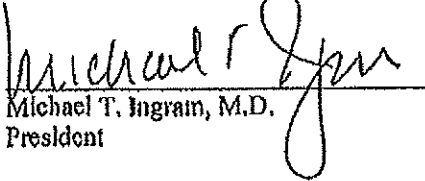
Date: 8/31/12

By: 
Name: Paraz Yousuf
Title: Chief Operating Officer

GROUP:

SACRAMENTO CARDIOVASCULAR
SURGEONS MEDICAL GROUP, INC.

Date: _____

By: 
Name: Michael T. Ingram, M.D.
Title: President

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

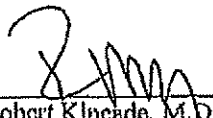
By: 
Name: Robert Kline, M.D.

EXHIBIT A

PHYSICIAN DUTIES AND SERVICES

Physician shall be responsible to perform the administrative services set forth below.

a. **License and Accreditation.** Physician shall provide such professional guidance and supervision as necessary to obtain and maintain the Service's license and accreditation.

b. **Policies and Procedures.** Physician shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Service. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies shall be approved by the Board of Directors, and procedures shall be approved by Administration and the Medical Staff where appropriate.

c. **Call Schedule.** Physician shall develop a system for assuring physician coverage of the Service 24 hours per day, seven days per week. Physicians scheduled to provide this coverage must:

(1) Be members in good standing of the Medical Staff, with full privileges to provide necessary patient care services;

(2) Comply with Hospital's nondiscrimination policies, and be eligible to and agree to treat Medicare and Medi-Cal patients; and

(3) Provide services in accordance with Hospital's standards of quality and efficiency and in accordance with all applicable Medical Staff and Hospital bylaws, rules, regulations, and policies.

d. **Personnel.** Physician shall advise Hospital in the recruiting, evaluation, and retention of key Hospital personnel working in the Service.

e. **Supervision.** Physician shall provide clinical supervision of technical personnel in the Service.

f. **Training and Education.** Physician shall train or arrange for the training of Service personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and Physician.

g. **Budgets.** Physician shall assist Hospital's administration in the development of operating and capital expenditure budgets for the proper and efficient

operation of the Service. Physician shall assist Hospital in operating the Service efficiently and in accordance with approved budgets and shall exercise diligence in keeping controllable costs of the Service to a minimum.

h. **Planning.** Upon request of Hospital, Physician shall participate in Hospital's planning process as it relates to the operation of the Service.

i. **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, Physician shall develop and implement appropriate quality assurance activities for the Service. In addition, Physician shall monitor utilization and quality of services, and shall refer any potential deficiencies to the appropriate Medical Staff Peer Review Committee. These activities shall be conducted through Hospital's Medical Staff committee structure; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.

j. **Equipment.** Physician shall advise Hospital on the selection, maintenance, and repair of equipment for the Service, and shall arrange for or advise Hospital on the need for maintenance or repair of equipment within the Service.

k. **Reimbursement.** Physician shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the Service.

l. **Committees.** Physician shall participate on Hospital and Medical Staff committees at the request of the Administrator or the Medical Staff.

m. **Community Education.** Physician shall assist in developing and implementing Hospital's marketing plan as it relates to the Service. Physician shall maintain the confidentiality of such marketing plan and shall not participate in any other aspects of the marketing plan.

n. **Other Responsibilities.** Physician shall perform such other responsibilities as reasonably necessary for the proper operation of the Service.

o. **Other Services.**

1. Physician shall work in conjunction with the transplant clinic director to monitor quality and work with the nursing staff to develop the standards of care for this patient population.

2. Physician shall be available to support nursing and physicians in the care delivery of this complex patient population.

3. Physician shall be assigned to the data committee for the department and monitor the services associated with STS and CCORP.

4. Physician shall work with the medical director of the Sutter Heart Institute to plan and prepare presentations for the department of Cardiovascular Medicine as well as review submissions to the State of California.

EXHIBIT B

TIME REPORT

[Form Attached]

EXHIBIT C

PERFORMANCE ASSESSMENT

Performance Assessment Period From: ____/____/____ To: ____/____/____	Facility: _____
Medical Director: <u>Robert Kincade, M.D.</u>	Reviewer: _____

Rating Determination: Meets: Meets or Exceeds Expectations Does Not Meet: Does not meet minimum expectations and improvement required
--

ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures _____ Services functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure _____ resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees _____ Services competency assessment program		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that _____ Services technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain _____ license, The Joint Commission accreditation, and Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the _____ personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form, adhering to defined reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to Administration and Medical Staff as appropriate.		
Comments:		

Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction as to benefit medical staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for _____ personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of _____ Services (i.e., clinical guidelines, clinical pathways, patient-driven protocols)		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health Sacramento Sierra Region.		
❖ Participates on hospital and Medical Staff committees as requested by Administration and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with _____ Services to review program needs and referring physician requests.		
Comments:		

Technical Procedures	Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.		
❖ Ensures that _____ Services are consistent with written policies, processes and procedures.		
❖ Provides consultation as requested to Sutter Health Sacramento Sierra Region technical workgroups and performance improvement committees.		
❖ Effectively collaborates with Administration and Medical Staff to identify and evaluate new _____ services.		
Comments:		

Strategic Initiatives	Meets	Does Not Meet
❖ Actively participates in _____ Department's annual planning process.		
❖ Promotes and participates in Sutter Health Sacramento Sierra Region and system-wide integration efforts.		
❖ Supports and facilitates change management efforts with key stakeholders.		
❖ Promotes and participates in ongoing efforts related to standardization and implementation of _____ Services as identified by the _____ Management Team.		
❖ Supports the operating and capital equipment budgeting process.		
Comments:		

Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

Operations Manager: _____

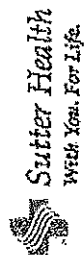
Operations Manager: _____

Nursing Director: _____

Regional Director: _____

EXHIBIT 5
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.



TractManager Cover Sheet

Vendor: <input checked="" type="checkbox"/> Physician <input checked="" type="checkbox"/> Non-Physician (Check One)		Status: <input checked="" type="checkbox"/> New <input type="checkbox"/> Amendment <input type="checkbox"/> Renewal <input type="checkbox"/> Extension <input type="checkbox"/> Termination (Check All That Apply)		Budgeted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check One)		Related Sutter Affiliate: <input type="checkbox"/> SOMT <input type="checkbox"/> SSC <input type="checkbox"/> SCS <input type="checkbox"/> SMC	
A: CONTRACT INFORMATION							
Department	Cardiovascular Surgery						
Contract Type	Medical Director						
Effective Date	10-1-12	Expiration Date	9-30-14				
Vendor	Sac Cardiovascular Surgeons Med Grp						
B: RESPONSIBLE PARTIES							
Primary	Margaret Mette						
Secondary	Vickie Sexton						
Third	Tim Passan						
Fourth							
C: PHYSICIAN/CONTRACTOR/VENDOR PAYMENT SPECIFICS							
Physician Name(s)	James Longoria, MD						
Foundation/ Medical Group	Sacramento Cardiovascular Surgeons Medical Group, Inc.						
Compensation	max \$6,650/month						
Call Coverage	<input type="checkbox"/>						
Hourly Rate	332.50	Hours Per Mo.	20	Hours Per Day			
Time Sheets Required?	yes	#Shifts Per Week		Hours Per Week			
Days Required for Termination Notification without Cause	30 days						
Days Required for Renewal Notification	90 days						
OIG/GSA/MEDI-CAL Exclusion Performed	yes						
Date Reviewed by Contract Specialist	9-20-12 pph						
TMI Contract Number	20000.22101						
D: COMPLIANCE QUESTIONS							
Business Associate Agreement ("BAA") Required?	no						
BAA language included in contract?	no						
Trading Partner Agreement ("TPA") Required?	no						
TPA language included in contract?	no						
Conflict of Interest ("COI") Statement Required?	yes						
COI statement language included in contract?	yes						
Has this vendor been excluded or debarred from any Federally Funded Health Care Program?	no						
Debarred provision language included?	yes						
Insurance Requirements Met?	yes						
Proof of Insurance Attached to this package?	yes						
Prepared by OGC?	yes						
NOTES							
SIGNATURES							
Assistant Administrator:	M. Mette			Date:	9/26/12		
CEO/COO/CFO:	James Longoria			Date:	9/26/12		
Date Uploaded Onto TractManager:							

**SUTTER HEALTH SACRAMENTO SIERRA REGION
dba SUTTER MEDICAL CENTER SACRAMENTO**

**MEDICAL DIRECTOR AGREEMENT
Surgical Ablation Program**

Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Medical Director Agreement (this "Agreement") is entered into as of **October 1, 2012**, (the "Effective Date") by and between **Sutter Health Sacramento Sierra Region**, a California nonprofit public benefit corporation **doing business as Sutter Medical Center Sacramento** ("Hospital"), and **Sacramento Cardiovascular Surgeons Medical Group, Inc.**, a California professional corporation ("Group").

RECITALS

A. Hospital operates a general acute care hospital in Sacramento, California, and in conjunction therewith maintains a Surgical Ablation program (the "Service"). The Service is in the process of programmatic growth and development. Hospital is in need of an experienced, qualified physician in the Specialty (as defined below) to serve as medical director of the Service.

B. Group employs **James Longoria, M.D.**, ("Physician") who is a physician duly licensed to practice medicine in the State of California and qualified in the specialty of Cardiothoracic Surgery and General Surgery (the "Specialty").

C. Hospital wishes to contract with Group to provide Physician to serve as medical director of the Service, and Group wishes to so contract with Hospital.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF GROUP AND PHYSICIAN

During the term of this Agreement, Group shall perform and comply with, or, as applicable, cause Physician to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Services.** Physician shall serve as medical director of the Service, shall be responsible for the overall supervision of the Service and shall perform the specific duties and responsibilities set forth in **Exhibit A** attached hereto. The services provided under this Agreement shall be limited to administrative and teaching services provided to Hospital and shall not include any professional services to patients or any other services.

b. **Coordination of Services.** Hospital, through its Assistant Administrator (the "Administrator"), and Physician shall coordinate their activities in connection with the Service, and Physician shall inform the Administrator of any extended periods (i.e.,

one [1] week or more) during which Physician will be unavailable due to vacation, professional meetings, or other personal or professional commitments. If requested by Hospital, Group shall engage and provide a substitute medical director ("Substitute Physician"), approved in writing by Hospital, to perform the services required of Physician under this Agreement during all periods of Physician's unavailability. Group shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform all duties of Physician under this Agreement. It is expressly understood that all rights, duties and responsibilities of Physician in this Agreement shall also apply to Substitute Physician.

c. **Time Requirements.** Physician shall devote a **maximum of twenty (20) hours per month** performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that Physician shall in no event devote less than three (3) times the minimum average monthly hours during any quarter (60) during the term of this Agreement. However, the monthly compensation paid to Group shall be capped as provided in Section 3.a. (Monthly Payments) of this Agreement, regardless of the number of hours expended by Physician above twenty (20) hours in any given month.

d. **Time Reports.** Physician shall contemporaneously record the hours and actual services provided on a monthly basis using Hospital's electronic time reporting system for administrative services ("Electronic Time Report"), or if an exception to using the electronic system is granted by Hospital, a form substantially similar to **Exhibit B** ("Paper Time Report"), as modified from time to time by Hospital. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Physician or Group shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within five (5) days after the end of each calendar month, or as otherwise requested by Accounts Payable during the term of this Agreement, to allow for Hospital's verification of services. Hospital shall have no obligation to pay Group for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Physician and Group shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

e. **Professional Qualifications.** Physician shall at all times:

- (1) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice in the Specialty;
- (2) Be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;
- (3) Be a member in good standing of Hospital's Medical Staff; and

(4) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

f. **Representations and Warranties.** Group represents and warrants to Hospital that:

(1) Neither Group nor Physician is bound by any agreement or arrangement that would preclude Group from entering into, or Group or Physician from fully performing the services required under, this Agreement;

(2) Physician's license to practice medicine in the State of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(3) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(4) Physician has never been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and

(5) Group has no information that would reasonably indicate that Physician is not able to perform the services required under this Agreement.

g. **Notice of Failure to Meet Professional Qualifications.** Group shall promptly notify Hospital of any event causing or likely to cause a failure by Physician to meet the requirements set forth in Section 1.e. (Professional Qualifications) and Section 1.f. (Representations and Warranties) hereof, and any of the following:

(1) Any investigation of Physician or disciplinary proceeding against Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(2) Any malpractice action against Physician or other action against Physician in connection with Physician's administrative or professional services;

(3) Any investigation of Physician or disciplinary action against Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by Physician; or

(4) Any other material breach of the terms of this Agreement.

h. **Working Cooperatively with Others.** Physician shall at all times work cooperatively with others toward enhancing the quality of patient care. Physician shall

refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

i. **Compliance with Rules and Laws.** Physician and, to the extent applicable, Group shall at all times comply with all policies, bylaws, rules and regulations of Hospital and Hospital's Medical Staff, applicable standards and recommendations of The Joint Commission, and all applicable federal, state and local laws, rules and regulations.

j. **Compliance Program.** Group and Physician shall comply with Hospital's corporate compliance program. Group and Physician shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group and/or Physician and/or any of the services provided by Group and Physician under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all documents and/or information related to Group or Physician, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physician shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

k. **System-wide Clinical Integration.** Physician shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

l. **Insurance.** Group shall maintain for Group and Physician (and any Substitute Physician) professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable) in the above amounts for a period of five (5) years, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

m. **Use of Hospital Facilities.** Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. This Agreement shall not be construed as a lease to Group or Physician of any portion of Hospital's facilities. No part of Hospital's premises shall be used at any time by Group or Physician for its own purposes or as an office for the general practice of medicine.

n. **Expert Witness Conflict of Interest.** Neither Group nor Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or

operated by, or affiliated with, Sutter Health, or any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Group and/or Physician from testifying as a factual witness in an action in which both Physician and Hospital or Group and Hospital (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

o. **Nondiscrimination.** Group and Physician shall both provide services under this Agreement without regard to any person's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law.

p. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital. This Agreement is not intended to influence Group's or Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or in any way restrict Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Equipment, Supplies, Etc.** Hospital shall provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Service. The parties acknowledge and agree that the Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital, after consultation with the Physician when reasonably possible. Group acknowledges and agrees that if Group or Physician alleges any breach by Hospital of this Section 2.a., Group's sole and exclusive remedy shall be termination of this Agreement.

b. **Insurance for Administrative Services.** With respect to administrative services provided under this Agreement, Physician shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to Physician's administrative services and not to professional services provided to Physician's patients.

c. **Responsibility for Services.** To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Service.

d. **Performance Assessment.** Hospital shall assess Physician's performance annually in **September** and from time to time as otherwise deemed appropriate or necessary, using the form attached hereto as **Exhibit C**, as modified by Hospital from time to time.

3. **COMPENSATION AND EXPENSES**

a. **Monthly Payments.** For all services rendered by Group and Physician under this Agreement, Hospital shall pay Group **Three Hundred Thirty-Two and 50/100 Dollars (\$332.50) per hour** for actual hours worked and documented pursuant to Section 1.d. (Time Reports), **up to a maximum of Six Thousand Six Hundred Fifty Dollars (\$6,650) per month.** Compensation shall be payable monthly within fifteen (15) days after the Administrator receives completed and signed Time Reports for the applicable month.

b. **Expense Approval.** Neither Group nor Physician shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Physician shall be solely responsible for the following: (i) professional license fees and professional association membership fees and dues; (ii) professional conventions and meetings; (iii) professional liability insurance; and (iv) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or Physician.

c. **Tax Reporting.** To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

d. **No Billing of Patients.** Physician's provision of professional services to patients is not covered by this Agreement, and neither Group nor Physician shall bill or assert any claim for payment against any patient or payor for services performed by Physician under this Agreement. Group and Physician shall be solely responsible for billing for professional services provided to their patients.

4. **TERM**

a. **Term.** The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) the death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to Hospital);

(b) Physician uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of Hospital's drug-free workplace rules;

(c) the occurrence of an event causing or likely to cause a failure by Physician to meet the professional qualification requirements in Section 1.e. (Professional Qualifications) hereof;

(d) the inaccuracy of any representation of Group in Section 1.f. (Representations and Warranties) hereof;

(e) Group's or Physician's failure to obtain or maintain professional liability insurance for Physician as required in Section 1.l. (Insurance), or Hospital's inability to maintain insurance for Physician's administrative services as specified in Section 2.b. (Insurance for Administrative Services);

(f) failure of Physician to comply with Section 1.h. (Working Cooperatively with Others);

(g) Group's or Physician's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 7 (Confidentiality and Intellectual Property);

(h) violation by Physician of other Hospital policies requiring immediate termination of Physician; or

(i) closure of the Service or sale or closure of the hospital at which the Service is located.

(2) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The

parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Physician to deliver Time Reports in a timely manner; (ii) failure to satisfy the time requirements set forth in Section 1.c. (Time Requirements) hereof; (iii) failure to satisfy the requirements of Section 7 (Confidentiality and Intellectual Property); or (iv) any act or omission by Physician that jeopardizes the quality of care provided to Hospital's patients.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status under state or federal law or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(4) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon thirty (30) days' written notice to the other party.

(5) **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon the written concurrence of the parties.

c. **Effect of Expiration or Termination.**

(1) **Termination of Obligations.** Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(2) **Pre-Termination Services.** Hospital shall pay Group any unpaid amount due for services rendered prior to the termination date.

(3) **Liability for Breach.** With the exception of a termination pursuant to Section 2.a. (Equipment, Supplies; Etc.), a termination by either party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(4) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Physician shall immediately vacate Hospital premises and remove any and all of Physician's personal property. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(5) **Survival.** The provisions of Sections 1.d. (Time Reports), 1.j. (Compliance Program), 1.l. (Insurance), 2.b. (Insurance for Administrative Services), 4.c. (Effect of Expiration or Termination), 4.d. (No Procedural Rights), 4.e. (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality and Intellectual Property), 8 (Indemnity), 9 (Dispute Resolution), 10 (Notices) and 11 (Miscellaneous) shall survive termination of this Agreement.

d. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body. Group represents and warrants that Physician and all other physicians providing services on behalf of Physician are aware of and accept this condition.

e. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Physician prior to the first anniversary of the Effective Date of this Agreement.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In performing the services described in this Agreement, Physician and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physician shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physician, and neither Group nor Physician shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group agrees that it shall do the following: withhold FICA (Social Security) from payments to Physician; make state or federal unemployment insurance contributions on Physician's behalf; withhold state and federal income tax from payments to Physician; make disability insurance contributions on behalf of Physician; and obtain workers' compensation insurance on behalf of Physician. Group and/or Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this

Agreement and the compensation payable by Group to Physician or any other physician employed or engaged by Group.

6. ACCESS TO BOOKS AND RECORDS

a. **Access.** Group shall maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to said Section 1861(v)(1)(I), Group agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of services under this Agreement, Group shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

(2) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period, such subcontract shall contain, and Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

b. **Limits.** The availability of Group's Agreement, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Physician and Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Neither Physician nor Group will at any time disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Physician's duties hereunder, any confidential or proprietary information of Hospital. Confidential or proprietary information shall include, but not be limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or Physician's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group

nor Physician shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Neither Physician nor Group shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Physician and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

e. **Intellectual Property Ownership and Assignment.** Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Physician or Group, or to which Physician or Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Physician or Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Physician nor Group shall have any interest in such Intellectual Property. Accordingly, Group and Physician hereby assign to Hospital all of Physician's and/or Group's right, title and interest in and to the Intellectual Property. Physician and Group further acknowledge their obligation to assist Hospital or its designee, at its expense, in every proper way to secure Hospital's, or its designee's, rights in the Intellectual Property and

any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to Hospital or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to Hospital or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Physician or Group during the course of this Agreement.

8. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including Physician) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 10 (Notices), below, as well as any additional consistent rules of arbitration. The

written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

10. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital:

Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819
Attn: Margaret Mette, Assistant Administrator

With a copy to: Sutter Health Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.
VP and Regional Counsel

If to Group: Sacramento Cardiovascular Surgeons Medical
Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95819
Attn: Michael Ingram, M.D., President

11. MISCELLANEOUS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including Section 1654 of the California Civil Code or any other similar federal or state statute) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable, and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.

d. **Severability.** Except as provided in Section 4.b.(3) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all Time Reports submitted to Hospital, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation and Expenses).

f. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

g. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by either party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and terminates and supersedes any prior written or oral agreement of the parties with respect to the subject matter.

j. **Amendments and Extensions.** Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

k. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any Group physician (or any immediate family member of any such Group physician), provides services to Hospital.

l. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement.

m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Signature Page follows

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION, dba Sutter Medical
Center Sacramento**

Date:

9/26/12

By:

Name: Paraaz Yousuf

Title: Chief Operating Officer

GROUP:

**SACRAMENTO CARDIOVASCULAR
SURGEONS MEDICAL GROUP, INC.**

Date:

9/19/12

By:

Name: Michael Ingram, M.D.

Title: President

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

By:

Name: James Longoria, M.D.

EXHIBIT A

DUTIES:

- 1) Be responsible for the overall surgical and medical supervision for clinical services pertaining to the surgical patients undergoing endoscopic procedures for aerial arrhythmias. This includes assisting with the development of a surgical pathway for this patient population including metrics for Length of Stay, Discharge Planning and other critical elements to support the surgical component for electrophysiology ("EP") Ablation.
- 2) Assist in the development, implementation, and maintenance of necessary policies and procedures for effective operation of the service.
- 3) Provide professional guidance to maintain the service's accreditation under The Joint Commission, CCS, California State Title 22 and other accreditation guidelines.
- 4) Develop and implement appropriate quality assurance activities for the service in accordance with the hospital's formal QA program. In addition, shall monitor utilization and quality of services, and shall recommend steps to remedy deficiencies therein.
- 5) Assist the Medical Directors of the Service Line in maintenance of statistics and annual reporting.
- 6) Advise hospital in the recruiting, evaluation and retention of key hospital personnel working in the service and shall develop such continuing education materials and instruction as necessary to properly instruct members of hospital's medical, nursing and allied health professional staff.
- 7) Provide clinical supervision and education of personnel in the service.
- 8) Assist hospital in the development of operating and capital expenditure budgets for the proper and efficient operation of the service. Medical Director shall cooperate in assuring the service is operated efficiently and in accordance with approved budgets, and shall exercise diligence in keeping controllable costs of the service to a minimum.
- 9) In collaboration with the Administration, secure the necessary physician, staff, financial and technological resources required implementing the strategic plan.
- 10) Consult and coordinate with the Administration regarding the development, planning and implementation of new programs. In particular, act as expert consultant in the consideration of the development of this joint program between EP and Surgery and overseeing the surgical aspects of care. Set annual clinical and business goals. Meet with the Service Line Medical Director quarterly to

review the status of the goals and attend the monthly Medical Directors meeting whenever possible.

- 11) Participate in the Master Plan for the completion of the consolidated SMC campus, in particular in the planning of the OR's.
- 12) Participate in the development of, and provide, education support for outreach education to support and market the service.
 - a) Actively participate in local, state and national associations to enhance the influence and image of the program and medical center.
 - b) Meet with colleagues at other Sutter Health institutions to foster constructive interchange of ideas and potential program development.
 - c) Develop relationships with referring physicians and institutions throughout our catchment area through outreach programs and managed care networks.
 - d) Facilitate and foster relationships between hospital-based and private based physicians.
 - e) Contribute to the creation and review of content for the Sutter Heart Institute Web Page.
- 13) Participation in the activities of the Sutter Heart Institute.
- 14) Serve as an advisor and participate in any site visits pertaining to accreditation, certification, or recognition of the specialty team process.
 - a) Updates Clinical Service staff on latest medical and technical advances in the field and recommends appropriate continuing education programs for the clinical staff.
 - b) Participates in the development and delivery of professional education programs for staff and community.
 - c) Maintains professional CME to assure ability to server as expert in area of clinical specialty.
 - d) Provides leadership and medical direction in clinical research/clinical effectiveness activities.

EXHIBIT B

TIME REPORT

[Form Attached]

EXHIBIT C

PERFORMANCE ASSESSMENT

[MODIFY TO FIT ASSESSMENT PERFORMED BY AFFILIATE]

<p>Performance Assessment Period</p> <p>From: ____ / ____ To: ____ / ____</p>	<p>Facility: _____</p>
<p>Medical Director: <u>James Longoria, M.D.</u></p>	<p>Reviewer: _____</p>

<p>Rating Determination:</p> <p>Meets: Meets or Exceeds Expectations</p> <p>Does Not Meet: Does not meet minimum expectations and improvement required</p>

ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures _____ Service functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key _____ services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure _____ resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees _____ Service's competency assessment program.		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project.		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that _____ Service's technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain _____ license and The Joint Commission accreditation, and meet Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the _____ personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form or Hospital equivalent, adhering to defined recordkeeping and reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to Administration and Medical Staff as appropriate.		
Comments:		

Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction for Medical Staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for _____ personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing _____ expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of _____ Service (i.e., clinical guidelines, clinical pathways, patient-driven protocols).		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health.		
❖ Participates on hospital and Medical Staff committees as requested by Administration and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with _____ Services to review program needs and referring physician requests.		
Comments:		

Technical Procedures	Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.		
❖ Ensures that _____ Services are consistent with written policies, processes and procedures.		
❖ Provides consultation as requested to Sutter Health technical workgroups and performance improvement committees.		
❖ Effectively collaborates with Administration and Medical Staff to identify and evaluate new _____ services.		
Comments:		

Strategic Initiatives	Meets	Does Not Meet
❖ Actively participates in _____ Department's annual planning process.		
❖ Promotes and participates in Sutter Health and system-wide integration efforts.		
❖ Supports and facilitates change management efforts with key stakeholders.		
❖ Promotes and participates in ongoing efforts related to standardization and implementation of _____ Services as identified by the _____ Management Team.		
❖ Supports the operating and capital equipment budgeting process.		
Comments:		

Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

_____ **Operations Manager:** _____

_____ **Operations Manager:** _____

_____ **Nursing Director:** _____

Regional Director: _____

EXHIBIT 6-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER MEDICAL CENTER SACRAMENTO
CARDIOTHORACIC SURGERY
CALL COVERAGE AGREEMENT
Sacramento Cardiovascular Surgeons Medical Group, Inc.**



This Call Coverage Agreement ("Agreement") is entered into as of July 01, 2008 (the "Effective Date") between Sutter Health Sacramento Sierra Region, a California non-profit public benefit corporation doing business as Sutter Medical Center Sacramento ("Hospital") and Sacramento Cardiovascular Surgeons Medical Group, Inc., a California professional corporation ("Medical Group").

RECITALS

A. Hospital operates an acute care hospital located in Sacramento, California, and offers the community a twenty-four (24) hour comprehensive emergency service.

B. Hospital desires to maintain adequate physician on-call coverage in its Emergency Department and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Medical Group is composed of physicians (each a "Physician," collectively "Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Cardiothoracic Surgery including Cardiac Surgery Transplant and VAD Program ("Specialty"). Medical Group's Physicians are willing to participate on Hospital's Emergency Department on-call panel pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties agree as follows:

I. MEDICAL GROUP'S RESPONSIBILITIES

a. **On-Call Coverage.** Medical Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's Emergency Department physicians. As a member of the Hospital's Emergency Department on-call panel, at all times during Physicians' Coverage Shifts (and as necessary for completion of services or follow-up care), Medical Group agrees that Physicians will provide consultation or assistance within the scope of Physicians' Medical Staff privileges to Emergency Department physicians and other Medical Staff members who call for specialty consults for their patients who are in the hospital.

b. **Response Time.** Medical Group will ensure that Physicians will respond to Emergency Department calls without delay and will be physically present in the Emergency Department within thirty (30) minutes of receiving a call from Emergency Department physicians.

c. **Consultations and Transfers.** During Coverage Shifts, Medical Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

d. **Non-Discrimination.** Physicians will not discriminate against any person presenting to Hospital's Emergency Department by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, national or ethnic origin, political opinion, sex, or disability. Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

e. **Qualifications.** During the term of this Agreement, Physicians must be duly qualified and licensed physicians and surgeons in the state of California, practicing in the Specialty. Physicians will also maintain an appointment to the Medical Staff in accordance with Hospital's Medical Staff bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

f. **Compliance.** Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon Physician's professional medical judgment and will be made in the best interests of Physician's patients.

g. **Insurance.** Medical Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional negligence with limits of liability of no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate for a claims made policy. Medical Group further agrees to maintain continuous coverage, by either obtaining "tail" insurance from the preceding carrier, or "nose" insurance from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than three (3) years. Medical Group agrees to provide proof of current insurance and will, in the event of modification, termination, expiration or cancellation of any of the required policies of insurance give Hospital written notice within five (5) business days.

h. **Billing and Collection.** Physicians will separately bill and collect charges at their own expense for any professional services rendered.

i. **Reporting of Payments.** To ensure that payments under Section 3 of this Agreement are properly reported, Medical Group will complete, execute and deliver to Hospital an IRS Form W-9 (**Exhibit A**).

2. **HOSPITAL'S RESPONSIBILITIES**

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. **Tax Reporting.** To the extent required by law, Hospital will report all payments to Medical Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. **COMPENSATION**

In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, upon presentation of a signed call invoice (**Exhibit B**), Hospital will pay to Medical Group the sum of **One Thousand One Hundred and Forty Dollars (\$1140) for each twenty-four (24) hour Coverage Shift.**

4. **TERM**

This Agreement shall commence on the Effective Date and terminate on July 31, 2009. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least sixty (60) days' written notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one year from the Effective Date.

5. **INDEPENDENT CONTRACTOR**

In performing the responsibilities and services described in this Agreement, Medical Group is acting as an independent contractor, and will not be considered a joint venturer or partner of Hospital for any purpose whatsoever. Hospital will not control or direct the methods by which Medical Group performs services provided pursuant to this Agreement. The sole interest and responsibility of the Hospital is to assure that services are performed in a competent, efficient and satisfactory manner. Physicians will have no claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Under no circumstances will Hospital: withhold FICA (Social Security) from payments to Medical Group; make state or federal unemployment insurance contributions on behalf of Physicians; withhold state and federal income tax from payments to Medical Group; make disability insurance contributions on behalf of Medical Group; or obtain workers' compensation insurance on behalf of Medical Group. Medical Group will be solely responsible for, and will indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, Social Security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Medical Group under this Agreement.

6. **ACCESS TO BOOKS AND RECORDS**

a. Medical Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Medical Group agrees as follows:

b. Until the expiration of four (4) years after the furnishing of services under this Agreement, Medical Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

c. If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Medical Group will enforce, a clause to the same effect as subparagraph (a) immediately above.

The availability of Medical Group's Agreement, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. **CONFIDENTIALITY**

a. **Hospital Information.** Medical Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Medical Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Medical Group agrees that it will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's written consent, except pursuant to duties pursuant to this Agreement, any confidential or proprietary information of Hospital, including but not limited to information that concerns Hospital's patients, costs, prices and treatment protocols at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Medical Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Medical Group will not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Medical Group will not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Medical Group will comply with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information,

including, but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA," 45 C.F.R. Part 160, et seq.), as amended from time to time.

8. NOTICE

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital:	Margaret Mette Assistant Administrator Sutter Medical Center Sacramento 2800 L Street Sacramento, CA 95816
With a copy to:	Sutter Health Office of the General Counsel Penny G. Westfall, Esq. 2200 River Plaza Drive Sacramento, CA 95833
If to Medical Group:	Sacramento Cardiovascular Surgeons Medical Group, Inc. 5301 F Street, Suite 111 Sacramento, CA 95819 Attn: Michael Ingram, M.D., President

9. ARBITRATION

a. In the event that any dispute arises between Hospital and Medical Group arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties will attempt in good faith to resolve the dispute.

b. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute will be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service will be selected by Hospital at its sole discretion. The decision of the arbitrator will be final and binding and will be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator will have no power to alter, modify, ignore or otherwise deviate from the express terms of this Agreement, and the arbitrator will be bound by controlling law. The arbitrator's decision will be provided to the parties in writing and will succinctly set forth the arbitrator's findings of fact, conclusions of law, and

remedy, if any. The cost of arbitration will be shared equally by Hospital and Medical Group, provided that each party will pay its own legal expenses.

10. INDEMNIFICATION

Both parties to this Agreement will indemnify and hold the other harmless from and against any and all claims, losses, suits, actions, damages, costs or liabilities of any kind whatsoever incurred or resulting from the acts or omissions of the indemnifying party.

11. MISCELLANEOUS

- a. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.
- b. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
- c. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.
- d. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital. This Agreement is not intended to influence Medical Group's or its Physicians' judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict in any way Group or its Physicians from establishing medical staff membership or clinical privileges at any other healthcare facility.
- e. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.
- f. **Survival.** The provisions of Sections 1.g (Insurance), 2.i (Reporting of Payments), 5 (Independent Contractor), 6 (Access to Books and Records), 7 (Confidentiality), 8 (Notice), 9 (Arbitration), 10 (Indemnification) and 11 (Miscellaneous), shall survive the termination of this Agreement. Further, those rights and obligations of the parties that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement shall survive (e.g., the obligation to pay for services rendered under this Agreement).
- g. **Expert Witness Conflict of Interest.** Neither Group nor its Physicians shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any employee of Hospital if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Medical Group and/or its Physicians from testifying as a percipient witness.

h. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement, other than proceedings or disputes between the parties to this Agreement.

i. **Other Agreements.** Exhibit C attached hereto lists all other agreements or arrangements under which Medical Group provides services to Hospital. If any such service agreement is entered into after the Effective Date of this Agreement, the parties will execute and attach a revised Exhibit C including such agreement.

j. **Entire Agreement.** This Agreement (including the attached Exhibits, which are incorporated by this reference) constitutes the entire agreement of the parties with respect to the subject matter hereof.

k. **Amendments.** Amendments to this Agreement shall be made only in writing duly executed by both parties hereto.

l. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart will be deemed an original.

* * * * *

HOSPITAL: Sutter Health Sacramento
Sierra Region, a California nonprofit
public benefit corporation doing business
as Sutter Medical Center Sacramento

Date: 8/5/08

By: [Signature]
Name: Thomas Gagen
Title: CEO

MEDICAL GROUP: Sacramento
Cardiovascular Surgeons Medical Group,
Inc., a California professional corporation

Date: 7.25.08

By: [Signature]
Name: Michael Ingram, M.D.
Title: President

PHYSICIAN ACKNOWLEDGEMENT

Each undersigned Physician hereby acknowledges receipt of a copy of this Agreement and agrees to participate on Hospital's Emergency Department on-call panel pursuant to the terms and conditions set forth herein.

Date: 7.25.08

By: Michael T. Ingram
Name: Michael Ingram, M.D.

Date: 7/25/08

By: [Signature]
Name: JAMES LONGORIA, M.D.

Date: 7/25/08

By: [Signature]
Name: Robert P. Pineda, M.D.

EXHIBIT A

IRS Form W-9

[Attach Form]

EXHIBIT B

CALL INVOICE

[Attach Call Invoice]

EXHIBIT C

OTHER SERVICE AGREEMENTS

Medical Directors for Transplant Services, Ablation Services and ICU.

EXHIBIT 6-2
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER MEDICAL CENTER SACRAMENTO
CARDIOTHORACIC SURGERY
CALL COVERAGE AGREEMENT**
Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Call Coverage Agreement ("Agreement") is entered into as of the date last signed, (the "Effective Date") between Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation doing business as Sutter Medical Center Sacramento ("Hospital"), and Sacramento Cardiovascular Surgeons Medical Group, Inc., a California professional corporation ("Medical Group").

RECITALS

A. Hospital operates two acute care hospitals located in Sacramento, California, and offers the community a twenty-four (24) hour comprehensive emergency service.

B. Hospital wishes to maintain adequate physician on-call coverage in its emergency departments in both hospitals (collectively referred to as the "Emergency Department") and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Medical Group is composed of physicians (each a "Physician," collectively "Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Cardiothoracic Surgery including Cardiac Surgery Transplant and VAD Program ("Specialty"). Medical Group's Physicians are willing to participate on Hospital's Emergency Department on-call panel pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties agree as follows:

1. MEDICAL GROUP'S RESPONSIBILITIES

a. **On-Call Coverage.** Medical Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts with two Physicians concurrently on-call, one as primary and one as back-up, for each such coverage shift (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's Emergency Department physicians. As a member of the Hospital's Emergency Department on-call panel, at all times during Physicians' Coverage Shifts (and as necessary for completion of services or follow-up care), Medical Group agrees that Physicians will provide consultation or assistance within the scope of Physicians' Medical Staff privileges to Emergency Department physicians and other

Medical Staff members who call for specialty consults for their patients who are in the hospital.

b. **Response Time.** Medical Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities; responding without delay when notified; and being physically present in the Emergency Department to provide services within thirty (30) minutes of a request for services.

c. **Consultations and Transfers.** During Coverage Shifts, Medical Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

d. **Non-Discrimination.** Physicians will not discriminate against any person presenting to Hospital's Emergency Department by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, national or ethnic origin, political opinion, sex, or disability. Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

e. **Qualifications.** During the term of this Agreement, Physicians must be duly qualified and licensed physicians and surgeons in the State of California, practicing in the Specialty. Physicians will also maintain an appointment to the Medical Staff in accordance with Hospital's Medical Staff bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

f. **Compliance.** Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon Physician's professional medical judgment and will be made in the best interests of Physician's patients.

g. **Insurance.** Medical Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional negligence with limits of liability of no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate for a claims made policy. Medical Group further agrees to maintain continuous coverage, by

either obtaining "tail" insurance from the preceding carrier, or "nose" insurance from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than three (3) years. Medical Group agrees to provide proof of current insurance and will, in the event of modification, termination, expiration or cancellation of any of the required policies of insurance give Hospital written notice within five (5) business days.

h. Billing and Collection. Physicians will separately bill and collect charges at their own expense for any professional services rendered.

i. Reporting of Payments. To ensure that payments under Section 3 of this Agreement are properly reported, Medical Group will complete, execute and deliver to Hospital an IRS Form W-9 (Exhibit A).

2. HOSPITAL'S RESPONSIBILITIES

a. Responsibility for Services. To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. Tax Reporting. To the extent required by law, Hospital will report all payments to Medical Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. COMPENSATION

In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, upon presentation of a signed call invoice (Exhibit B), Hospital will pay to Medical Group the sum of Two Thousand Five Hundred Dollars (\$2500) for each twenty-four (24) hour Coverage Shift.

4. TERM

This Agreement will have an effective term of two (2) years commencing on the Effective Date (the "Initial Term"), and will automatically renew for an additional ninety (90) days upon the expiration of the Initial Term unless (a) the parties enter into a new replacement agreement upon the expiration of the Initial Term, or (b) either party gives the other party advance written notice of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least ninety (90) days' advance written notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one (1) year from the Effective Date.

5. INDEPENDENT CONTRACTOR

In performing the responsibilities and services described in this Agreement, Medical Group is acting as an independent contractor, and will not be considered a joint venturer or partner of Hospital for any purpose whatsoever. Hospital will not control or direct the methods by which Medical Group performs services provided pursuant to this Agreement. The sole interest and responsibility of the Hospital is to assure that services are performed in a competent, efficient and satisfactory manner. Physicians will have no claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Under no circumstances will Hospital: withhold FICA (Social Security) from payments to Medical Group; make state or federal unemployment insurance contributions on behalf of Physicians; withhold state and federal income tax from payments to Medical Group; make disability insurance contributions on behalf of Medical Group; or obtain workers' compensation insurance on behalf of Medical Group. Medical Group will be solely responsible for, and will indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, Social Security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Medical Group under this Agreement.

6. ACCESS TO BOOKS AND RECORDS

Medical Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Medical Group agrees as follows:

a. Until the expiration of four (4) years after the furnishing of services under this Agreement, Medical Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

b. If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Medical Group will enforce, a clause to the same effect as subparagraph (a) immediately above.

The availability of Medical Group's Agreement, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY

a. Hospital Information. Medical Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Medical Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Medical Group agrees that it will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's written consent, except pursuant to duties pursuant to this Agreement, any confidential or proprietary information of Hospital, including but not limited to information that concerns Hospital's patients, costs, prices and treatment protocols at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. Terms of this Agreement. Except for disclosure to Medical Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Medical Group will not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. Patient Information. Medical Group will not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Medical Group will comply with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA," 45 C.F.R. Part 160, et seq.), as amended from time to time.

8. ARBITRATION

a. In the event that any dispute arises between Hospital and Medical Group arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties will attempt in good faith to resolve the dispute.

b. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute will be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service will be selected by Hospital at its sole discretion. The decision of the arbitrator will be final and binding and will be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator will have no power to alter, modify, ignore or otherwise deviate from the

express terms of this Agreement, and the arbitrator will be bound by controlling law. The arbitrator's decision will be provided to the parties in writing and will succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The cost of arbitration will be shared equally by Hospital and Medical Group, provided that each party will pay its own legal expenses.

9. **INDEMNIFICATION**

Both parties to this Agreement will indemnify and hold the other harmless from and against any and all claims, losses, suits, actions, damages, costs or liabilities of any kind whatsoever incurred or resulting from the acts or omissions of the indemnifying party.

10. **MISCELLANEOUS**

a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

b. **Other Service Agreements.** Hospital represents that its TractManager database includes copies of all other agreements under which Medical Group, or any physician employed by Medical Group (or any immediate family member of any such physician), provides services to Hospital.

c. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart will be deemed an original.

d. **Recitals and Exhibits.** The recitals and exhibits attached hereto or referred to herein are hereby incorporated into this Agreement by this reference.

(Signature page to follow)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION dba Sutter Medical
Center Sacramento**

By: Margaret Mette
Name: Margaret Mette
Title: Assistant Administrator
Date: 8/17/10

Address for notices:

Sutter Medical Center Sacramento
2800 L Street
Sacramento, CA 95816
Attn: Margaret Mette
Assistant Administrator

MEDICAL GROUP:

**SACRAMENTO
CARDIOVASCULAR SURGEONS
MEDICAL GROUP, INC.**

By: Michael Ingram
Name: Michael Ingram, M.D.
Title: President
Date: 8/17/10

Address for notices:

Sacramento Cardiovascular Surgeons
Medical Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95816
Attn: Michael Ingram, M.D., President

With copy to:

Sutter Health
Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.,
VP and Regional Counsel

EXHIBIT A

IRS FORM W-9

[Attach Form]

EXHIBIT B

CALL INVOICE

[Attach Call Invoice]

EXHIBIT 6-3
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER HEALTH SACRAMENTO SIERRA REGION
dba SUTTER MEDICAL CENTER SACRAMENTO**

**CALL COVERAGE AGREEMENT
Cardiothoracic Surgery**

Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Call Coverage Agreement ("Agreement") is entered into as of November 17, 2012, (the "Effective Date") between Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation doing business as Sutter Medical Center Sacramento ("Hospital"), and Sacramento Cardiovascular Surgeons Medical Group, Inc., a California professional corporation ("Medical Group").

RECITALS

A. Hospital operates two acute care hospitals located in Sacramento, California, and offers the community a twenty-four (24) hour comprehensive emergency service.

B. Hospital wishes to maintain adequate physician on-call coverage in its emergency departments in both hospitals (collectively referred to as the "Emergency Department") and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Medical Group is composed of physicians (each a "Physician," collectively "Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Cardiothoracic Surgery including Cardiac Surgery Transplant and VAD Program ("Specialty"). Medical Group's Physicians are willing to participate on Hospital's Emergency Department on-call panel pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties agree as follows:

1. MEDICAL GROUP'S RESPONSIBILITIES

a. **On-Call Coverage.** Medical Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts with two Physicians concurrently on-call, one as primary and one as back-up, for each such coverage shift (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's Emergency Department physicians. As a member of the Hospital's Emergency Department on-call panel, at all times during Physicians' Coverage Shifts (and as necessary for completion of services or follow-up care), Medical

Group agrees that Physicians will provide consultation or assistance within the scope of Physicians' Medical Staff privileges to Emergency Department physicians and other Medical Staff members who call for Specialty consults for their patients who are in the hospital.

b. **Response Time.** Medical Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities; responding without delay when notified; and being physically present in the Emergency Department to provide services within thirty (30) minutes of a request for services.

c. **Consultations and Transfers.** During Coverage Shifts, Medical Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

d. **Non-Discrimination.** Physicians will not discriminate against any person presenting to Hospital's Emergency Department by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, national or ethnic origin, political opinion, sex, or disability. Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

e. **Qualifications.** During the term of this Agreement, Physicians must be duly qualified and licensed physicians and surgeons in the State of California, practicing in the Specialty. Physicians will also maintain an appointment to the Medical Staff in accordance with Hospital's Medical Staff bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

f. **Compliance.** Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon Physician's professional medical judgment and will be made in the best interests of Physician's patients.

g. **Insurance.** Medical Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional negligence with limits of liability for Medical Group and each Physician of

no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. If coverage is provided on a claims-made policy, Medical Group further agrees to maintain continuous coverage, by either obtaining "tail" insurance from the preceding carrier, or "nose" coverage from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than seven (7) years. Medical Group agrees to provide proof of current insurance and will, in the event of modification, termination, expiration or cancellation of any of the required policies of insurance give Hospital written notice within five (5) business days.

h. **Billing and Collection.** Physicians will separately bill and collect charges at their own expense for any professional services rendered.

i. **Reporting of Payments.** To ensure that payments under Section 3 (Compensation) of this Agreement are properly reported, Medical Group will complete, execute and deliver to Hospital an IRS Form W-9 (**Exhibit A**).

2. HOSPITAL'S RESPONSIBILITIES

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. **Tax Reporting.** To the extent required by law, Hospital will report all payments to Medical Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. COMPENSATION

In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, upon presentation of a signed call invoice (**Exhibit B**), Hospital will pay to Medical Group the sum of **Two Thousand Five Hundred Dollars (\$2500) for each twenty-four (24) hour Coverage Shift.**

4. TERM

This Agreement will have an effective term of **twenty-four (24) months** commencing on the Effective Date (the "Initial Term"), and will automatically renew for an additional ninety (90) days upon the expiration of the Initial Term unless (a) the parties enter into a new replacement agreement upon the expiration of the Initial Term, or (b) either party gives the other party advance written notice of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least ninety (90) days' advance written

notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one (1) year from the Effective Date.

5. INDEPENDENT CONTRACTOR

In performing the responsibilities and services described in this Agreement, Medical Group is acting as an independent contractor, and will not be considered a joint venturer or partner of Hospital for any purpose whatsoever. Hospital will not control or direct the methods by which Medical Group performs services provided pursuant to this Agreement. The sole interest and responsibility of the Hospital is to assure that services are performed in a competent, efficient and satisfactory manner. Physicians will have no claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Under no circumstances will Hospital: withhold FICA (Social Security) from payments to Medical Group; make state or federal unemployment insurance contributions on behalf of Physicians; withhold state and federal income tax from payments to Medical Group; make disability insurance contributions on behalf of Medical Group; or obtain workers' compensation insurance on behalf of Medical Group. Medical Group will be solely responsible for, and will indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, Social Security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Medical Group under this Agreement.

6. ACCESS TO BOOKS AND RECORDS

Medical Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Medical Group agrees as follows:

a. Until the expiration of four (4) years after the furnishing of services under this Agreement, Medical Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

b. If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Medical Group will enforce, a clause to the same effect as subparagraph (a) immediately above.

The availability of Medical Group's Agreement, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY

a. **Hospital Information.** Medical Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Medical Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Medical Group agrees that it will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's written consent, except pursuant to duties pursuant to this Agreement, any confidential or proprietary information of Hospital, including but not limited to information that concerns Hospital's patients, costs, prices and treatment protocols at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Medical Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Medical Group will not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Medical Group shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by SSR in writing, any patient or medical record information regarding SSR patients ("Patient Information"), and Medical Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of SSR and its Hospital's medical staffs, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

8. ARBITRATION

a. In the event that any dispute arises between Hospital and Medical Group arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the

authority to negotiate and bind that party to a resolution. At the meeting, the parties will attempt in good faith to resolve the dispute.

b. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute will be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service will be selected by Hospital at its sole discretion. The decision of the arbitrator will be final and binding and will be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator will have no power to alter, modify, ignore or otherwise deviate from the express terms of this Agreement, and the arbitrator will be bound by controlling law. The arbitrator's decision will be provided to the parties in writing and will succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The cost of arbitration will be shared equally by Hospital and Medical Group, provided that each party will pay its own legal expenses.

9. INDEMNIFICATION

Both parties to this Agreement will indemnify and hold the other harmless from and against any and all claims, losses, suits, actions, damages, costs or liabilities of any kind whatsoever incurred or resulting from the acts or omissions of the indemnifying party.

10. MISCELLANEOUS

a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

b. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Medical Group, or any physician employed by Medical Group (or any immediate family member of any such physician), provides services to Hospital.

c. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart will be deemed an original.

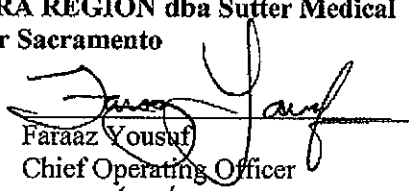
Signature Page follows

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

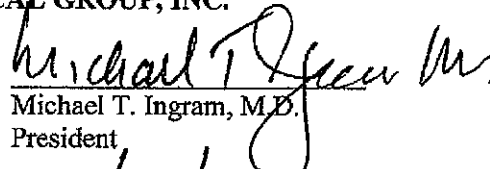
HOSPITAL:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION dba Sutter Medical
Center Sacramento**

By: 
Name: Faraaz Yousuf
Title: Chief Operating Officer
Date: 11/12/12

MEDICAL GROUP:

**SACRAMENTO
CARDIOVASCULAR SURGEONS
MEDICAL GROUP, INC.**

By: 
Name: Michael T. Ingram, M.D.
Title: President
Date: 11/12/12

Address for notices:

Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819
Attn: Margaret Mette, Assistant
Administrator

Address for notices:

Sacramento Cardiovascular Surgeons
Medical Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95819
Attn: Michael T. Ingram, M.D., President

With copy to:

Sutter Health
Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.,
VP and Regional Counsel

Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Name (as shown on your income tax return)
Sacramento Cardiovascular Surgeons Medical Group, Inc

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ ☐ Exempt payee
☐ Other (see instructions) ▶ _____

Address (number, street, and apt. or suite no.)
5301 F Street, Suite 111

City, state, and ZIP code
sacramento, CA 95819

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

--	--	--	--

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person** ▶ *Michael T. Gern* **Date** ▶ 11/7/12

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

EXHIBIT A

IRS FORM W-9

[Attach Form]

EXHIBIT B

CALL INVOICE

[Attach Call Invoice]

SUTTER MEDICAL CENTER SACRAMENTO**Payable to:**

Name:

Address:

City/State/Zip:

Billable to:

Name:

Address:

City/State/Zip:

Medical Group:	Month:
Service Specialty:	
Address:	TractManager:
Phone: ()	

Mark the days of the month below that Medical Group provided a Coverage Shift pursuant to the Agreement by indicating which Physician provided the coverage each day:

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

Medical Group Certification: By my signature below, I certify that **Sacramento Cardiovascular Surgeons Medical Group, Inc.** provided the above-indicated coverage.

Date: _____

By: _____

Name: _____

Title: _____

FOR HOSPITAL USE ONLY:		
Cost Center:	Account Number:	Tax Id #:
Days: Total Days Call Covered in Month: _____	Rate: \$ _____ / per day	Compensation: Total Due: \$ _____

Hospital Authorization:

Date: _____

Hospital Administrator _____

EXHIBIT 7
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**Sutter Health****Request for Check**

* To determine if a Purchase Order is required for this purchase, refer to the reverse side of this form.

* Questions regarding the need for a Purchase Order should be directed to Materials Management for your facility.

1. Use the Request for Check form when an invoice cannot be obtained. (I.e. examples: prepayments, reservations, stipends, registrations). Do not use this form for employee reimbursement.
2. Indicate if there are remittance documents to accompany this Request. Supporting documents which are to be sent with check should be folded, labeled "Mail with Check" and attached to the front of the Request for Check. An extra copy of these documents should be attached to the back of the Request form to be retained by Accounts Payable.
3. Properly completed Requests must be received in Accounts Payable by Wednesday noon for Friday payment. All checks will be sent via U.S. mail the day they are issued. Plan to allow time for processing and mailing.
4. Exceptions to the above procedures require prior approval of the Disbursement Manager and the Director of the department requesting the exception. Contact Accounts Payable for assistance.

Ref. #: 28000.27683

Lawson
Company #

Reason Requested: Cardiothoracic Surgery Call Coverage - July, 2013

Give brief but specific explanation and attach supporting documents.

* A/P Use Only (Vendor Number)

Process Level

Date Requested: 08/05/13Facility: SMH Dept. AdministrationRequestor's name: Vickie Sexton Ext. # 37037Payee Name: Sacramento Cardiovascular SurgeonsPayee Address: 5301 F Street, Suite 111

Sacramento CA 95819
City State Zip

Payee Telephone Number: ()

Payee Tax ID Number: _____

Exact name and address of payee as it should appear on the check.

Tax ID number is required if payment is for rentals or purchased services from a payee which is non-incorporated or is a medical corporation.

Payee Verified by: _____ Date: _____
Title: _____ Signature _____

If this vendor has not previously supplied goods or services to Sutter and a PO is not used, the signature of an Assistant Administrator or higher is required, to verify validity of vendor.

Purchase Order No. _____ On Line ☐Required Payment Date: _____ Next Check Run _____ Off Line ☐

Amount: \$77,500.00 Tax: _____
Freight / Taxable
Shipping Amount

TOTAL/GROSS AMOUNT: \$77,500.00ACCOUNTING UNIT: 138794 ACCOUNT: 62000-00

SUB ACCOUNT: _____

ACTIVITY NAME: _____ ACTIVITY CATEGORY: _____

Payment Authorization _____ Signature _____

Date: 08/05/13 Title: Regional Executive Cardiovascular

Enter PO number if one was required.

ACCOUNT PAYABLE USE ONLY

Check Date

Acct Period

A/P & Purchasing Use Only

Payment authorization criteria listed below.

Level of approval for commitment of funds:

MANAGEMENT LEVELS OF APPROVAL

<u>Sutter Health</u>	<u>Dollar Limit</u>	<u>Sutter Health Central</u>	<u>Dollar Limit</u>
Sutter Health Directors and Managers	5,000	Hospital Director and Managers	10,000
Sutter Health Support Vice President	250,000	Area Wide Support Directors	25,000
Affiliate Administrators	500,000	Asst. Administrators & Controllers	100,000
Sutter Health Senior Vice President	1,000,000	Affiliate Administrators	500,000
Sutter Health Chief Executive Officer	2,000,000	Service Area Chief Executive Officer	1,000,000
Sutter Health Board	UNLIMITED	Sutter Health Chief Executive Officer	2,000,000
		Sutter Health Board	UNLIMITED

Enter Activity number and account category if Capital Funds are used or associated with a project being tracked on Activities Based Management.



EMERGENCY DEPARTMENT ON-CALL TIME REPORT

SUTTER MEDICAL CENTER SACRAMENTO

Physician: Service Specialty: CVT SURGERY	Month: <u>JULY 2013</u>	
Address: <u>5301 F STREET,</u> <u>SACRAMENTO, CA</u>	Phone: (<u>916</u>) <u>452-8291</u>	
(If Applicable) Group Name: <u>SACRAMENTO CARDIOVASCULAR</u> <u>SURGEONS MEDICAL GROUP, INC</u>	Tax Id. Number: <u>94-1688832</u>	
For Hospital Use Only		
Total Call Days: <u>31</u>	Rate: <u>2,500</u>	Total: \$ <u>77,500</u>
Notes:		

Please list the date on which you provided a shift of call coverage in each box.								
	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Totals
Week 1	24	24	24	24	24	24	24	168
Week 2	24	24	24	24	24	24	24	168
Week 3	24	24	24	24	24	24	24	168
Week 4	24	24	24	24	24	24	24	168
Week 5	24	24	24					
TOTAL NUMBER OF SHIFTS								

I certify that this Time Report is a true and accurate record of the number of shifts of call I provided during this month.

Date: 7-31-
2013

Michael I. Ingram, MD
Physician Signature

Date: 8/6/13

Rick Harrell
Administrator Signature

Name:

Rick Harrell

Title:

Reg. Exec. Cardiovascular

EXHIBIT 8 to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER PHYSICIANS ALLIANCE
SPECIALTY CARE CLINICIAN AGREEMENT**

This Specialty Care Clinician Agreement ("Agreement") effective as of December 1, 2003, ("Effective Date") is made by and between:

Sutter Medical Foundation ("SMF"), a nonprofit public benefit California corporation which provides medical services through separate professional services agreements with Sutter Medical Group ("SMG"), a California professional corporation, Community Health Associates Multi-Specialty Medical Group, Inc., a California professional corporation doing business as Sutter West Medical Group ("SWMG") and Sutter Independent Physicians, a California professional corporation, and Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation ("SHSSR") collectively doing business as **Sutter Physicians Alliance** with a principal place of business at 2800 L Street, 7th Floor, Sacramento, CA 95816 (hereinafter collectively referred to as "SPA"); and

Sacramento Cardiovascular Surgeons Medical Group, Inc. with a principal place of business at 5301 F Street, Suite 111, Sacramento, CA 95819 (hereinafter referred to as "Professional").

RECITALS

A. SHSSR, SMF together with SMF's contracting medical groups (SIP, SMG and SWMG), have entered into an agreement pursuant to which they have created Sutter Physicians Alliance ("SPA"), an integrated managed care contracting physician network. SPA has the right to negotiate capitated contracts with Commercial health care service plans licensed under the Knox-Keene Health Care Service Plan Act of 1975 ("Act"), Medicare+Choice Risk Programs, and other purchasers of Covered Services ("Health Plans") who will pay SMF on a capitated or risk basis for the provision of medical services to persons who are Enrollees of those Health Plans..

B. SPA will negotiate and administer Health Plan contracts directly or through a third party administrator ("TPA"), and the Health Plan contracts will be held by SMF. SIP and SMF shall remain individually responsible to pay for Covered Services rendered to Enrollees by Participating Clinicians.

C. Although SPA will negotiate and administer this Agreement directly or through a TPA in order to achieve efficiencies and simplify the administrative functions related to the provision of Covered Services to Enrollees, this Agreement is intended to create two separate and distinct contractual relationships for purposes of financial responsibility: one between SIP and Professional for compensation of Covered Services provided to Enrollees who have selected SIP PCPs and one between Professional and SMF for compensation of Covered Services provided to Enrollees who have selected SMG or SWMG PCPs. ("SIP/SMF")

D. Professional is a physician of medicine or osteopathy, a podiatrist, a dentist, another professional clinician, or a medical group, and duly licensed to practice medicine or other applicable profession in the State of California, with a specialty approved by the SPA Steering Committee and is qualified to provide the professional medical services in his or her specialty. In the event Professional is a medical group, the references in this Agreement to "Professional" shall include those individual physician members of the medical group who have been approved by the SPA Steering Committee and are listed on Exhibit B .

E. SPA desires to arrange for the services of Professional for the benefit of the Enrollees of the Health Plans, and Professional desires to provide such services all in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual agreements and conditions contained herein; and other valuable consideration, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Accreditation Organization** means the National Committee for Quality Assurance ("NCQA"), the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO") and any other accreditation organizations recognized as such by the SPA Steering Committee.

1.2 **Act** means the Knox-Keene Health Care Service Plan Act of 1975, as amended (commencing at Section 1340 of the California Health & Safety Code), and the rules and regulations promulgated thereunder.

1.3 **Capitation Fee** means the predetermined monthly payment to be made to Professional by SIP/SMF for Covered Services for each Enrollee assigned to Professional for whom Professional and SPA have agreed to a capitated compensation arrangement.

1.4 **Copayment** means those charges for professional services which shall be charged to and collected directly by Professional from Enrollee, as permitted by the Act and the M+C Program laws and the applicable Subscriber Agreement, and disclosed in the Evidence of Coverage or Combined Evidence of Coverage and Disclosure Statement, in addition to the fees paid to Professional by SIP/SMF. Copayment amounts may vary by Plan and Covered Services.

1.5 **Coordination of Benefits (COB)** means the determination of whether Covered Services provided to an Enrollee will be paid for, either in whole or in part, under any private or governmental health plan benefit or any legal or contractual entitlement, including, but not limited to, a private group indemnification or insurance program. "COB" also refers to the determination of which two (2) or more health benefit plans will apply, either as primary or secondary coverage, to the rendition of hospital, surgical or medical services to Enrollee.

1.6 **Covered Services** means those Medically Necessary professional services and supplies which an Enrollee is entitled to receive under a Health Plan's Evidence of Coverage, disclosure forms, subscriber or group contracts, and for which SMF/SIP have accepted the financial responsibility as defined in the Division of Financial Responsibility (DOFR) in the Health Plan contracts. Covered Services for purposes of this Agreement do not include payment for professional services and supplies for which the Health Plans are financially responsible as defined in the DOFR.

1.7 **CPT** means the Physicians Current Procedural Terminology as defined by the CPT book, most current version published by the American Medical Association.

1.8 **Emergency** means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson with an average knowledge of health and medicine could reasonably expect that the absence of immediate medical attention could result in: (i) placing in serious jeopardy the health of the Enrollee or, in the case of a pregnant woman, the health of the woman or her unborn child, (ii) serious impairment to bodily functions, or (iii) cause serious dysfunction of any bodily organ or part, as determined by the SPA Utilization Management Committee.

1.9 **Enrollee** means a person who is eligible to receive Covered Services under the terms and conditions of SMF contracts which SPA negotiates with Health Plans including Medicare+Choice Programs on whose behalf SMF has received payment from contracted Health Plans.

1.10 **Evidence of Coverage or Combined Evidence of Coverage and Disclosure Statement** means the document issued by a Health Plan to an Enrollee that describes the Enrollee's Covered Services in the Health Plan.

1.11 **Centers for Medicare and Medicaid ("CMS")** means the agency within the Department of Health and Human Services that administers the Medicare Program.

1.12 **Health Plan or Health Plan Contracts** means SMF's health care service plan risk contracts including the Medicare+Choice Program with health maintenance organizations pursuant to which Professional provides Covered Services. The Health Plan Contracts are listed in the Provider Manual and updated from time to time.

1.13 **HEDIS** means the Health Plan Employer Data and Information Set developed by the National Committee for Quality Assurance (NCQA) and any updated revisions.

1.14 **In-Area Urgently Needed Care** are the non-emergency, in-area Covered Services obtained to treat a condition where the condition or other circumstances are such that obtaining a future appointment through standard procedures would result in severe pain or might reasonably be judged by the Enrollee to risk a serious deterioration of the Enrollee's health.

1.15 **Medical Director** shall mean the Medical Director appointed by the SPA Steering Committee.

1.16 **Medically Necessary** shall mean services that, based on prospective and/or retrospective review by SPA, are determined to be: (a) appropriate and necessary for the symptoms and diagnosis or treatment of an Enrollee's medical condition; (b) provided for the diagnosis, or the direct care and treatment of that medical condition; (c) provided in accordance with accepted medical and surgical practices and standards prevailing in the community at the time of the treatment; (d) not primarily for the convenience of the Enrollee or the Enrollee's provider of care, and; (e) the most appropriate and cost effective level of service that can be safely provided the Enrollee.

1.17 **Medicare+Choice Organization or M+CO** means the Health Plan which has entered into an agreement with CMS to provide or arrange for the provision of services to Medicare beneficiaries under the Medicare+Choice Program, and which has entered in an agreement with SMF

1.18 **Medicare+Choice Program (M+C Program)** means a program to provide Covered Services to Medicare Members under a contract with CMS, authorized by Title IV of the Balanced Budget Act of 1997, and is a program for which SMF is contracted.

1.19 **Medicare Member** means a Medicare beneficiary entitled to receive coverage for Covered Services under the terms of the Health Plan's Medicare+Choice Program, who has elected to enroll and whose enrollment in said Plan has been confirmed by CMS.

1.20 **Non-Covered Services** shall mean those health care services which are not benefits under the Evidence of Coverage.

1.21 **NCQA** means the National Committee for Quality Assurance.

1.22 **Participating Physician** shall mean a physician (duly licensed to practice medicine or osteopathy in accordance with applicable State law) who has entered into an agreement with SPA to provide Covered Services to Enrollees; and is a member or employee of a medical group which provides services to SMF through a professional services agreement.

1.23 **Participating Clinician** shall mean a Participating Physician or licensed health professional who has entered into an agreement with SPA to provide Covered Services to Enrollees.

1.24 **Policies and Procedures** means the policies and procedures, or rules and regulations, developed and adopted by Plans and SPA applicable to the provision of Covered Services under a Plan, which may be revised

from time to time based on changes in state and federal laws, requirements of Accreditation Organizations, Plan contracting requirements, operational necessity, or SPA Steering Committee mandate. If any Plan with which SMF contracts for Covered Services does not have a policies and procedures manual or similar document, SPA and Plan shall identify information pertaining to conditions of coverage and any policies and procedures adopted by the Plan for the administration of health benefits and provide such information to Professional. The references in this Agreement to the Policies and Procedures shall, in such instances, include such manuals, documents, and pertinent written information. The references in this Agreement to the Policies and Procedures shall also include the Provider Manual, Provider bulletins and communications from SPA Steering Committee and other documents and information designated by the SPA Steering Committee as part of the Policies and Procedures.

1.25 **Primary Care Physician (PCP)** means a Participating Physician who is selected by an Enrollee to render first contact medical care and provide "primary care" as that term is defined by SPA.

1.26 **Primary Hospital or Facility** means a Sutter Health Sacramento Sierra Region (SHSSR) Hospital or Facility and/or any other general acute care hospital or health care facility as determined by SPA.

1.27 **Provider Manual** means the operations manual developed by SPA and modified from time to time which identifies the methods of administration of this Agreement, including grievance procedures, quality assurance programs, utilization management programs, referral procedures, claims filing and adjudication policies and procedures and accounting of Covered Services rendered hereunder. The Provider Manual is hereby incorporated herein by reference and made a part of this Agreement. SPA shall make the Provider Manual available to Professional and update the Provider Manual on a periodic basis. If any update is inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

1.28 **RBRVS (Resource Based Relative Value Scales)** means the relative value units (RVUs) as promulgated by the Centers for Medicare and Medicaid ("CMS").

1.29 **Referral** means the process by which the Participating Physician or Clinician directs an Enrollee to seek and obtain Covered Services from a Participating Clinician, Primary Hospital or other provider approved in accordance with SPA's referral and authorization procedures and guidelines as set forth in the Provider Manual.

1.30 **Service Area** means the geographic area(s) within the zip codes and/or other descriptive boundaries as defined by the Act, the Medicare+Choice Program Laws and the applicable Plan.

1.31 **SIP/SMF** means SIP or SMF acting in their individual capacity as the party which is responsible to pay Professional for Covered Services provided to Enrollees.

1.32 **Specialty Care Clinician** means a physician of medicine or osteopathy, a podiatrist, or a dentist, or another professional clinician who is licensed in the State of California, who has completed training in a specialty or subspecialty recognized by the SPA Steering Committee who (if required by SPA) is either Board Certified or Board Eligible and who meets the criteria for practice in such specialty or subspecialty as may be established by SPA or the Plan.

1.33 **Subscriber Agreement** means the contract between the Health Plan and the respective employer group or individual subscriber which expresses the contractual rights and obligations of the parties thereto, and which describes the costs, benefits, procedures, conditions, limitations, exclusions and other obligations to which Enrollees are subject under the applicable Plan.

1.34 **Subscriber or Subscriber Group** means a person or entity which is responsible for payment to a Health Plan or a person whose employment or other status, except for family dependency, is the basis for enrollment in a Health Plan.

1.35 **Sutter Aligned Provider** means any physician, organized group of physicians (such as a partnership or professional corporation), or IPA which has agreed to participate with Sutter Health or one of its

affiliates in a risk sharing arrangement related to the provision of health care related services. As used in this definition, "affiliate" means (a) any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or under common control with Sutter Health or one of its affiliates; or (b) any entity in which Sutter Health or one of its affiliates owns at least fifty percent (50%) of the outstanding stock.

1.36 SPA shall mean SHC, SMF, SMG, SWMG and SIP acting jointly pursuant to the SPA Agreement either directly through the SPA Steering Committee or through SPA's third party administrator.

1.37 Utilization Management/Quality Improvement ("UM/QI") means the programs, processes, and standards established and carried out by SPA to authorize and monitor the utilization and quality of Covered Services provided to Enrollees, subject to review and approval by Plans and in compliance with the requirements of the Act, the Medicare+Choice Program laws and the applicable Plans.

ARTICLE 2 REPRESENTATIONS

2.1 Representations by SPA. SMF, SMG, SWMG and SIP hereby warrant and represent that they are each California corporations, in good standing with the California Secretary of State and are parties to the Sutter Central Physicians Network Agreement pursuant to which SPA was created.

2.2 Representations by Professional. Professional hereby warrants and represents that Professional is a physician, a podiatrist, a dentist, a medical group, California professional medical corporation, or other licensed professional, duly licensed and/or certified to practice in the State of California, and is in good standing with the applicable governing Board of California. Professional further warrants and represents that Professional is currently and for the duration of this Agreement shall remain, if required by SPA, a member in good standing of the medical staff of a Primary Hospital or Facility with privileges in Professional's specialty and is board certified or board eligible in his or her specialty, to the extent such eligibility or certification is required by SPA. In Agreements executed in the name of a professional corporation or partnership, these warranties are made on behalf of each professional listed on Exhibit B. Professional represents that Professional is a Medicare certified provider with a current and valid Medicare provider number. Professional shall notify SPA immediately, in writing, if for any reason Professional is no longer in compliance with this Section 2.2.

ARTICLE 3 OBLIGATIONS OF PROFESSIONAL

3.1 Services/General. Professional shall provide all Covered Services to Enrollees in accordance with the Provider Manual.

a. Covered Services. Professional shall provide all Covered Services to Enrollees of each Health Plan listed in the Provider Manual as updated from time to time.

b. Emergency Services. Professional shall assure the availability of Covered Services in the event of an Emergency and In-Area Urgently Needed Care, twenty-four (24) hours per day, seven (7) days per week either through Professional's availability or through appropriate coverage arrangements. Professional agrees to cooperate with SPA and other Participating Clinicians within Professional's specialty and geographic area in arranging for and providing equitable twenty-four (24) hour Emergency coverage for SPA Enrollees at the Primary Hospitals, including responding to the Emergency Room when Enrollees present for emergency medical care and treatment.

c. Notification of Emergency Services. Upon provision of Emergency services, Professional shall notify Enrollee's PCP in accordance with the Provider Manual. Emergency services are subject to physician review, and retrospective denial may be imposed.

d. Hours. Professional shall maintain usual and customary office hours. Professional shall schedule appointments for Enrollees during normal business hours and in a timely manner. Professional shall maintain weekly appointment hours that are sufficient to serve Enrollees. Without limiting the generality of the foregoing, Professional shall make appointments available to Enrollees immediately when emergency or urgent care is required, and in the case of routine appointments, within the time periods established by SPA and Plans.

e. Access, Benefits and Coverage. With respect to Medicare Members, Professional agrees:

- (1) to not deny, limit or condition coverage or the provision of services on the basis of any factor that is related to the Enrollee's health;
- (2) to pay for Emergency and In-Area Urgently Needed Care consistent with federal regulations, if such services are Professional's responsibility and liability;
- (3) to pay for renal dialysis services for Medicare Members temporarily outside the service area, if such services are Professional's responsibility and liability;
- (4) to direct access to mammography screening and influenza vaccinations;
- (5) to not collect any copayment or other cost sharing for influenza vaccine and pneumonia vaccine;
- (6) to direct access to in-network women's health specialists for women for routine and preventative services;
- (7) to have approved procedures to identify, assess and establish a treatment plan for Medicare Members with complex or serious medical conditions; and
- (8) to provide access to benefits in a manner described by CMS.

f. Call Arrangements and Coverage. If Professional is, for any reason, from time to time, unable to provide Covered Services when and as needed, Professional may secure the services of a qualified covering Participating Clinician who shall render such Covered Services on behalf of Professional. Professional shall be solely responsible for securing the services of such covering Participating Clinician and ensuring that the covering Participating Clinician accepts the compensation set forth in this Agreement. If Professional is unable to obtain coverage by a Participating Clinician and arranges for coverage by a non-Participating Clinician, SIP's/SMF's expenses for Covered Services rendered by such covering clinician shall not exceed the costs that would have been incurred had Professional arranged for coverage by a Participating Clinician. SIP/SMF may withhold from future payments to Professional any excess amounts paid by SIP/SMF to a covering non-Participating Clinician. Professional shall ensure that any Participating or non-Participating Clinician who provides coverage for Professional:

- (1) Will accept SPA's credentialing, peer review, UR/QI procedures;
- (2) Except for Copayments, will not bill Enrollees for Covered Services under any circumstances;
- (3) Will, prior to all elective hospitalizations and procedures, obtain prior authorization in accordance with SPA's Policies and Procedures and Provider Manual;
- (4) Maintains professional liability coverage in amounts no less than that required of Professional under this Agreement; and
- (5) Will comply fully with the terms of this Agreement.

g. Assistants. Professional shall, at Professional's sole cost and expense, employ or contract with such assistants or employees as Professional deems necessary to provide Covered Services. SPA shall not control, direct or supervise Professional's assistants, contractors, or employees in the performance of those services, except to the extent that SMF bears contractual responsibility for ensuring that qualified medical professionals render care to Enrollees covered under SMF's Health Plan Contracts and other agreements. All of Professional's assistants shall hold and maintain in good standing, at all times during the term of this Agreement, all valid State licenses, registrations and certifications (when applicable) required by state or federal law or by any Plan for the scope of services they perform, shall not have been excluded from the Medicare or Medicaid program, and are covered by Professional's professional liability insurance policy or by other applicable liability insurance.

h. Prior Authorization and Referral Procedure. Professional shall comply with those Referral and authorization procedures designed, developed and adopted by SPA from time to time as set forth in the Provider Manual. Failure to comply with SPA referral procedures may result, at SPA's option, in nonpayment for Covered Services provided in connection with such referral. Additionally, failure to comply with referral procedures may constitute grounds for termination of this Agreement or imposition of other sanction as determined by the SPA Steering Committee. SPA reserves the right to define certain specialty services as being exclusively provided by capitated provider specialists, and to deny authorization for such services to be performed by non-capitated providers who may be Participating Clinicians.

i. Coordination of Care; Consultation/Service Report. Professional acknowledges that each Enrollee will be required to select a PCP who shall be responsible for providing the Enrollee primary care and for coordinating the provision of all health care services, including the Covered Services provided by Professional. Professional is responsible for the professional care and treatment of Enrollees and for maintaining the physician-patient relationship with each Enrollee. Professional shall cooperate with Enrollee's PCP and SPA to assure the timely and efficient monitoring, coordination, and management of Enrollee's care by Professional and by the PCP as may be reasonable and appropriate, including, without limitation the development of a plan of treatment. Professional shall use his or her best efforts to submit a written report to the Primary Care Physician having responsibility for the ongoing care of a particular Enrollee regarding the plan of treatment proposed by Professional, including any proposed hospitalization or surgery, within fourteen (14) days of examination of said Enrollee. Professional shall use best efforts to coordinate with the referring Primary Care Physician on the proposed plan of treatment prior to implementation. Whenever appropriate, Professional will refer the Enrollee back to the PCP to implement, monitor or carry out said plan of treatment. If Professional and PCP cannot agree on a proposed plan of treatment, the disagreement regarding such treatment shall be submitted to the Medical Director for resolution in accordance with the SPA Provider Manual and/or Policies and Procedures. Nothing in this Agreement or in any Plan Agreement shall be interpreted to interfere with the physician-patient relationship, or to limit the Professional's ability to discuss all treatment options with Enrollees or to provide medical advice or treatment deemed appropriate by Professional.

j. Hospital Admission Authorization. Professional shall admit Enrollee only to a Primary Hospital or Facility unless an appropriate bed or service is unavailable. Professional may not admit an Enrollee to a hospital on a non-Emergency basis without receiving the prior authorization of SPA or its designated agent as set forth in the Provider Manual.

3.2 Reciprocity. Reciprocity provisions in Health Plan Contracts or in agreements between SMF and other corporations or professionals may require SPA and their Participating Clinicians to provide services to patients (not Enrollees of SPA) referred out of their network into the SPA network. If Professional does not have a direct contractual relationship with the payor (Health Plan, physician group, IPA, etc.) having the financial liability for such patient, Professional agrees to provide Covered Services upon request at the rates established in the Health Plan Contracts or agreements. Professional shall look only to payor and not to SIP/SMF for payment of such services.

3.3 Referral from Sutter Aligned Provider. If Professional accepts tertiary referrals of patients capitated to other Sutter Aligned Providers, Professional shall accept as payment in full for Professional's services rates no greater than those set forth in Exhibit C. If Professional wishes to receive such referrals Professional shall indicate his/her willingness to accept such referrals and rates by signing Exhibit C. If Professional does not sign Exhibit C, Professional's name shall not be included on any referral list for Sutter Aligned Providers.

3.4 Non-SPA Services. In rendering professional services to patients who are not Enrollees, Professional shall neither represent nor imply in any way that such medical services are being rendered by or on behalf of SMF or SPA and shall not bill SPA for such services.

3.5 Personnel, Equipment and Supplies; Inspections. Professional will supply all necessary office personnel, equipment, instrumentalities and supplies which are required to perform Covered Services and are usual and customary for professional practice in Professional's specialty in the community. Upon reasonable prior notice, Professional shall permit SPA, Plans, the Commissioner of Corporations, the Secretary of the U.S. Department of

Health and Human Services, the General Accounting Office ("GAO"), their authorized designees and any other duly authorized federal or state official to inspect said facilities and equipment, medical records and all phases of professional and ancillary medical care provided to Enrollees by Professional.

3.6 Acceptance of Enrollees. Professional agrees to accept Enrollees of all Plans contracted with SMF including Medicare Members, as new patients, and to treat current patients pursuant to the Plans and Subscriber Agreements should they become Enrollees, unless Professional gives SPA one hundred and eighty (180) days advance written notice that Professional is unable to accept Enrollees as new patients. If Professional is accepting patients from any Plan or other third-party payor, it shall accept Enrollees of any Plan for whom SMF has contracted to provide Covered Services. Professional acknowledges that the Plans contracting with SMF have the right to immediately withdraw Enrollees from the care of Professional in the event the health or safety of Enrollees is jeopardized by the actions of Professional or by reason of Professional's failure to provide Covered Services in accordance with the Plan's or SPA's UM/QI Programs.

3.7 Performance. Professional shall devote the time, attention and energy necessary for the competent and effective performance of Professional's duties hereunder to Enrollee. Professional shall render Covered Services to Enrollees, including Medicare Members, in an economic and efficient manner, consistent with professionally recognized standards of care accepted in the medical community for professionals in Professional's specialty.

3.8 Compliance with Provider Manual and SPA Policies and Procedures. Professional agrees to perform his or her duties under this Agreement in a manner consistent with all reasonable administrative guidelines of SPA and the Plans, including, without limitation, the Provider Manual and all Policies and Procedures of SPA. SPA shall provide written notice to Professional of amendments to the Provider Manual at least thirty (30) days in advance of the effective date of the amendment; provided, however, that the Provider Manual may be amended from time to time without prior written notice to the Professional if such amendments are required by law or agreements with Plans. SPA shall provide a copy of such Policies and Procedures and Provider Manual to Provider and agrees to update and distribute revisions to the same as required from time to time.

3.9 Licensure, Certification, and Hospital Staff Privileges. Professional shall maintain in good standing an unrestricted license or certificate to practice his or her profession in the State of California. If Professional is a physician⁷, Professional shall maintain in good standing membership and appropriate clinical privileges at one or more hospitals that are Primary Hospitals or Facilities so as to enable Professional to render the Covered Services required by this Agreement. Professional also agrees to participate in the Medicare Program to allow Professional to provide Covered Services required under this Agreement. Professional shall notify SPA within seventy-two (72) hours should any disciplinary or other action of any kind be initiated against Professional which would result in (a) the suspension, revocation, or termination of Professional's licensure or certification or registration, (b) the suspension or loss of Professional's membership or privileges on the medical staff of any hospital, (c) the voluntary or involuntary reduction of clinical privileges of Professional at any hospital, when such reduction is for medical disciplinary cause or reason (d) the imposition of sanctions against Professional under the Medicare or Medi-Cal program, (e) revocation, suspension, or restriction of Professional's Drug Enforcement Administration Number, or (f) the termination of Professional's participation in any managed care organizations or IPAs due to any quality of care issues or service issues to Enrollees. If Professional is a professional corporation or partnership, all shareholders, partners and professional employees shall comply with the foregoing. Professional shall furnish to SPA such evidence of licensure, medical staff membership and clinical privileges as SPA may reasonably request.

3.10 Continuing Education. During the entire term of this Agreement, Professional shall maintain professional competence and skills commensurate with the medical standards of the community, and shall satisfy any continuing professional education requirements as may be required by law, CMS, SPA, Plans or other recognized professional associations.

3.11 Professional Roster. Professional agrees that SPA and each Health Plan which contracts with SMF may include Professional's name, address, phone number, type of practice and willingness to accept new patients in their respective rosters of professional participants. These rosters may be inspected by and are intended to be used

by prospective patients, current and prospective SPA physicians, Sutter Aligned Providers and others. Professional further agrees that SPA may include such information in its marketing materials and community publications.

3.12 Compliance with California and Federal Statutes and Ethical Standards. Professional, and Professional's employees, agents and subcontractors, shall at all times during this Agreement comply with all applicable federal, state and local laws and regulations, including, but not limited to, the Act, CMS instructions as documented in the M+C Os policies and procedures, as well as the rules and regulations of the Medical Board of California and the ethical standards of the American and California Medical Associations. In addition, Professional shall require that all facilities and offices used by Professional to provide Covered Services to Medicare Members shall comply with the facility standards established by CMS, to the extent applicable. Professional shall cooperate with SPA and each Plan, to the extent reasonably necessary, to enable SPA and Plans to comply with the Act, the Medicare+Choice Program Laws, as amended, all rules and regulations issued pursuant thereto and any other applicable state and federal laws. Professional, and Professional's employees, agents, and subcontractors, shall maintain any and all licenses or certifications required by Plans in order to provide Covered Services. This obligation shall survive the termination of this Agreement.

3.13 Agreement to Comply with Regulatory Requirements Not Included in Agreement. The Plans are subject to the requirements of Chapter 2.2 of Division 2 of the Health and Safety Code, Subchapter 5.5 of Chapter 3 of Title 10 of the California Code of Regulations, and the laws and regulations implementing the Medicare+Choice Program, including the Balanced Budget Act of 1997 (collectively, the "Medicare+Choice Program Laws"), and any provision required to be in this Agreement by any of the above shall bind SPA and the Professional whether or not provided in this Agreement.

3.14 Reports of Services and Encounter Data. Upon request of SPA or Plan, Professional shall maintain and furnish SPA and Plan with any information pertaining to services rendered by Professional to Enrollees, as necessary for SPA and Plan to meet all federal, state, and Plan reporting requirements. Professional shall fully cooperate in providing such information and assistance regarding Medicare Members and Professional's performance under this Agreement as may reasonably be required in filing such reports. Professional shall submit any encounter or utilization data required by SPA on the terms and conditions established by SPA and shall certify the completeness and truthfulness of all encounter data submitted to SPA or Plans.

3.15 Nondiscrimination.

a. Professional shall not differentiate or discriminate in its provision of Covered Services to Enrollees, including Medicare Members, on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, or health status. Without limiting the foregoing, Professional shall assure that Enrollees with disabilities as defined by the Americans With Disabilities Act are provided with the assistance necessary to effectively communicate with Professional and Professional's agents as required by the Americans With Disabilities Act or other applicable law.

b. Professional agrees to render Covered Services to Enrollees in the same manner, in accordance with the same standards, and within the same time availability, as Professional applies to non-Enrollees within existing medical, ethical and legal requirements.

c. Professional, and Professional's employees and subcontractors providing services under this Agreement shall not request, demand, require or otherwise seek, directly or indirectly, the transfer of or termination from any Plan of any Enrollee based upon the Enrollee's need for, or utilization of, Covered Services or in order to gain financially or otherwise from such termination.

d. Professional shall not unlawfully discriminate against employees or applicants for employment on the basis of race, color, creed, national origin, ancestry, religion, sex, marital status, age (except as provided by law), or physical or mental handicap. In addition to the foregoing, Professional shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d et. seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794) and the regulations thereunder, Title IX of the Education

Amendments of 1972, as amended (20 U.S.C. Section 1681 et. seq.), the Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 et. seq.), Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (42 U.S.C. Section 9849), the Americans With Disabilities Act ("ADA") (P.L. 101-365)(ADA) and all implementing regulations, guidelines and standards as are now or may be lawfully adopted under the above statutes.

3.16 Cooperation with SPA's and Health Plans' Medical Directors. Professional understands that contracting Health Plans will place certain obligations upon SPA regarding the quality of care received by Enrollees and that contracting Health Plans in certain instances will have the right to oversee and review the quality of care administered to Enrollees. Professional agrees to cooperate with all contracting Health Plans' Medical Directors, and SPA's Medical Director and the Medical Directors of SIP, SMG and SWMG in their review of the quality of care administered to Enrollees.

3.17 Compliance with SPA Pharmaceutical Formularies. Professional shall comply, unless medical necessity dictates otherwise, with pharmaceutical formularies developed and/or adopted by SPA and contracting Health Plans.

3.18 Consent to Obtain Professional's Peer Review Information and Records.

a. Access. Professional grants to members of the peer review committees of SPA (including TPA staff assigned to assist SPA in such matters on a need to know basis only), SMF (including SMG, SWMG and SIP) permission to gain access to and obtain copies of any and all information, records, summaries of records, reports, files or data relative to Professional's professional qualifications, mental or physical fitness (as it relates solely to material questions raised about Professional's fitness to provide Covered Services and perform Professional's responsibilities under this Agreement), or the Professional's quality of care from any hospital, medical staff, governmental or private agency or association (including the National Practitioner Data Bank, the Federal or State Medical Boards and the Medical Board of California), or any other entity or individual. Professional agrees to provide the requesting party, within ten (10) days of any such request, any authorizations, consents or releases which are necessary to obtain such information. Professional hereby releases SPA, SIP, SMF and any person or entity providing information covered by this Section, and their respective employees or authorized agents, from any claims or liability of any sort arising in connection with their access to the information covered in this Section. Those reviewing and/or obtaining copies of such records shall only use them for peer review purposes, shall take all steps reasonably necessary to maintain the confidentiality of such records and shall not disclose them to any third party in such a manner as would cause such records to lose their protection under applicable law. Any and all subsequent disclosures shall be specifically authorized by the SPA Steering Committee.

b. Disclosure. To the extent necessary to comply with the terms of the Health Plan contracts, Professional hereby authorizes SPA, SIP or SMF to release to contracting Health Plans any and all information, records, summaries of records and statistical reports specific to Professional (including, professional qualification and credentialing information); provided, however, that neither SPA, SMF nor SIP shall release Professional's personal medical records without Professional's prior written consent.

c. Use. The records obtained pursuant to this Section shall only be used for peer review purposes and shall be maintained exclusively as part of the receiving entity's peer review committee's records. The receiving entity shall comply with applicable laws and regulations governing the use and disclosure of such records.

3.19 Credentialing. Professional agrees to comply with all aspects of the credentialing and recredentialing policies and procedures maintained by SPA, SIP or SMF and the credentialing and recredentialing policies and procedures in any Health Plan contract. Professional acknowledges and agrees that the participation of any given Participating Clinician as a provider under any Health Plan contract is conditioned upon Professional's satisfaction of and compliance with these credentialing procedures.

3.20 Excluded Individuals. Professional shall not employ or contract with individuals excluded from participation in the Medicare or Medicaid Programs or any federal health care program under Section 1128 or 1128A of the Social Security Act.

3.21 Delegation. If applicable, Professional agrees to: (i) maintain delegated functions consistent with the requirements of M+C Organizations and in compliance with M+C regulations, and (ii) to comply with any delegation requirements between the M+C Organization and SMF.

3.22 Professional Grievances. Should Professional have complaints or concerns that cannot be resolved through informal negotiation, Professional agrees to first utilize any SPA dispute resolution policies or procedures prior to invoking the arbitration clause of this Agreement.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF SPA

4.1 Administrative Services. SPA shall perform or arrange for the performance of all necessary administrative, accounting, claims processing, credentialing, utilization management, quality improvement, enrollment and other functions consistent with the administration and the terms and conditions of this Agreement and the Plan agreements and appropriate for the marketing and administration of Medicare Member benefit programs and this Agreement. Any material change in marketing and administrative policies and procedures affecting Professional shall be communicated to Professional by SPA.

4.2 Plan Agreements. SPA shall negotiate agreements with Plans and SMF will contract with Plans for the provision of Covered Services to Enrollees. To the extent that such Plans are also licensed by the Department of Managed Health Care, they shall retain the authority and are not relieved of any statutory obligations under the Act, including, but not limited to, the authority to sanction or terminate a professional found to be providing inadequate quality of care and/or failing to comply with the Plan's statutory obligations under the Act, regardless of delegation of such services to SPA, SIP or SMF. SPA shall contract with Professional for the provision of Covered Services pursuant and subject to SMF's agreements with Plans.

4.3 Utilization Management and Quality Management. SPA shall establish utilization management and quality management committees to monitor all utilization policies and protocols, medical necessity, and quality of all Covered Services furnished by Professional to eligible Enrollees.

4.4 Confidentiality of UM/QI Records. All records and proceedings of the UM/QI Program committees shall be maintained as confidential in accordance with the immunities and privileges set forth in Section 43.7 of the California Civil Code and Section 1157 of the California Evidence Code, to the extent they are applicable, and the parties shall mutually conduct all of their activities with respect to this Agreement and the policies and protocols of contracting Plans in accordance with the requirements of those laws. Specifically with respect to the proceedings and records of the UM/QI Program committees, SPA and Professional shall, to the extent possible, conform their activities to such legal requirements. Notwithstanding the foregoing, SPA may release aggregated information that is based in part upon Professional-specific information without Professional's consent.

4.5 Delegation. SPA agrees to: (i) maintain delegated functions consistent with the requirements of M+C Os and in compliance with M+C regulations, and (ii) to comply with any delegation requirements between the M+C O and SMF.

ARTICLE 5 COMPENSATION

5.1 Compensation. SIP/SMF shall pay Professional the amounts set forth in Exhibit A as full compensation for the authorized Covered Services provided by Professional to Enrollees as of the Effective Date. Professional shall accept these amounts as payment in full for Covered Services rendered to Enrollees, except for authorized Copayments or deductibles. Professional acknowledges that SPA shall have authority to modify the methodology and/or rates of Professional's compensation under this Agreement from time to time, provided that SPA

gives Professional no less than thirty (30) days prior written notice before implementing such modification. Professional shall have thirty (30) calendar days from the date of such notice to reject the proposed amendment by written notice to SPA. If SPA does not receive such written notice of rejection within the thirty (30) day-period, the amendment shall be deemed accepted and binding upon Professional. Professional agrees not to unreasonably withhold approval of any such proposed amendment. If Professional rejects such amendment, this Agreement may be terminated by SPA effective no less than sixty (60) days from the date of the Professional's rejection, and the amendment shall not be effective prior to the effective date of termination. Professional acknowledges and understands that as of the Effective Date of this Agreement, the rates set forth in Exhibit A shall supersede and replace the rates at which Professional has been paid under any and all agreements with SIP and/or SMF.

5.2 Timing of Payment of Compensation. SIP/SMF shall pay claims promptly according to CMS standards and comply with all payment provisions of state and federal law. SIP/SMF shall pay Professional the compensation amounts due under this Agreement within forty-five (45) business days for Commercial Health Plan claims and within sixty (60) calendar days for Medicare Member claims following receipt of a clean claim as defined by and in accordance with the procedures set forth in the Provider Manual. Claims payment delayed due to Coordination of Benefits are excluded from such payment time frames. Professional shall submit to SPA all requests to trace a claim, or for adjustment or reconsideration of a claim, in accordance with the time frames set forth in the Provider Manual. Claims and requests for tracing, adjustment or reconsideration that are not submitted by Professional in accordance with this Section may be denied.

5.3 Prompt Payment By Professional. Professional agrees, when applicable, to pay claims from Professional's subcontractors promptly according to CMS standards and comply with all payment provisions of state and federal law. CMS requires non-contracted provider claims to be paid within thirty (30) days of receipt and contracted provider claims to be paid within sixty (60) days of receipt, unless California law requires earlier payment. Professional shall include this prompt payment provision in all of its contracts with his/her subcontractors. Professional shall pay claims submitted by non-contracted providers for services for which Professional is financially responsible at the rate which that provider could collect if he or she were paid under regular Medicare.

5.4 Billing Procedures. Professional shall bill SPA for all Covered Services rendered to an Enrollee, less any Copayment and deductible collected or to be collected from the Enrollee in accordance with the procedures set forth in the Provider Manual.

5.5 Enrollee Billing. Professional shall look only to SIP/SMF for compensation for Covered Services provided to eligible Enrollees, and, except for authorized Copayments or deductibles, shall in no event (including insolvency of SPA, SMG, SWMG, SIP or SMF, or SIP's/SMF's failure to pay Professional) seek compensation from or take any recourse against Enrollees or any person acting on behalf of the Enrollee or the Plan Covered Services regardless of whether or not payment is received from SIP/SMF. No surcharge to any Enrollee shall be permitted. For purposes of this Agreement, a surcharge shall be deemed to be any additional fee not provided for in the Enrollee's Evidence of Coverage. Should SPA, SIP, SMG, SWMG or SMF receive notice that Professional charges a surcharge to an Enrollee for Covered Services, SPA shall take appropriate action pursuant to the terms of this Agreement. Nothing in this Agreement shall prohibit Professional from collecting applicable co-insurance, deductibles, co-payments as specified in the Enrollee's Evidence of Coverage.

5.6 Non-Covered Services. SIP/SMF shall have no responsibility to compensate Professional for any non-Covered Services rendered by Professional to Enrollees. Nothing in this Agreement shall prevent Professional from billing an Enrollee for non-Covered Services, provided, however, that the Enrollee is first informed such services are non-Covered Services, and further, if payment for services has been denied by SPA by reason that such services were not Medically Necessary, then Professional must first obtain consent to payment from the Enrollee, documented by means of a written consent signed by the Enrollee or an individual legally responsible for Enrollee, or by a notation in Enrollee's medical chart that such consent was obtained.

5.7 Enrollee Copayments. Professional shall be responsible for the collection of and billing for all Copayment and deductibles from the Enrollee specifically permitted in an Enrollee's Evidence of Coverage as set forth in the Provider Manual. SPA will use its best efforts to provide Professional with appropriate information

allowing Professional to determine when and if Copayments or deductibles may be charged. However, SPA shall in no way guarantee the availability or the collectability of any Copayment or deductibles.

5.8 Ineligibility. Professional shall confirm the eligibility of an Enrollee to receive the Covered Services requested in accordance with the provisions of the applicable Plan and the Policies and Procedures. If a Health Plan erroneously represents to SPA that an Enrollee is eligible for Covered Services and that Enrollee, after being referred to Professional for services, is later found to be ineligible under the applicable Health Plan Contracts, SIP/SMF will not retroactively adjust Professional's compensation for authorized Covered Services rendered. If SIP/SMF pays Professional for services rendered after the date of ineligibility and Professional subsequently obtains reimbursement from the patient or the responsible party for services provided following the date of ineligibility for which SIP/SMF paid Professional, Professional shall reimburse SIP/SMF the amount so paid but not to exceed the amount received by Professional from such other party.

5.9 Audit of Payment for Services. At any time during the term of this Agreement and for at least five (5) years after termination hereof, upon reasonable notice and during normal business hours, SPA or its designated representative may conduct audits of the records of Professional relating to payment for Covered Services rendered to Enrollees as set forth in this Provider Manual.

5.10 Claims Payment Appeal. Professional agrees to cooperate with SPA's claims department and Utilization Management department in the proper adjudication of claims submitted. SPA reserves the right to review claims for accuracy of codes utilized, unbundling, medical necessity, prior authorization, and assign codes to services delivered based upon documentation provided and authorize payment accordingly. If any Covered Service is deemed medically unnecessary or non-authorized, payment for such Covered Services will be denied. Professional may appeal claims payment following the appeals procedures detailed in the Provider Manual.

5.11 Relationship with Plans. The applicable Plans are obligated to compensate SMF for Covered Services provided to Enrollees. SIP/SMF are solely responsible for compensating Professional for Covered Services provided to Enrollees pursuant to this Agreement. Professional specifically acknowledges and agrees that no Plan shall, except pursuant to specific written agreement, be obligated to make any payment directly to Professional for Covered Services provided pursuant to this Agreement. Professional acknowledges that some of the compensation received constitutes federal funds and such payments are subject to applicable provisions of federal law. In the event SIP/SMF breaches its payment obligations hereunder, Professional shall, at the request of the applicable Plan, accept payment from the Plan and agree to perform the applicable provisions of this Agreement for the benefit of such Plan.

5.12 Compliance with CMS' Physician Incentive Program Regulations. SIP/SMF and Professional agree that any compensation payable pursuant to this Agreement is not made as an inducement to reduce or limit Covered Services to any specific Enrollee. Any incentive programs described in this Agreement shall comply with applicable state and federal law and regulations, and Professional hereby consents to any and all changes to this Agreement which may be necessary or advisable in order to comply with such laws and regulations.

5.13 Complete Agreement. Professional and SPA agree that this Agreement describes all compensation and incentive arrangements between them for Covered Services provided to Enrollees.

ARTICLE 6 RELATIONSHIP OF THE PARTIES

6.1 Independent Contractors. In the performance of the work, duties and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Professional and SPA are at all times acting and performing as independent contractors in providing Covered Services pursuant to this Agreement and are not acting as an employee, partner, agent or joint venture of the other. SPA shall neither have, nor exercise, any control or direction over the manner and means by which Professional shall perform and administer the

provision of Covered Services; provided, however, that Professional agrees to perform his or her obligations and responsibilities hereunder and function at all times in accordance with approved methods and practices as set forth in the Policies and Procedures. It is understood and agreed that the sole interest of SPA and Professional is to assure that Covered Services rendered by Professional shall be performed in a competent, efficient and satisfactory manner and in accordance with all applicable state and federal law. Neither party shall have any claim against the other under this Agreement for sick leave, retirement benefits, social security, worker's compensation, disability or unemployment insurance benefits or employee benefits of any kind, for the other or for any agents or employees of the other.

6.2 Payment of Taxes and Benefits. Each party acknowledges and agrees to be solely responsible for and to file, on a timely basis, all tax returns and payments required to be filed or made to any federal, state or local tax authority, on its own behalf, including without limitation, amounts required to be paid for (i) social security, (ii) federal, state or any other employee payroll taxes, (iii) federal unemployment taxes, (iv) workers' compensation, (v) disability insurance, and (vi) similar items (collectively, "Taxes and Other Payments"). SIP/SMF will regularly report amounts paid to Professional by filing Form 1099-MISC with the Internal Revenue Service, or other reports, as required by law.

6.3 Responsibility for Own Acts. SPA and Professional shall each be responsible for their own acts and/or omissions and are not responsible for the acts and/or omissions of the other, and any and all claims, liabilities, injuries, suits, and 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 that party, its employees or representatives, in the performance or omission of any act or responsibility of that party under this Agreement. 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 interest.

6.4 Professional's Medical Group. If this Agreement is entered into with Professional in his or her individual capacity, and Professional is a partner in a medical partnership or a shareholder or employee of a medical corporation, Professional shall perform the Covered Services contemplated herein in his or her individual capacity and any compensation for Covered Services performed may be submitted and collected in the name of such medical partnership or professional corporation. All correspondence regarding such billing and collection shall clearly identify Professional as the party providing the Covered Services.

6.5 Non-Exclusive Agreement. This Agreement is a non-exclusive agreement and Professional shall be free to enter into contracts to provide medical services through other provider organizations and entities, provided such contracts do not cause Professional to violate the terms of either SPA's Plan Agreements or this Agreement. During the term of this Agreement, if a Plan elects to contract with SPA for the provision of Covered Services in SPA's Service Area, Professional acknowledges that SPA's agreement with Professional shall prevail over any other agreement Professional may have with another provider organization serving the same Plan.

6.6 Confidentiality. None of the parties shall disclose this Agreement or the terms hereof to any third party, except as provided in this Agreement or as otherwise required by law (including the Act and as may be required to participate in the M+C Program), without the prior written consent of the other party or parties. Professional recognizes and acknowledges that Professional and its employees will have access to certain confidential and proprietary information of SPA, including, but not limited to: (a) Enrollee lists, eligibility lists and any other information containing the names, addresses and telephone numbers of Enrollees which have been compiled by SPA or a Plan; (b) lists or documents compiled by SPA or a Plan which include the names, addresses and telephone numbers of Subscriber Groups, Subscriber Group employees responsible for health benefits and the officers and directors of such Subscriber Groups; (c) SPA's Enrollees; (d) Provider Manuals and SPA or Plan administrative service manuals and all forms related thereto; (e) the Subscriber Agreements and the information contained therein; (f) the financial arrangements between SPA and any professionals, including Professional; (g) financial arrangements between SMF and Plans and between Plans and other Participating Clinicians; (h) Plan's underwriting and rating information and any other information utilized by Plans for determining eligibility or rates for Plans and (i) any other information compiled or created by SPA or a Plan, which is proprietary to SPA or the

Plan and which SPA identifies in writing to Professional, including, but not limited to, operations, clients, treatment protocols, UM/QI Program protocols, and other know-how, processes, and practices (collectively, the "Confidential Information"), and that such information constitutes valuable, special, and unique property of SPA. For purposes of this Agreement, Confidential Information shall not include any information which is publicly known, and which was not disclosed in breach or violation of any obligation or covenant to maintain confidentiality. Professional shall not, during or after the term of this Agreement, without the express written consent of SPA, disclose or suffer to be disclosed to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, except as may be ordered by a court or governmental agency, or use, cause, or suffer to be used in competition with SPA any such Confidential Information. Upon the effective date of termination of this Agreement, Professional shall provide and return to SPA the Confidential Information in Professional's possession or under its control in a reasonable manner to be specified by SPA. This confidentiality agreement shall survive the expiration or termination of this Agreement. In the event of a breach or threatened breach by Professional of the provisions of this Section, SPA shall be entitled to an injunction restraining Professional from disclosing in whole or in part any Confidential Information. Nothing herein shall be construed as prohibiting SPA from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from Professional.

6.7 Plan Names. Professional shall not use the name, service mark, logo or other business product of any Plan or Plan without the written consent of the Plan.

ARTICLE 7 COORDINATION OF BENEFITS (COB)

7.1 Obligations of Professional. Professional agrees to coordinate with SPA or its designated representative for proper determination of COB and to bill and collect from other payors any charges for which the other payer is responsible in accordance with the procedures set forth in the Provider Manual.

7.2 Right to Retain Third Party Liability (TPL) Monies. SIP/SMF shall retain all monies recovered from TPL in the event an Enrollee has been referred for services authorized by SPA and Professional accepts payment from SIP/SMF. In such cases, Professional shall assign all Professional's rights in connection with, and shall cooperate in the recovery of, said claims from other third parties. Professional has the right to pursue and retain TPL monies if Professional does not bill SPA for the services provided. SIP/SMF shall not be entitled to TPL monies when an Enrollee is not accessing his/her HMO benefit and when SPA is not coordinating Enrollee's care including specific services provided by Professional. In any event, Enrollee shall not be responsible for more than the Copayment specified by his/her Health Plan benefit. SPA's policies and procedures for TPL are described in the Provider Manual.

ARTICLE 8 UTILIZATION MANAGEMENT, QUALITY MANAGEMENT AND GRIEVANCE PROCEDURE

8.1 Utilization Management Procedures.

a. Utilization Procedures. SPA shall, in its sole and absolute discretion, establish a utilization management program to review the medical necessity and appropriateness of Covered Services furnished by Professional to Enrollees on an inpatient and outpatient basis. Professional agrees to participate in, cooperate with SPA and Plans, and abide by the UM Program established by SPA or required by the Plans, including M+C Organizations, that are consistent with the Plan agreement, accepted medical standards and NCQA standards for rendering quality care. Such compliance shall include active participation in development, implementation, and utilization of relevant practice guidelines, attendance at required SPA administrative meetings, and cooperation in resolving coverage issues within Professional's specialty. Such compliance shall also include availability and cooperation with Medical Directors and case management personnel in making arrangements for care. Professional shall be bound by the UM Program, subject to Professional's rights to appeal. The UM Program shall not be amended without a minimum of thirty (30) days written notice to Professional. Professional shall participate with

SPA and the Plans, including M+C Organizations, in monitoring the utilization and quality of care provided to all Enrollees under this Agreement, including, but not limited to, timely submission of HEDIS data, any supporting documents requested by SPA, timely responses to concerns or queries by SPA clinical services departments or patient care or service issues raised by SPA Enrollee services departments. If Professional does not comply with the utilization and practice standards set forth in the Provider Manual, SPA may in its sole discretion upon notice restrict new referrals of Enrollees to Professional until such time as SPA determines that Professional is and will remain in compliance with such standards. Notwithstanding the foregoing, failure to comply with the requirements of this Section may be deemed by SPA to be a material breach of this Agreement and may, at SPA's option, be grounds for termination of this Agreement.

b. Utilization Information. Professional grants to SPA permission to gain access to and obtain copies of any and all information, records, summaries of records, reports, files or data relative to Professional's utilization and case management from any hospital, medical staff, governmental or private agency or association (including the National Practitioner Data Bank, the Federation of State Medical Boards and the Medical Board of California), or any other entity or individual. SPA shall develop utilization profiles which, notwithstanding the provisions of Section 4.4 to the contrary, SPA may provide to other Participating Clinicians.

8.2 Quality Management Program. SPA shall, in its sole and absolute discretion, establish a quality improvement program to review the quality of Covered Services furnished by Professional to Enrollees. Professional agrees to participate in, cooperate with SPA and Plans, and abide by the Quality Management Program established by SPA or required by the Plans, including M+C Organizations, that are consistent with the Plan agreement, accepted medical standards and NCQA standards for rendering quality care. Such compliance shall include active participation in the review of the quality of care administered to Enrollees, attendance at required SPA administrative meetings, and cooperation in resolving quality issues within Professional's specialty. Such compliance shall also include availability and cooperation with Medical Directors and case management personnel in making arrangements for care. Professional shall comply with, and subject to Professional's right to appeal, shall be bound by such quality improvement program as set forth in the Provider Manual, including specifically, cooperating with SPA (including SIP, SMG and SWMG) in all quality assurance activities. Failure to comply with the requirements of this Section may be deemed by SPA to be a material breach of this Agreement and may, at SPA's option, be grounds for termination of this Agreement.

8.3 Grievance Procedure. SPA shall establish a grievance procedure for the processing of any patient complaints regarding Covered Services furnished by Participating Clinicians. Professional shall comply with and, subject to Professional's rights of appeal, shall be bound by such grievance procedure as set forth in the Provider Manual. Additionally, Professional shall comply with the terms and conditions of the applicable Plans relating to grievances and appeals by Enrollees and resolution of disputes, a copy of which shall be provided to Professional as a part of the Provider Manual, and will cooperate with SPA and the Plan in providing requested information in a timely manner. Professional shall adhere to Medicare's appeals, expedited appeals and expedited review procedures for Medicare Members, including gathering and forwarding information on appeals to M+C Os as necessary. Professional agrees that the contracting Plans or SPA may cause Professional to be joined in any grievance or arbitration involving Covered Services under the Plans. Professional shall cooperate fully with SPA and the Plans in the investigation and resolution of complaints by Medicare Members regarding Professional or Covered Services rendered by Professional, in compliance with all applicable federal and state laws, regulations, and requirements.

ARTICLE 9 RECORDS

9.1 Cooperation of SPA. SPA agrees to comply with all reasonable requests of Professional to provide access to all Enrollees' records reasonably necessary for the performance of Professional's duties under this Agreement.

9.2 Medical Record Maintenance, Retention, Access and Confidentiality. Consistent with and as required by Plans, Accreditation Organizations and applicable state and federal law, including, but not limited to, the Act and the implementing regulations thereunder, the M+C Program laws, the parties shall comply with all federal

and California laws relating to the privacy of individually identifiable health information. Such laws include, without limitation, the Health Insurance Portability and Accountability Act of 1996 and its attendant regulations as amended from time to time ("HIPAA") and the California Confidentiality of Medical Information Act. The parties shall assure that all patient individually identifiable health information that either party uses or discloses under or pursuant to this Agreement is secure and that such use and/or disclosure complies with HIPAA and other applicable laws. Professional shall safeguard Enrollee's privacy and maintain accurate, clear and complete medical records which reflect all health care services rendered to each Enrollee ("Records"). Such Records shall be retained by Professional for at least seven (7) years or, in the event Enrollee is a minor, until said minor's twenty-first (21st) birthday, whichever is later. Upon receipt of the written consent of the Enrollee (to the extent required by HIPAA and other applicable confidentiality laws) and a request for such Records or information, Professional shall provide copies of or summaries of information contained in the Records of such Enrollee to Enrollee, SPA, a Plan, other Participating Physicians or Participating Clinicians and to other providers of health care services for the purpose of facilitating the delivery of appropriate health care services to such Enrollee and to carry out the purposes and provisions of this Agreement. If SPA obtains Records under this Section, it shall not disclose them to any third party except in accordance with all applicable laws and regulations. Professional shall indemnify SIP/SMF in the event that any amount of reimbursement is denied or disallowed because of the failure of Professional to comply with this obligation to maintain and provide access to Records. Such indemnity shall include the amount of reimbursement denied, plus any interest, penalties, and reasonable legal costs. Except as otherwise provided in this Agreement, Professional shall maintain such Records for at least five (5) years from and after the termination of this Agreement. This provision shall survive the termination of this Agreement, whether by rescission or otherwise.

9.3 Knox-Keene Act Access to Books and Records. Professional shall provide access to SPA, Plans, as applicable, Accreditation Organizations, as applicable, and applicable regulatory authorities (the Director of the Department of Managed Health Care), and their designees, at all reasonable times, upon demand, to the books, records and papers of Professional relating to the provision of services to Enrollees, to the cost of such services, to payments received by Professional from Enrollees and to the financial condition of the Professional. This provision shall survive termination of this Agreement, whether by rescission or otherwise.

9.4 Medicare Access to Books and Records. In compliance with United States Code Section 1395x(v)(1)(I) and its implementing regulations and any other federal laws or regulations for the M+C Program, SPA and Professional, and any subcontractors of same, shall make available to the Secretary of Health and Human Services, the General Accounting Office, the Comptroller General, and their duly authorized representatives, written contracts between SPA, Professional and its subcontractors, if any, and to Professional's and subcontractor's books, documents, medical records, patient care documentation, or other records as are necessary to verify the costs of services provided. Such access shall be granted until the expiration of seven (7) years after the services are furnished, or for periods exceeding seven (7) years for reasons specified in the provisions of Part 420 of Title 42 of the Code of Federal Regulations. This provision shall be subject to the provisions of Part 420 of Title 42 of the Code of Federal Regulations.

9.5 Notice of Request for Disclosure. If Professional, or subcontractors, are requested to disclose any books, documents, or records as required by this Agreement for the purpose of an audit or investigation, Professional shall notify SPA of the nature and scope of such request and shall make available all such books, documents and records.

ARTICLE 10 INSURANCE AND INDEMNIFICATION

10.1 Workers' Compensation Insurance. Professional agrees to provide, at Professional's sole cost and expense, workers compensation insurance for Professional's agents, servants and employees throughout the entire term of this Agreement, in accordance with the laws of the State of California as the same may be amended from time to time.

10.2 Liability Insurance. During the term of this Agreement, Professional shall provide and maintain, at Professional's sole cost and expense, a policy of professional liability insurance with NORCAL, or another licensed insurance company admitted to do business in the State of California and approved in writing by SPA, in a minimum amount of one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) in the annual aggregate (or higher limits as may be required by Plans) to cover any loss, liability or damage alleged to have been committed by Professional or Professional's agent, servants, or employees. Professional shall purchase a "tail" policy for a period of not less than five (5) years following the effective termination date of the foregoing policy in the event said policy is a "claims made" policy. Said "tail" policy shall have at least the same policy limits as the policy limits of the primary professional liability policy. Professional shall notify SPA immediately, in writing, if for any reason Professional is no longer in compliance with this Section. Professional shall maintain such other insurance as is required by law or advisable and customary for Professional's business.

10.3 Comprehensive Insurance. During the term of this Agreement, unless otherwise agreed in writing between Professional and SPA, Professional shall provide at Professional's sole cost and expense, a policy or policies of insurance covering Professional's place of business insuring Professional against any claim of loss, liability or damage committed or arising out of the alleged condition of said premises, or the furniture, fixtures, appliances or equipment located therein, together with standard liability protection against any loss, liability or damage as a result of Professional's agents, servants or employee's operation of a motor vehicle for business purposes. Professional shall notify SPA immediately, in writing, if for any reason Professional is no longer in compliance with this Section.

10.4 Proof of Insurance. Professional shall provide SPA written notice within thirty (30) days if any of the policies set forth above are canceled, changed or amended. Professional shall from time to time, on the reasonable request of SPA, furnish to SPA, written evidence that the policies of insurance required under these Sections are in full force and effect, and in accordance with the provisions of said Sections. Professional shall give SPA ten (10) days prior written notice of any modification, cancellation or termination of such coverage.

10.5 Notice of Malpractice Actions. Professional shall advise SPA of each malpractice claim notice or filing against Professional and each settlement or other disposition of a malpractice claim entered into by Professional within fifteen (15) days following said notices, filing, settlement or other disposition.

10.6 Indemnification. Notwithstanding any other provision of this Agreement to the contrary, Professional shall not be obligated to indemnify any Plan or SPA for civil liability caused by the denial by the Plan or SPA of Medically Necessary care for an Enrollee.

ARTICLE 11 PLAN AGREEMENTS

11.1 Plan Agreements. SMF shall contract with Plans for the provision of Covered Services to Enrollees. Plans that are licensed by the Department of Managed Health Care shall retain the authority and are not relieved of any statutory obligations under the Act regardless of delegation of such services to SMF or SPA.

11.2 Power of Attorney. Professional acknowledges and agrees that SPA may negotiate and SMF may, from time to time, enter into agreements with additional Plans ("Additional Plans") for the delivery of Covered Services to Plan's Enrollees through SPA, including Enrollees of commercial Plans and Enrollees of Medicare Risk Programs and Medicare+Choice Programs. SPA shall have the right to bind Professional to all Plan Agreements executed by SMF under this Agreement. Professional shall provide Covered Services to the Enrollees of such Additional Plans pursuant to and in accordance with the provisions of this Agreement. If SMF enters into an agreement with an Additional Plan that materially modifies the terms and conditions of this Agreement, or is with

respect to new lines of business, SPA shall distribute to Professional a summary of all material modifications to this Agreement contemplated under such agreement.

11.3 Documentation. SPA shall issue to Professional a copy of any document required by a Plan which has been approved by SPA as necessary and which requires Professional's signature. Professional must execute and return any such document within fifteen (15) calendar days of receipt thereof.

ARTICLE 12 TERM AND TERMINATION OF AGREEMENT

12.1 Term. This Agreement shall be effective for a period of one (1) year from its Effective Date, and shall be automatically renewed for successive one (1) years terms unless sooner terminated pursuant to the terms of this Article.

12.2 Immediate Termination. The SPA Steering Committee may, in its reasonable discretion, immediately terminate this Agreement upon written notice due to one of the following events:

- a. Professional's death or disability. For purposes of this provision, "disability" means any condition which impairs Professional's ability to provide services in a competent manner under this Agreement for more than ninety (90) consecutive days;
- b. Professional's conviction of a felony or misdemeanor of moral turpitude;
- c. Professional's diagnosis of severe mental or emotional disturbance;
- d. Professional's addiction to alcohol, narcotics or other drugs that poses a threat to patient care;
- e. Unless the condition is waived in writing by SPA, if Professional is no longer an active member of SIP, SMG or SWMG or a member of a medical group which provides services to SMF pursuant to a professional services agreement;
- f. Failure of a Professional to provide satisfactory personal and professional references and credentials, or to provide verification regarding past employment, training, hospital affiliation or professional liability;
- g. Professional's failure to notify SPA within forty-eight (48) hours if Professional ceases to actively participate in a required diversion or like substance abuse rehabilitation program;
- h. Professional's license to practice medicine, medical staff membership or privileges, or certification to provide services or ability to participate in Medicare or Medicaid, or Professional's Drug Enforcement Administration ("DEA") Controlled Substance Certificate, are revoked, terminated, suspended or restricted in any way regardless of whether such action has been finally adjudicated;
- i. Professional's being a party to a malpractice action in which Professional was determined to have practiced in a substandard manner and which resulted in a substantial judgment or settlement against Professional;
- j. If SPA receives notice that a contracting Health Plan has removed Professional from its roster of participating physicians/providers, SPA shall have the right to terminate this Agreement or otherwise limit Professional's participation in Health Plan Contracts;

k. Professional's breach of Section 13.10 of the Agreement regarding Enrollee relations and non-solicitation;

1. Professional engages in conduct which is determined by the SPA Steering Committee to be unethical, detrimental to patient safety or to the delivery of quality patient care, contrary to the Policies or Procedures of SPA, or contrary to the professional or clinical standards of SPA or the SPA's quality management and utilization management policies and procedures, availability and accessibility standards or performance standards, established by SPA or amended by SPA from time to time, including but not limited to, (i) the inability of Professional to work effectively with others, as determined by the SPA Steering Committee, (ii) the Professional's denial of Covered Services to Enrollees inappropriately, as determined by the SPA Steering Committee, any Plan, governmental agency or other entity without regard to whether or not such matter has been finally adjudicated; (iii) the Professional engages in conduct or actions which have adverse economic consequences to SPA as determined by the SPA Steering Committee, or, (iv) the Professional is unavailable (unless such absence is otherwise protected by applicable law) to provide Covered Services to Enrollees for a continuous period of greater than three (3) months during any one (1) year period during term of this Agreement.

12.3 Termination for Cause With Cure Period. Either party may terminate this Agreement upon thirty (30) days written notice if the other party materially breaches any term of this Agreement (including, for example, recurring non-compliance with the Provider Manual authorization requirements) and either fails to remedy such breach within thirty (30) days of receipt of notice of same or fails to commence and diligently pursue correction of such breach if by its nature the breach cannot be cured within such thirty (30) day period.

12.4 Termination Without Cause. Subject to applicable law, this Agreement may be terminated without cause by either party upon ninety (90) days prior written notice.

12.5 Written Notice of Termination. SPA shall notify Professional in writing of the reasons for termination, denial or suspension in accordance with 42 C.F.R. , 422.204. Professional shall comply with this provision in all contracts which Professional has with subcontractors providing services under this Agreement.

12.6 Responsibility for Enrollees at Termination. Professional shall continue to provide authorized Covered Services to an Enrollee who is receiving Covered Services from Professional on the effective termination date of this Agreement, and shall be compensated according to the terms of this Agreement until the Covered Services being rendered to the Enrollee by Professional are completed (consistent with existing medical ethical/legal requirements for providing continuity of care to a patient), unless SPA or a Health Plan makes a reasonable and medically appropriate provision for the assumption of such Covered Services by another Participating Clinician.

12.7 Termination of SMF's Agreement with Health Plan. If any Health Plan Contract is terminated for reasons other than the Health Plan's insolvency, Professional shall look to the Health Plan for payment for Covered Services rendered after the termination date to an Enrollee who retains eligibility under the terminated Health Plan Contract.

12.8 Professional's Rights Upon Termination. Except as otherwise required by law, or the Provider Manual, or SPA Policies and Procedures, Professional agrees that any SPA decision to terminate this Agreement shall be final, and Professional shall have no right(s) to appeal SPA's decision through any formal or informal SPA administrative hearing process. Nothing in this provision shall affect Professional's rights to arbitration as set forth in Section 13.4.

**ARTICLE 13
GENERAL PROVISIONS**

13.1 Notices. Any notices required or permitted to be given hereunder by either party to the other, shall be given by personal delivery in writing or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses listed above, but either party may change its address by written notice given in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed effective three (3) days after mailing.

13.2 Entire Agreement of the Parties. This Agreement including any Exhibits or Attachments, and as of the Effective Date, supersedes any and all agreements, either written or oral, between the parties with respect to its subject matter and contains all the covenants and agreements between the parties with respect to the rendering of Covered Services under Health Plan Contracts; provided, however, that agreements between Professional and SIP (other than Professional's membership agreements) and/or SMG or SWMG in effect at the time the parties execute this Agreement shall remain in effect until the Effective Date at which time such agreements shall automatically terminate without penalty or notice. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

13.3 Severability. If any provision in this Agreement is held by a court of competent jurisdiction, or applicable state or federal law and their implementing regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, unless the effect of such severance shall be to materially and adversely affect the obligation of the parties, in which case it may be immediately terminated.

13.4 Arbitration. Any controversy or claim arising out of or relating to this Agreement including the interpretation, formation, performance, termination or any breach thereof will be settled by arbitration in accordance with the rules established in California Code of Civil Procedure Section 1280 et. seq., including Section 1283.05. The arbitration shall be conducted before a single arbitrator knowledgeable in the health care industry. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall occur within the County of Sacramento, State of California, unless the parties mutually agree to have such proceeding in some other locale. The arbitrator(s) may in any such proceeding award attorney's fees and costs to the prevailing party.

13.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.

13.6 Assignment. This Agreement shall be binding upon, and shall inure to the benefit of the parties to it, and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, however, Professional may not assign any of Professional's rights, or delegate any of Professional's duties hereunder without the prior written consent of SPA. SPA may assign this contract to any successor in interest in the event of the sale, merger, consolidation or reorganization of SPA.

13.7 Waiver. The waiver of any provisions, or of the breach of any provision, of this Agreement must be set forth specifically in writing and signed by the waiving party. Any such waiver shall not operate or be deemed to be a waiver of any prior or future breach of such provision or of any other provision. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition.

13.8 Headings. The subject headings of the Articles, Sections and/or paragraphs of this Agreement are included for purposes of convenience and reference only and shall not affect the construction or interpretation of any of its provisions.

13.9 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants, conditions hereof shall be for the sole purpose and exclusive benefit of the parties hereto and their successors and assigns. Unless otherwise expressly provided, this Agreement shall not create any third party beneficiary rights for any person or entity. Notwithstanding the immediately preceding sentence, with respect to the Professional's obligations hereunder to provide Covered Services to Enrollees of a specific Plan, said Plan shall be an intended third party beneficiary of this Agreement.

13.10 Enrollee Relations/Non-Solicitation. During the term of this Agreement and for one (1) year following the effective date of termination, Professional shall not, directly or indirectly, "solicit" Enrollees or any employer of Enrollees, or otherwise call on, solicit, or take away, or attempt to call on, solicit, or take away any Enrollee, employer of Enrollee, Subscriber Group, patients, or patient groups of SPA, or otherwise engage in any conduct designed to persuade any such persons to disenroll from any Plan contracting with SMF, without SPA's prior review and written approval; provided, however, that Professional may notify Professional's own patients of changes in Professional's status as a Participating Clinician under specific Health Plan Contracts. Professional may communicate directly with any Enrollee as necessary for the proper provision of care to such Enrollee in connection with billing for such care or as otherwise permitted under Business and Professional Code Section 2056.1(b). For purposes of this Section, "solicit" shall mean any action by Professional (including those just listed) which is for the primary purpose of securing financial gain for Professional (including, Professional's group), including any attempt to persuade an Enrollee to discontinue his/her relationship with SPA, to disenroll from a Health Plan contracting with SMF, or to encourage an Enrollee to receive health care from Professional on a fee-for-service basis. "Solicit" shall also include any such conduct designed to persuade or encourage a Plan to discontinue or modify the Plan's contractual relationship with SMF. A breach of this Section during any term of this Agreement shall be grounds for immediate termination of this Agreement. However, nothing herein is intended to interfere with the physician-patient relationship between Professional and Enrollee and the right of Professional to advocate for medically appropriate health care or to advise Enrollee regarding alternative treatment plans.

13.11 Amendment.

a. This Agreement may be amended by SPA to comply with any Health Plan Contract or any applicable state or federal law or regulation, or other governmental requirements. Such amendment shall become effective on the date specified therein which shall be at least thirty (30) days after notice thereof has been received by Professional.

b. SPA may amend this Agreement for any reason other than those identified above, by giving written notice to Professional of the proposed amendment. Professional shall be deemed to have agreed to such amendment and it shall become effective unless Professional provides SPA with written notice of rejection of such amendment within thirty (30) days after receipt of SPA's notice. If Professional so rejects any amendment, the rejection letter shall be deemed a notice of termination under Section 12.4, and the amendment shall not apply to Professional during the ninety (90) day termination period. If Professional does not give such notice, the Amendment shall be effective thirty (30) days after notice thereof has been received by Professional.

13.12 Force Majeure. If either party is unable to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, governmental restricts, fire or other casualty, emergency, or any cause beyond the reasonable control of the party, such non-performing party shall be excused the performance by the other party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage. Notwithstanding this provision, a party may terminate this Agreement immediately upon written notice if such events continue for thirty (30) days.

13.13 Exhibits. Each exhibit referenced in this Agreement is hereby incorporated by reference at that place in the Agreement where such reference first appears.

13.14 Execution. By their signatures below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

SUTTER PHYSICIAN ALLIANCE (SPA)

By: Thomas Blinn
Thomas Blinn
Vice President SMF/SPA

10-31-03
Date

PROFESSIONAL

By: Michael T. Ingram
(Signature)

Michael T. Ingram
Print Name

10-28-2003
Date

94-1688832
Tax Identification Number

916-452-8291
Phone Number

916-452-6841
Fax Number

**EXHIBIT A
COMPENSATION**

I. Provisions. Covered Services rendered under the terms of this Agreement shall be reimbursed in accordance with Article 5 and the following rules and valuations.

A. Claims for Covered Services rendered by Professional and submitted for payment are adjudicated based on Current Procedural Terminology (CPT) Guidelines, Medicare CMS guidelines and determinations made by SPA.

B. Charges are considered for payment when the services rendered are reasonable, necessary and authorized to diagnose and/or treat the Enrollee's condition. Preventative medicine services covered under Enrollee's Health Plan are also considered for reimbursement. Experimental and investigational procedures are not covered.

C. Only current CPT-4 and HCPCS procedure codes are accepted for adjudication. Charges are subject to prepayment audits and edits and retrospective review of claims payment.

D. Claims will be adjudicated for payment upon receipt of the following information:

1. Copy of the referral authorization;
2. Medical report (if required or previously requested);
3. Copy of the primary insurance's EOB (if applicable);
4. Completed HCFA/CMS 1500 with all required information.
(Patient statements are not acceptable.)

E. All payments made to Professional will have the applicable co-payments deducted from the reimbursement.

II. Compensation.

A. Commercial Enrollees.

1. Compensation for Covered Services rendered to Commercial Enrollees shall be based on the current RBRVS unit values published by CMS multiplied by one hundred percent (100%) of the corresponding conversion factor used by Medicare without any Geographic Practice Cost Indices (GPCI) except for specified Cardiac Surgeries. The Cardiac Surgeries will be paid at the rates listed in Exhibit A-1.

2. Payments to Professional for non-Cardiac Surgeries shall be subject to a ten percent (10%) withhold. Withhold funds shall be utilized to fund any deficits that may be experienced due to over-utilization of Covered Services in relation to budgets.

3. The SPA Steering Committee, in its reasonable discretion, may impose additional withholds on an entire specialty panel, an individual Participating Clinician or both in order to address utilization problems which remain uncorrected after the panel/individual has been given notice and an opportunity to cure the problem.

B. Medicare Risk Enrollees.

1. Compensation for Covered Services rendered to Medicare Members shall be based the current RBRVS unit values published by CMS multiplied by one hundred percent (100%) of the corresponding conversion factor used by Medicare without any Geographic Practice Cost Indices (GPCI) except for specified Cardiac Surgeries. The Cardiac Surgeries will be paid at the rates listed in Exhibit A-1.

2. Payments to Professional shall not be subject to a withhold.

C. SPA intends to develop and implement at a future date a risk sharing arrangement among its medical groups and specialty panels, by which a specialty incentive pool would be shared among specialists who achieve predetermined benchmark cost effectiveness standards.

D. Any Covered Services, drugs and supplies without a listed RBRVS unit value will be reimbursed using Medicare and other third party payer fee schedules as determined by SPA.

E. Changes to current year RBRVS and conversion factors will be in effect by April 1 of each year. Professional's compensation shall reflect the change to current year RBRVS and Medicare conversion factors for dates of service on and after the effective date of the change.

F. Compensation for authorized Covered Services provided by a surgical assistant identified by CPT modifier 80 following RBRVS guidelines shall be at the percentage allowed by Medicare and applied to the allowable compensation for a SPA primary surgeon based on compensation detailed in II.A. and B. above.

EXHIBIT A-1
COMPENSATION for CARDIAC SURGERIES

Payments to Professional for Cardiac Surgeries shall not be subject to a withhold.

<u>CPT</u>	<u>Description</u>	<u>Rate</u>
33141	Transmyocardial Laser Revascularization	253.89
33405	Replacement of Aortic Valve	2,470.68
33426	Repair of Mitral Valve	2,443.95
33430	Replacement of Mitral Valve	2,672.83
33508	Endoscopic vein harvest	16.53
33510	CABG Vein, One	2,147.57
33511	CABG Vein, Two	2,346.96
33512	CABG Vein, Three	2,545.64
33513	CABG Vein, Four	2,745.03
33514	CABG Vein, Five	3,001.26
33516	CABG Vein, Six or more	3,209.53
33517	CABG Artery - Vein Single	220.71
33518	CABG Artery - Vein Two	420.45
33519	CABG Artery - Vein Three	618.42
33521	CABG Artery - Vein Four	817.81
33522	CABG Artery, Five	1,016.49
33523	CABG Artery, Six or more	1,218.65
33530	Coronary artery, bypass/reop	539.76
33533	CABG Arterial, Single	2,222.83
33534	CABG Arterial, Two	2,475.30
33863	Ascending Aorta Graft	2,748.43
35820	Explore chest vessels	789.78

EXHIBIT B
PROFESSIONAL'S AFFILIATED CLINICIANS

The clinicians affiliated with Professional, providing services under this Agreement and approved by SPA, acknowledge Professional's authority to execute this Agreement on their behalf and to bind them to the terms and conditions of this Agreement.

<u>Name</u>	<u>Effective Date</u>
Michael Ingram, Sr., M.D.	12.1.2003
James Longoria, M.D.	12.1.2003
Douglas Schuch, M.D.	12.1.2003
Kuppe-Shankar, M.D.	
Robert Kineaid , M.D. Kincade	12.1.2003

EXHIBIT C
COMPENSATION FOR SERVICES PROVIDED TO ENROLLEES OF
SUTTER ALIGNED PROVIDER

For Covered Services rendered by Professional to Enrollees of Sutter Aligned Provider:

1. Sutter Aligned Provider shall assume the obligations of SIP/SMF in Article 5 of this Agreement;
2. Sutter Aligned Provider shall provide Professional with authorization and claims submission procedures;
3. Professional shall bill Sutter Aligned Provider and look only to Sutter Aligned Provider and not SIP/SMF for payment; and
4. Sutter Aligned Provider shall pay Professional as outlined below:

Commercial HMO Enrollees:	108% of Medicare allowable
Medicare Risk Program Enrollees:	Medicare allowable

Any Covered Services, drugs and supplies without a listed RBRVS unit value will be reimbursed using Medicare and other third party payer fee schedules as determined by the Sutter Aligned Provider.

Compensation for authorized Covered Services provided by an assistant surgeon (either a Participating Physician or non-Participating Physician) identified by CPT modifier 80 following RBRVS guidelines shall be as follows:

- | | |
|-------------------------------------|---|
| a. Commercial HMO Enrollees: | 20% of the allowable compensation for a primary surgeon. |
| b. Medicare Risk Program Enrollees: | 16% of the Medicare allowable compensation for a primary surgeon. |

PROFESSIONAL

By: _____

(Signature)

Print Name

94-1688832

Tax Identification Number

10-28-2003

Date

Organization: Sutter Medical Foundation - Sacramento Today's Date: 1/19/04

CONTRACT GROUP COVER PAGE (FORM #8)

PAGE 1 OF 3

Please write the number that corresponds with the appropriate selection of Contracting Entity, Site, Department and Contract Type, and attach this cover page to the document that will be scanned. Then darken the corresponding boxes underneath where you wrote the number. For example, if you wrote 123 for the Contracting Entity, you would then darken the corresponding boxes for 1, 2 and 3 in the Contracting Entity section.

CONTRACTING ENTITY:

(Select from your Contracting Entity List)

CONTRACT TYPE:

(Select from your List of Contract Types)

DEPARTMENT:

(Select from your List of Departments)

PRINT HERE				PRINT HERE				PRINT HERE			
Sutter Medical Foundation				Downstream Providers Exc. 1 Patient LOAS				Physician			
3	0			6	7	2		3	0		
DARKEN HERE				DARKEN HERE				DARKEN HERE			
0		0	0								
1	1	1	1								
2	2	2	2								
	3	3	3								
4	4	4	4								
5	5	5	5								
6	6	6	6								
7	7	7	7								
8	8	8	8								
9	9	9	9								

☐ ☐ ☒ ☐

REPLACE CONTRACT NO.:

VENDOR:

TERM:

30000.2630C - can be moved to attachments
Sacramento Cardiovascular Surgeons

ORIGINAL DATE:

EXPIRATION DATE:

12/1/2003

[illegible]

EXHIBIT 9 to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

From: RFAX Compliance Officers
Sent: Thursday, November 07, 2013 12:03 PM
To: Sexton, Victoria (Vickie)
Cc: Hanvey, Laurie; RFAX Compliance Officers
Subject: FW: Timesheets - SMCS

Vickie,

The way I am reading this contract, the full monthly compensation is only paid when a minimum of 1880 hours of services are performed in a given *quarter*.

Monthly Payments. For all services rendered by Group and Assistant(s) under this Agreement, Hospital shall pay Group Fifty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$56,666.66) per month; provided, however, that **in the event Assistants provide fewer than One Thousand Eight Hundred Eighty (1,880) hours of service in the aggregate in a given quarter, such payment shall be prorated at a rate of \$90.43 per hour for actual hours worked** and documented pursuant to Section i.c. (Time Reports).

The 3rd Quarter is the months of August, September and October. I calculated the hours and amounts as follows:

Month	Hours	Hourly Rate	Amount Owing
August	472	90.43	42,682.96
September	432	90.43	39,065.76
October	528	90.43	47,747.04
Qtr Totals:	1432 (below required 1880/hrs)		\$129,495.76

To complicate matters more, on 9/24/13 you submitted the check request for *August* and **the full sum of \$56,666.66 was approved for payment**. Since the hourly total is less than the quarterly requirement, we are going to need to somehow prorate the payment for the remaining months to make up for the overpayment. By my calculations August was overpaid by \$13,983.70.

Laurie – I am cc'ing you here in the event you have anything to add or correct me on. Thank you!

Kind Regards,
 Brooke

Brooke Haynes
Contract Specialist | Accounts Payable
Sutter Health Support Services
RFaxCompliance@sutterhealth.org



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From: Sexton, Victoria (Vickie)
Sent: Tuesday, November 05, 2013 3:38 PM
To: RFAX Compliance Officers
Subject: Timesheets - SMCS

Attached are timesheets for SMCS.

Vickie Sexton
Administrative Assistant to:

Shelly McGriff, Chief Nurse Executive
Rick Harrell, Regional Executive Cardiovascular

Sutter Medical Center, Sacramento
5151 F Street
Sacramento, CA 95819

Tel: 916.733.7037
Fax: 916.733.1058

sextonv@sutterhealth.org



Approval Announcement	
The attached has been reviewed and is APPROVED for payment re:	
Vendor:	12643
Physician:	
Payee:	Sacramento Cardiovascular Surgeons Medical G
Contracted Service:	Cardiology Case Management
Service Period:	August 2013
Service Hours/Days:	472
Amount Approved:	\$56,666.66
TM #:	69625.28112
Agreement Period:	5/1/2013 - 4/30/2015
Terms:	4 FTE Assistants @ \$170,000/yr. = \$56,666.66/mo provided that 1,880hrs of actual work has been provided in a given quarter (or \$90.43/hr for actual work)
Notes:	1st month of 2nd Qtr.
9/24/2013 SMCS	11333
<div>Announcement</div> <div>Options</div>	

Kind Regards,
Brooke

Brooke Haynes
Contract Specialist | Accounts Payable
 Sutter Health Support Services
RFaxCompliance@sutterhealth.org



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owner of the relevant rights; (ii) let us know of the mistake by reply E-mail or by telephone (916-286-8163); and (iii) delete it from your system and destroy all copies. Any personal information contained in this E-mail must be handled in accordance with applicable privacy laws.

From: Sexton, Victoria (Vickie)
Sent: Tuesday, September 24, 2013 8:07 AM
To: RFAX Compliance Officers
Subject: Timesheets - SMCS

Attached are timesheets for SMCS.

Vickie Sexton
Administrative Assistant
Shelly McGriff, Chief Nurse Executive
Rick Harrell, Reg. Executive Cardiovascular
Sutter Memorial Hospital
Phone: 916-733-7037
Fax: 916-733-1058
email: sextonv@sutterhealth.org



Approval Announcement	
The attached has been reviewed and is <u>APPROVED</u> for payment re:	
Vendor:	12643
Physician:	
Payee:	Sacramento Cardiovascular Surgeons Medical G
Contracted Service:	Cardiology Case Management
Service Period:	August 2013
Service Hours/Days:	472
Amount Approved:	\$56,666.66
TM #:	69625.28112
Agreement Period:	5/1/2013 - 4/30/2015
Terms:	4 FTE Assistants @ \$170,000/yr. = \$56,666.66/mo provided that 1,880hrs of actual work has been provided in a given quarter (or \$90.43/hr for actual work)
Notes:	1st month of 2nd Qtr.
9/24/2013 SMCS	Announcement Options 11333

Kind Regards,
Brooke

Brooke Haynes
Contract Specialist | Accounts Payable
Sutter Health Support Services
RFaxCompliance@sutterhealth.org



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From: Sexton, Victoria (Vickie)
Sent: Tuesday, September 24, 2013 8:07 AM

To: RFAX Compliance Officers
Subject: Timesheets - SMCS

Attached are timesheets for SMCS.

Vickie Sexton
Administrative Assistant
Shelly McGriff, Chief Nurse Executive
Rick Harrell, Reg. Executive Cardiovascular
Sutter Memorial Hospital
Phone: 916-733-7037
Fax: 916-733-1058
email: sextonv@sutterhealth.org



EXHIBIT 10
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

From: Hanvey, Laurie
Sent: Monday, July 28, 2014 9:59 AM
To: RFAX Compliance Officers
Cc: Haynes, Brooke
Subject: Immediate Hold on TM# 28112

Please put an immediate hold on any payments for TM# 28112 and if there is anything in process please put an immediate stop on payment.

Please send me confirmation that you have received this message and hold/stop payments have been activated.

Thank you,

Laurie Hanvey
Compliance Officer
Sutter Medical Center Sacramento

T: 916.733.6027

C: 916.790.0788

HanveyL@Sutterhealth.org

My Words: Improving operations for long-term community benefits.

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EXHIBIT 11
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

From: Hanvey, Laurie

Sent: Thursday, June 19, 2014 11:48 AM

To: RFAX Compliance Officers; Haynes, Brooke

Subject: Place an Immediate hold on any payments for the below MDAs

Brooke:

Can you please place an immediate hold on any payments for the below MDAs? If there are any payments in queue for a check to be cut/released can you please place a stop payment notice.

- TM# 69584.220097 MDA: SHSSR and SCSMG/Robert Kincade, M.D. Surgical Director Advanced heart failure transplant ventricular assist device program.
- TM# 69584.22101 MDA: SHSSR and SCSMG/James Longoria, M.D. Surgical Ablation Program.
- TM# 69584.2934 MDA: SHSSR and SCSMG/Michael Ingram, M.D. medical director of the cardiac intensive care unit and assistant medical director of the Sutter Heart Institute.

Please send me a confirmation email that the hold has been implemented. This hold should remain in place until you receive confirmation from me that we are o.k. to proceed with payments.

Thank you.

This

Laurie Hanvey
Compliance Officer
Sutter Medical Center Sacramento

T: 916.733.6027

C: 916.790.0788

HanveyL@Sutterhealth.org

My W6rds: *Improving operations for long-term community benefits.*

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EXHIBIT 14
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

From: Dalton, Eric
Sent: Thursday, July 31, 2014 4:17 PM
To: Owen Plietz, Carrie; Westfall, Penny; Harrell, Horace R. (Rick); Hanvey, Laurie
Subject: FW: URGENT!!!: Sac Cardio Check Reissued & Sent via Fed-Ex

Fed-Ex tracking # highlighted below.

Eric Dalton
VP Finance/Finance Leader
Sutter Shared Services
Phone: 916-297-8133
Email: daltone@sutterhealth.org

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From: Haynes, Brooke
Sent: Thursday, July 31, 2014 3:57 PM
To: Dalton, Eric
Subject: URGENT!!!: Sac Cardio Check Reissued & Sent via Fed-Ex

Eric - You aren't included on the below trail. Sacramento Cardiovascular check has been sent Fed-Ex. Tracking information below.

Thank you,

Brooke Haynes

From: Fong, Mindy M.
Sent: Thursday, July 31, 2014 3:54 PM
To: Dallas, Adrienne
Cc: Brown, Mary; Kropf, Kristine C.; Stephenson, George III; Wheeler, Mark; Haynes, Brooke; Kielty, Tracie
Subject: RE: URGENT!!!: Immediate Hold on TM# 28112_Stop payment complete MANUAL PAYMENT FOR 7-31-14
Check sent Fed-Ex tracking # 770738076893

Thank you,

Mindy Fong
AP Specialist

From: Dallas, Adrienne
Sent: Thursday, July 31, 2014 3:18 PM
To: S3APenclosures
Cc: Brown, Mary; Kropf, Kristine C.; Fong, Mindy M.; Stephenson, George III; Wheeler, Mark; Haynes, Brooke; Kielty, Tracie

Subject: FW: URGENT!!!: Immediate Hold on TM# 28112_Stop payment complete MANUAL PAYMENT FOR 7-31-14

Importance: High

HELLO - This is a Manual Check to be processed ASAP and FED EX per Eric Dalton!

Please fed ex to 5301 F ST STE 111 Sacramento, Ca 95819

From: RFAX Compliance Officers

Sent: Thursday, July 31, 2014 2:59 PM

To: Kielty, Tracie; Dallas, Adrienne

Cc: Hanvey, Laurie; Dalton, Eric

Subject: FW: URGENT!!!: Immediate Hold on TM# 28112_Stop payment complete

Importance: High

Tracie/Adrienne,

Eric notified us that this check needs to be reissued and FedEx immediately.

Please let me know if there is any additional information you need from us to get this payment made ASAP.

Thank you so much,
Brooke

From: RFAX Compliance Officers
Sent: Thursday, July 31, 2014 2:30 PM
To: Dalton, Eric
Subject: FW: URGENT!!!: Immediate Hold on TM# 28112_Stop payment complete
Importance: High

Eric,

Below is the entire trail of emails beginning with Laurie's request to stop payment.

Thank you - Brooke

From: Kielty, Tracie
Sent: Monday, July 28, 2014 10:32 AM
To: RFAX Compliance Officers
Cc: Dallas, Adrienne; Hanvey, Laurie
Subject: RE: URGENT!!!: Immediate Hold on TM# 28112_Stop payment complete

All,

REF# CO 110, CK#2594420,V#12643

Stop payment complete.

Sincerely,

Tracie Kielty

Accounts Payable Team | Sutter Shared Services

Phone: (916) 297-8176 | Email: <mailto:OlsonT3@sutterhealth.org>

From: RFAX Compliance Officers
Sent: Monday, July 28, 2014 10:21 AM
To: Kielty, Tracie
Cc: Dallas, Adrienne; Hanvey, Laurie
Subject: RE: URGENT!!!: Immediate Hold on TM# 28112
Importance: High

The reason I have is that the Compliance Officer for SMCS requested a HOLD and STOP PAYMENT ON payments made for the Vendor on the Call Coverage contract with Sacramento Cardiovascular Surgeons. See below for her instructions.

No reissue of payment needed at this time. Thank you!!

From: Kielty, Tracie
Sent: Monday, July 28, 2014 10:17 AM
To: RFAX Compliance Officers
Cc: Dallas, Adrienne; Hanvey, Laurie
Subject: RE: URGENT!!!: Immediate Hold on TM# 28112

Brooke,

Please provide the reason for the stop payment. And confirm there should not be any reissue of payment.

Sincerely,

Tracie Kielty

Accounts Payable Team | Sutter Shared Services

Phone: (916) 297-8176 | Email: <mailto:OlsonT3@sutterhealth.org>

From: RFAX Compliance Officers
Sent: Monday, July 28, 2014 10:09 AM
To: Hanvey, Laurie
Cc: Kielty, Tracie; Dallas, Adrienne
Subject: URGENT!!!: Immediate Hold on TM# 28112
Importance: High

Laurie – We received your message and will hold all payments. The below payment was issued on 7/22/14.

Adrienne/Tracie – Per my discussion with Tracie, will one of you please stop payment on the below check ASAP. Thank you - Brooke

VENDOR #12643

From: Hanvey, Laurie
Sent: Monday, July 28, 2014 9:59 AM
To: RFAX Compliance Officers
Cc: Haynes, Brooke
Subject: Immediate Hold on TM# 28112

Please put an immediate hold on any payments for TM# 28112 and if there is anything in process please put an immediate stop on payment.

Please send me confirmation that you have received this message and hold/stop payments have been activated.

Thank you,

Laurie Hanvey
Compliance Officer
Sutter Medical Center Sacramento

T: 916.733.6027
C: 916.790.0788

HanveyI@Sutterhealth.org

My Words: Improving operations for long-term community benefits.

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EXHIBIT 13
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

DATE	SURGEON	ASSIST SURG	PA	ANESTHESIOLOGIST	PT NAME	MRN#	OR TIME START	RATI	PROCEDURE	2nd Surgeon documented in OP report?	2nd Surgeon documented in Anesthesiologists report?	PA documented in OP report	PA document Anesthetic report?
12/14/2013	DANIELSON, DAREN S.		FRIBOURG, ALAN	DOYKOS, GEORGE	[REDACTED]	[REDACTED]	14:34	62	PERICARDIAL WINDOW	No	No		
12/06/2013	LONGORIA, JAMES		DAVIS, CHRIS	LARSEN, ROBERT	[REDACTED]	[REDACTED]	14:20	51	STERNAL WOUND INCISION AND DRAINAGE, PLACEMENT WOUND VAC	No, Surgeon/Longoria Assistant/Davis	No, only Surgeon Longoria is listed		
11/29/2013	KINCADE, ROBERT		JONES, MARK	MURAWSKI, TOM	[REDACTED]	[REDACTED]	7:23	202	CABG X2 WITH LEFT INTERNAL MAMMARY ARTERY USED AS FREE GRAFT, RIGHT ENDOSCOPIC VEIN HARVEST, TRANSESOPHAGEAL ECHOCARDIOGRAM	No	No, only surgeon, Kincaide is listed	Yes, Mark Jones	No
11/19/2013	LONGORIA, JAMES	INGRAM, MICHAEL	DAVIS, CHRIS	BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	7:24	184	CABG X2, LEFT INTERNAL MAMMARY ARTERY, RIGHT SAPHEOUS ENDOSCOPIC VEIN HARVEST	Yes	No, it only lists Dr. Longoria, no second surgeon or assist is listed.		No
11/13/2013	KINCADE, ROBERT	LONGORIA, JAMES	JONES, MARK	BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	7:15	341	REDO STERNOTOMY, CABG X1 WITH CRYO VEIN TYPE A, AORTIC VALVE REPLACEMENT	Yes	No it only lists surgeon, Dr. Kincaide, no second surgeon or assist is listed.		
11/07/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	FRIBOURG, ALAN	DOYKOS, GEORGE	[REDACTED]	[REDACTED]	8:10	180	MEDIAN STERNOTOMY, AORTIC ROOT REPLACEMENT, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes Danielson	No, only Ingram and PA Fribourg are listed.		
10/30/2013	KINCADE, ROBERT	DANIELSON, DAREN S.	JONES, MARK	MURAWSKI, TOM	[REDACTED]	[REDACTED]	7:40	160	AORTIC VALVE REPLACEMENT, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Danielson	Yes, Danielson	Yes, Mark Jones	No only Kincaide/Dani
10/24/2013	LONGORIA, JAMES		DAVIS, CHRIS	MURAWSKI, TOM	[REDACTED]	[REDACTED]	13:33	117	LEFT THORACOSCOPY FOR LEFT ATRIAL APPENDAGE OCCLUSION, CARDIO-PULMONARY STANDBY, TRANSESOPHAGEAL ECHOCARDIOGRAM	No	No, Longoria, PA	Yes, Chris Davis	only as "PA": Longoria's na
10/17/2013	LONGORIA, JAMES		DAVIS, CHRIS	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	8:20	247	THORACOSCOPIC MAZE PROCEDURE, LEFT ATRIAL APPENDAGE OCCLUSION, TRANSESOPHAGEAL ECHOCARDIOGRAM	No, Surgeon/Longoria Assistant/Davis	No, Surgeon/Longoria Assistant/Davis	Yes, Surgeon/Longoria Assistant/Davis	Yes, Surgeon/Long Assistant/Da
10/10/2013	INGRAM, MICHAEL		DAVIS, CHRIS	DOYKOS, GEORGE	[REDACTED]	[REDACTED]	7:16	197	AORTIC VALVE REPLACEMENT, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Ingram, Danielson, Davis	No, Ingram/Davis	Yes, Ingram, Danielson, Davis	Yes, Davis bu 2nd surgeon referenced

DATE	SURGEON	ASSIST SURG	PA	ANESTHESIOLOGIST	PT NAME	MRN#	OR TIME START	RATI	PROCEDURE	2nd Surgeon documented in OP report?	2nd Surgeon documented in Anesthesiologists report?	PA documented in OP report	PA documented in Anesthesiologists report?
10/04/2013	DANIELSON, DAREN S.		DAVIS, CHRIS	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	12:56	92	SUBXIPHOID PERICARDIAL WINDOW WITH DRAINAGE OF PERICARDIAL EFFUSION, PERICARDIAL BIOPSY, CULTURES OF PERICARDIAL FLUID AND PERICARDIAL TISSUE, TRANSESOPHAGEAL ECHOCARDIOGRAM	No, Surgeon/Danielson Assistant/Davis	No, Surgeon/Danielson Assistant/Davis	Yes, Danielson/Davis, but no reference to 2nd surgeon	Yes, Danielson but no reference to 2nd Surgeon
09/27/2013	LONGORIA, JAMES	INGRAM, MICHAEL	DAVIS, CHRIS	BAHRE, BONITA	[REDACTED]	[REDACTED]	11:15	172	CABG X 3 WITH LEFT INTERNAL MAMMARY ARTERY, RIGHT ENDOSCOPIC VEIN HARVEST	Yes, Surgeon/Longoria 1st Assist/Ingram 2nd Assist/Davis	No, Surgeon/Ingram and PA/Davis are all that is listed.	Yes, Surgeon/Longoria 1st Assist/Ingram 2nd Assist/Davis	Yes, Longoria/no reference to Surgeon
09/20/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	FRIBOURG, ALAN	HEYER, AMARDEEP	[REDACTED]	[REDACTED]	10:32	198	CABG X 3 WITH LEFT INTERNAL MAMMARY ARTERY, RIGHT ENDOSCOPIC VEIN HARVEST, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Ingram, Danielson, Fribourg	No, only Ingram is listed	Yes, Ingram, Danielson, Fribourg	No, only Ingram listed
09/16/2013	KINCADE, ROBERT		JONES, MARK	DOYKOS, GEORGE	[REDACTED]	[REDACTED]	13:40	36	REMOVAL OF STERNAL WIRES				
09/06/2013	DANIELSON, DAREN S.	INGRAM, MICHAEL	FRIBOURG, ALAN	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	7:25	241	CABG X 1 WITH RIGHT SAPHENOUS VEIN GRAFT, AORTIC VALVE REPAIR, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Danielson 1st Assist/Ingram 2nd Assist/Davis 3rd Assist/Fribourg	Yes, Danielson, Ingram and Davis are listed.	Yes, Surgeon/Danielson 1st Assist/Ingram 2nd Assist/Davis 3rd Assist/Fribourg	
08/28/2013	KINCADE, ROBERT	DANIELSON, DAREN S.	JONES, MARK	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	7:21	182	CABG X 4, RIGHT SAPHENOUS VEIN GRAFT, LEFT INTERNAL MAMMARY ARTERY, RIGHT ENDOSCOPIC VEIN HARVEST	Yes, Kincaide, Jones and Danielson listed	Yes, Kincaide, Jones and Danielson listed	Yes, Kincaide, Jones and Danielson listed	Yes, Kincaide, and Danielson
08/20/2013	LONGORIA, JAMES	KINCADE, ROBERT	DAVIS, CHRIS	BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	11:52	224	CABG X 4 WITH LEFT INTERNAL MAMMARY ARTERY, RIGHT SAPHENOUS ENDOSCOPIC VEIN HARVEST, TRANSMYOCARDIAL REVASCULARIZATION WITH HOLIUM LASER, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Longoria 2nd Assist/Kincaide 3rd Assist/Davis	Yes, Surgeon/Longoria 2nd Assist/Kincaide 3rd Assist/Davis		Yes, Surgeon/Longoria 2nd Assist/Kincaide 3rd Assist/Davis
08/13/2013	INGRAM, MICHAEL	LONGORIA, JAMES	DAVIS, CHRIS	DOYKOS, GEORGE	[REDACTED]	[REDACTED]	7:15	158	AORTIC VALVE REPLACEMENT, LEFT ATRIAL APPENDECTOMY, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Ingram Assistant/Longoria 2nd Assistant/Davis	No only Ingram and Davis are listed	Yes, Surgeon/Ingram Assistant/Longoria 2nd Assistant/Davis	Yes, Ingram and Davis are listed no reference to Surgeon

DATE	SURGEON	ASSIST SURG	PA	ANESTHESIOLOGIST	PT NAME	MRN#	OR TIME START	RAT#	PROCEDURE	2nd Surgeon documented in OP report?	2nd Surgeon documented in Anesthesiologists report?	PA documented in OP report	PA document Anesthesia report
08/05/2013	DANIELSON, DAREN S.	LONGORIA, JAMES	DAVIS, CHRIS	MURAWSKI, TOM	[REDACTED]	[REDACTED]	7:30	215	CABG X 2 WITH LEFT SAPHENOUS VEIN GRAFT AND LEFT INTERNAL MAMMARY ARTERY, LEFT ENDOSCOPIC VEIN HARVEST, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Longoria	Yes, Danielson, Longoria are listed	Yes, Chris Davis, PA	No, PA or 3rd Surgeon is not listed.
07/29/2013	LONGORIA, JAMES		DAVIS, CHRIS	BAHRE, BONITA	[REDACTED]	[REDACTED]	7:29	287	THORACOSCOPIC MAZE PROCEDURE, LEFT ATRIAL OCCLUSION, TRANSESOPHAGEAL ECHOCARDIOGRAM	No, Surgeon/Longoria Assistant1/Davis	No, Surgeon/Longoria Assistant1/Davis	Yes, Surgeon/Longoria Assistant1/Davis No reference to second surgeon	Yes, Surgeon/Longoria Assistant1/Davis no reference second surgeon
07/19/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	FRIBOURG, ALAN	SIMON, NATHANIEL	[REDACTED]	[REDACTED]	7:27	193	CABG X 4, RIGHT ENDOSCOPIC VEIN HARVEST WITH LEFT INTERNAL MAMMARY ARTERY, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Ingram Assistant/Danielson Second Assistant/Fribourg	No, only Ingram and Fribourg are listed	Yes, Surgeon/Ingram Assistant/Danielson Second Assistant/Fribourg	Yes, Ingram and Fribourg are but no reference second surgeon
07/11/2013	LONGORIA, JAMES		NORTH, THERESE	MURAWSKI, TOM	[REDACTED]	[REDACTED]	7:34	285	BILATERAL SUPINE THORACOSCOPIC MAZE PROCEDURE, CARDIOVERSION, CARDIAC MAPPING, OCCLUSION OF LEFT ATRIAL APPENDAGE, CARDIO PULMONARY BYPASS STAND-BY, TRANSESOPHAGEAL ECHOCARDIOGRAM	No, Surgeon/Longoria Assistant1/North	No, only Longoria is listed.	No, Surgeon/Longoria Assistant1/North	No, only Longoria is listed.
06/27/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	FRIBOURG, ALAN	BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	7:20	200	CABG X 3 WITH LEFT INTERNAL MAMMARY ARTERY, ENDOSCOPIC VEIN HARVEST OF RIGHT SAPHENOUS VEIN	Yes, Surgeon is Ingram, Assistant/Danielson, 2nd Assistant is Fribourg and 3rd Assistant is North	No only Ingram is listed	Yes, Surgeon is Ingram, Assistant/Danielson, 2nd Assistant is Fribourg and 3rd Assistant is North	No only Ingram is listed
06/20/2013	LONGORIA, JAMES	DANIELSON, DAREN S.	NORTH, THERESE	MURAWSKI, TOM	[REDACTED]	[REDACTED]	8:25	205	CABG X 2 WITH ENDOSCOPIC VEIN HARVEST RIGHT GREATER SAPHENOUS, AORTIC VALVE REPLACEMENT, LEFT ATRIAL APPENDAGE OCCLUSION, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon is Longoria, Assistant/Danielson 2nd Asist/North	No, only Longoria is listed.	Yes, Surgeon is Longoria, Assistant/Danielson 2nd Asist/North	Yes, Surgeon Longoria, Assistant/Danielson 2nd Asist/Nc

DATE	SURGEON	ASSIST SURG	PA	ANESTHESIOLOGIST	PT NAME	MRN#	OR TIME START	IRATI	PROCEDURE	2nd Surgeon documented in OP report?	2nd Surgeon documented in Anesthesiologists report?	PA documented in OP report	PA documented in Anesthesiologists report?
06/13/2013	LONGORIA, JAMES		NORTH, THERESE	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	7:25	290	THORACOSCOPIC MAZE PROCEDURE, EPICARDIAL MAPPING, CARDIOVERSION, OCCLUSION OF LEFT ATRIAL APPENDAGE, TRANSESOPHAGEAL ECHOCARDIOGRAM	No Surgeon/Longoria, Assistant/North	No Longoria/North	Yes Surgeon is Longoria, Assistant is North no other surgeon is referenced.	No Longoria
06/05/2013	KINCADE, ROBERT	DANIELSON, DAREN S.	NORTH, THERESE	LARSEN, ROBERT	[REDACTED]	[REDACTED]	13:12	208	AVR, CABG X 2 WITH ENDOSCOPIC VEIN HARVEST OF THE RIGHT GREATER SAPHENOUS, ON CARDIO PULMONARY BYPASS, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Danielson 1st Assist/Kincade 2nd Assist/North	Yes, Danielson/Kincade are listed.	Yes	No
05/30/2013	LONGORIA, JAMES	WONG, GRANGER	JONES, MARK	MURAWSKI, TOM	[REDACTED]	[REDACTED]	16:50	138	DEBRIDEMENT OF STERNAL WOUND, STERNAL CLOSURE, STERNAL RECONSTRUCTION WITH PECTORALIS MUSCLE FLAP, PLACEMENT OF INCISION MANAGEMENT SYSTEM	No Op report	No Anesthesiologist report	This procedure may not apply.	
05/23/2013	KINCADE, ROBERT			BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	14:10	68	EMERGENT ANTERIOR LEFT MINI THORACOTOMY, CONTROL OF POST OP BLEEDING	No, surgeon Kincade Assistant "None"	No, Only Kincade is listed	"None" is referenced	No, Only Kincade listed
05/16/2013	LONGORIA, JAMES	KINCADE, ROBERT	JONES, MARK	BOUDREAUX, CHARLES	[REDACTED]	[REDACTED]	14:20	183	AORTIC VALVE REPLACEMENT, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Longoria 1st Assist/Kincade 2nd Assist/Jones	Yes, Surgeon/Longoria 1st Assist/Kincade 2nd Assist/Jones		Yes, Surgeon/Longoria 1st Assist/Kincade 2nd Assist/Jones
05/10/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	DAVIS, CHRIS	SIMON, NATHANIEL	[REDACTED]	[REDACTED]	7:23	217	CABG X3 WITH LEFT INTERNAL MAMMARY ARTERY AND ENDOSCOPIC VEIN HARVEST OF RIGHT SAPHENOUS VEIN, LEFT INTERNAL MAMMARY ARTERY AS A FREE GRAFT, TRANSESOPHAGEAL ECHOCARDIOGRAM	Yes, Surgeon/Ingram 1st Assist/Danielson 2nd Assist/Davis	No only Ingram/Davis are listed		Yes Ingram reference to Surgeon.

DATE	SURGEON	ASSIST SURG	PA	ANESTHESIOLOGIST	PT NAME	MRN#	OR TIME START	RAT#	PROCEDURE	2nd Surgeon documented in OP report?	2nd Surgeon documented in Anesthesiologists report?	PA documented in OP report	PA docume: Anesthesiol report
05/03/2013	INGRAM, MICHAEL	DANIELSON, DAREN S.	FRIBOURG, ALAN	BROOKSBY, N. GLEN	[REDACTED]	[REDACTED]	12:15	373	MITRAL VALVE REPLACEMENT, LEFT ATRIAL APPENDECTOMY, PULMONARY VEIN ISOLATION, MAZE PROCEDURE ON CARDIO PULMONARY BYPASS, AORTIC VALVE AND ASCENDING AORTA REPLACEMENT	Yes, Danielson	Yes, Danielson	Yes, Fribourg	Yes, Fribourg

EXHIBIT 16
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

SUTTER HEALTH SACRAMENTO SIERRA REGION

**REGIONAL MEDICAL DIRECTOR AGREEMENT
CARDIOVASCULAR SERVICE LINE**

Sutter Medical Foundation

This Medical Director Agreement (this "Agreement") is entered into as of **May 1, 2014, or the date last signed by the parties, whichever is later** (the "Effective Date") by and between **Sutter Health Sacramento Sierra Region**, a California nonprofit public benefit corporation ("SSR") and **Sutter Medical Foundation**, a California nonprofit public benefit corporation ("Foundation").

RECITALS

A. SSR operates acute care general hospitals located in Sacramento, Davis, Vallejo, Auburn, Jackson and Roseville, California (each a "Hospital" and collectively the "Hospitals"). In conjunction therewith, SSR maintains a cardiovascular service line (the "Service"). SSR is in need of an experienced, qualified physician to serve as the regional medical director of the Service (the "Medical Director").

B. Foundation owns and operates a multi-specialty clinic that is exempt from clinic licensure under California Health & Safety Code Section 1206(I). Foundation has entered into a Professional Services Agreement with **Sutter Medical Group**, A California Corporation ("Group"), whereby Foundation retains the services of physicians employed by Group.

C. Group employs **David K. Roberts, III, M.D.**, ("Physician") who is a physician duly licensed to practice medicine in the State of California and qualified in the specialty of cardiovascular medicine and interventional cardiology (the "Specialty").

D. SSR wishes to contract with Foundation to provide Physician to serve as medical director of the Service, and Foundation wishes to so contract with SSR.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF FOUNDATION, PHYSICIAN AND GROUP

During the term of this Agreement, Foundation shall perform and comply with, or, as applicable, cause Physician and/or Group to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Services.** Physician shall serve as medical director of the Service, shall be responsible for the overall supervision of the Service and shall perform the specific duties

and responsibilities set forth in **Exhibit I.a.** attached hereto. The services provided under this Agreement shall be limited to administrative and teaching services provided to SSR and shall not include any professional services to patients or any other services.

b. **Coordination of Services.** SSR, through its Chief Medical Officer (the "Administrator"), and Physician shall coordinate their activities in connection with the Service, and Physician shall inform the Administrator of any extended periods (i.e., one [1] week or more) during which Physician will be unavailable due to vacation, professional meetings, or other personal or professional commitments. If requested by SSR, Foundation shall engage and provide a substitute medical director ("Substitute Physician"), approved in writing by SSR, to perform the services required of Physician under this Agreement during all periods of Physician's unavailability. Foundation shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform all duties of Physician under this Agreement. It is expressly understood that all rights, duties and responsibilities of Physician in this Agreement shall also apply to Substitute Physician.

c. **Time Requirements.** Physician shall devote an **average of one hundred twenty-one (121) hours per month** performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, however, the monthly compensation paid to Foundation shall be capped as provided in Section 3.a. (Monthly Payments) of this Agreement, regardless of the number of hours expended by Physician above three hundred sixty-three (363) hours in any given quarter.

d. **Time Reports.** Physician shall contemporaneously record the hours and actual services provided on a monthly basis using SSR's electronic time reporting system for administrative services ("Time Report"), as modified from time to time by SSR. Physician or Foundation shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within five (5) days after the end of each calendar month, or as otherwise requested by Accounts Payable during the term of this Agreement, to allow for SSR's verification of services. SSR shall have no obligation to pay Foundation for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of SSR, Physician and Foundation shall from time to time complete and execute such other time reports or allocation statements on forms provided by SSR as may be required to comply with applicable Medicare and other legal requirements.

e. **Professional Qualifications.** Physician shall at all times:

- (1) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice in the Specialty;
- (2) Be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;

(3) Be a member in good standing of Sutter Medical Center Sacramento's ("SMCS") Medical Staff; and

(4) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

f. **Representations and Warranties.** Foundation represents and warrants to SSR that:

(1) Foundation, Physician and Group are each not bound by any agreement or arrangement that would preclude Foundation from entering into, or Foundation, Physician and/or Group from fully performing the services required under, this Agreement;

(2) Physician's license to practice medicine in the State of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(3) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(4) Physician has never been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and

(5) Foundation has no information that would reasonably indicate that Physician is not able to perform the services required under this Agreement.

g. **Notice of Failure to Meet Professional Qualifications.** Foundation shall promptly notify SSR of any event causing or likely to cause a failure by Physician to meet the requirements set forth in Section 1.e. (Professional Qualifications) and Section 1.f. (Representations and Warranties) hereof, and any of the following:

(1) Any investigation of Physician or disciplinary proceeding against Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(2) Any malpractice action against Physician or other action against Physician in connection with Physician's administrative or professional services;

(3) Any investigation of Physician or disciplinary action against Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by Physician; or

(4) Any other material breach of the terms of this Agreement.

h. **Working Cooperatively with Others.** Physician shall at all times work cooperatively with others toward enhancing the quality of patient care. Physician shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

i. **Compliance with Rules and Laws.** Physician and, to the extent applicable, Foundation and Group shall at all times comply with all policies, bylaws, rules and regulations of SSR and Hospital's Medical Staff, applicable standards and recommendations of The Joint Commission, and all applicable federal, state and local laws, rules and regulations.

j. **Compliance Program.** Foundation and Physician shall comply with SSR's corporate compliance program. Foundation and Physician shall cooperate with any corporate compliance audits, reviews and investigations that relate to Foundation and/or Physician and/or any of the services provided by Foundation and Physician under this Agreement. Subject to request by SSR, such cooperation shall include without limitation the provision of any and all documents and/or information related to Foundation or Physician, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by SSR, Foundation and Physician shall participate in corporate compliance-related seminars and educational programs sponsored by SSR.

k. **System-wide Clinical Integration.** Physician shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by SSR.

l. **Insurance.** Foundation shall maintain, or shall ensure that Group and/or Physician (and any Substitute Physician) shall maintain, for Group and Physician professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to SSR. Such insurance shall cover Foundation's and Physician's obligations (as set forth in detail in Exhibit 7.d. of this Agreement) concerning the Protected Health Information received from, or created by Foundation and Physician on behalf of SSR pursuant to this Agreement. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Foundation shall also acquire, or shall ensure that Group and/or Physician shall acquire, "prior acts" or "tail" coverage (as applicable) in the above amounts for a period of five (5) years, covering all periods that this Agreement is or has been in force. Foundation shall provide SSR with written evidence of such insurance upon SSR's request.

m. **Use of SSR Facilities.** Any facilities, equipment, supplies, or personnel provided by SSR shall be used by Foundation and Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. This Agreement shall not be construed as a lease to Foundation or Physician of any portion of

SSR's facilities. No part of SSR's premises shall be used at any time by Foundation or Physician for its own purposes or as an office for the general practice of medicine.

n. **Expert Witness Conflict of Interest.** Neither Foundation, Group nor Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of SSR or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of SSR or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Foundation, Group and/or Physician from testifying as a factual witness in an action in which both Physician and SSR or Foundation, Group and/or SSR (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of SSR or such other hospital or health care facility) are defendants.

o. **Nondiscrimination.** Foundation and Physician shall both provide services under this Agreement without regard to any person's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law.

p. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for SSR. This Agreement is not intended to influence Foundation's or Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or in any way restrict Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF SSR

During the term of this Agreement, SSR shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

a. **Equipment, Supplies, Etc.** SSR shall provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Service. The parties acknowledge and agree that the Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of SSR, after consultation with the Physician when reasonably possible. Foundation acknowledges and agrees that if Foundation or Physician allege any breach by SSR of this Section 2.a., Foundation's sole and exclusive remedy shall be termination of this Agreement.

b. **Insurance for Administrative Services.** With respect to administrative services provided under this Agreement, Physician shall be included in SSR's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to Physician's administrative services and not to professional services provided to Physician's patients.

c. **Responsibility for Services.** To the extent required by applicable laws and regulations, SSR shall retain professional and administrative responsibility for the services rendered to patients in the Service.

d. **Performance Assessment.** SSR shall assess Physician's performance annually and from time to time as otherwise deemed appropriate or necessary, using the form attached hereto as **Exhibit 2.d**, as modified by SSR from time to time.

3. **COMPENSATION AND EXPENSES**

a. **Monthly Payments.** For all services rendered by Foundation and Physician under this Agreement, SSR shall pay Foundation **Two Hundred Seventy Dollars (\$270) per hour** for actual hours worked and documented pursuant to Section 1.d. (Time Reports), **up to a maximum of Thirty-Two Thousand Six Hundred Seventy Dollars (\$32,670) per month.** Compensation shall be payable monthly within fifteen (15) days after the Administrator receives completed and signed Time Reports for the applicable month.

b. **Expenses.**

(1) **Expense Reimbursement Maximum.** SSR shall reimburse Foundation, or at its election pay directly, **up to a maximum of Three Thousand Dollars (\$3,000) per contract year** for seminar, conference, travel and other expenses that (i) are approved in advance in accordance with SSR policy and at SSR's sole discretion, and (ii) are incurred for the benefit of SSR and are reasonable and ordinary and necessary business expenses directly and substantially related to Physician's job duties. Such reimbursement shall be conditioned upon the submission of the request for reimbursement, and receipts therefore, to the Administrator or his/her designee within five (5) days after the end of each calendar month, or as otherwise requested by SSR/Accounts Payable during the term of this Agreement, to allow for SSR's verification of expenses.

(2) **Expense Documentation.** Physician and Foundation shall properly document all reasonable and necessary business expenses incurred by Physician and Foundation in the discharge of Physician's duties under this Agreement, in order to be eligible for expense reimbursement at SSR's sole discretion. Proper documentation will not guarantee reimbursement.

c. **No Billing of Patients.** Physician's provision of professional services to patients is not covered by this Agreement, and Foundation, Physician and/or Group shall not bill or assert any claim for payment against any patient or payor for services performed by Physician under this Agreement. Foundation, Physician and Group shall be solely responsible for billing for professional services provided to their patients.

4. **TERM**

a. **Term.** The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by SSR.** SSR may terminate this Agreement immediately by written notice to Foundation upon the occurrence of any of the following events:

(a) the death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to SSR);

(b) Physician uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of SSR's drug-free workplace rules;

(c) the occurrence of an event causing or likely to cause a failure by Physician to meet the professional qualification requirements in Section 1.e. (Professional Qualifications) hereof;

(d) the inaccuracy of any representation of Foundation in Section 1.f. (Representations and Warranties) hereof;

(e) Foundation's, Group's or Physician's failure to obtain or maintain professional liability insurance for Physician as required in Section 1.i. (Insurance), or SSR's inability to maintain insurance for Physician's administrative services as specified in Section 2.b. (Insurance for Administrative Services);

(f) failure of Physician to comply with Section 1.h. (Working Cooperatively with Others);

(g) Foundation's, Group's or Physician's unauthorized disclosure of Patient Information or SSR Information as defined in Section 7 (Confidentiality and Intellectual Property);

(h) violation by Physician of other SSR policies requiring immediate termination of Physician; or

(i) closure of the Service or sale or closure of the Hospital(s) at which the Service is located.

(2) **Material Breach.** Subject to the immediate termination rights of SSR set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Physician to deliver Time Reports in a timely manner; (ii) failure to satisfy the time requirements set forth in Section 1.c. (Time Requirements) hereof; (iii) failure to satisfy the requirements of Section 7 (Confidentiality and Intellectual Property); or (iv) any act or omission by Physician that jeopardizes the quality of care provided to SSR's patients.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of SSR, loss of its tax-exempt status under state or federal law or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(4) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon ninety (90) days' written notice to the other party.

(5) **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon the written concurrence of the parties.

c. **Effect of Expiration or Termination.**

(1) **Termination of Obligations.** Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(2) **Pre-Termination Services.** SSR shall pay Foundation any unpaid amount due for services rendered prior to the termination date.

(3) **Liability for Breach.** With the exception of a termination pursuant to Section 2.a. (Equipment, Supplies, Etc.), a termination by either party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(4) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of SSR, Physician shall immediately vacate SSR premises and remove any and all of Physician's personal property. Any personal property that is not so removed may be removed by SSR at Foundation's expense.

(5) **Survival.** The provisions of Sections 1.d. (Time Reports), 1.j. (Compliance Program), 1.i. (Insurance), 2.b. (Insurance for Administrative Services), 4.c. (Effect of Expiration or Termination), 4.d. (No Procedural Rights), 4.e. (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality and Intellectual Property), 8 (Indemnity), 9 (Dispute Resolution), 10 (Notices) and 11 (General Provisions) shall survive termination of this Agreement.

d. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership at any Hospital. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the SSR's Board of Directors, a committee of the Medical Staff, or any other body. Foundation represents and warrants that Physician and all other physicians providing services on behalf of Physician are aware of and accept this condition.

e. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Physician prior to the first anniversary of the Effective Date of this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP

In performing the services described in this Agreement, Physician, Foundation and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of SSR for any purpose whatsoever. SSR shall neither have nor exercise any control or direction over the methods by which Physician shall perform the services required under this Agreement. The sole interest and responsibility of SSR is to assure that such services are performed in a competent, efficient and satisfactory

manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physician, and Foundation, Physician and Group shall have no claim under this Agreement or otherwise against SSR for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Foundation agrees that it shall ensure that Group does the following: withhold FICA (Social Security) from payments to Physician; make state or federal unemployment insurance contributions on Physician's behalf; withhold state and federal income tax from payments to Physician; make disability insurance contributions on behalf of Physician; and obtain workers' compensation insurance on behalf of Physician. Foundation, Physician and/or Group, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold SSR harmless from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by SSR to Foundation under this Agreement and the compensation payable by Foundation to Group or any other physician employed or engaged by Foundation or Group.

6. ACCESS TO BOOKS AND RECORDS

a. Access. Foundation shall ensure Group maintains and makes available all necessary written agreements, books, documents and records in order to assure that SSR and each Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to said Section 1861(v)(1)(I), Foundation agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of services under this Agreement, Foundation shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

(2) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period, such subcontract shall contain, and Foundation shall enforce, a clause to the same effect as subparagraph (1) immediately above.

b. Limits. The availability of Foundation's Agreement, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

a. **SSR Information.** Foundation recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to SSR hereunder, Physician, Foundation and Group may have access to certain information of SSR that is confidential and constitutes valuable, special and unique property of SSR ("SSR Information"). Physician, Foundation and/or Group will at no time disclose to others, use, copy or permit to be copied, without SSR's express prior written consent, except pursuant to Physician's duties hereunder, any confidential or proprietary information of SSR. Confidential or proprietary information shall include, but not be limited to, information that concerns SSR's patients, costs, prices and treatment methods at any time used, developed or made by SSR, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Foundation's, Physician's or Group's legal counsel, accountant or financial advisors, Foundation, Physician and/or Group shall not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by SSR. Physician and Group's legal counsel, accountants, and financial advisors shall not be associated or affiliated with SSR or any of its affiliates.

c. **Patient Information.** Physician, Foundation and/or Group shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by SSR in writing, any patient or medical record information regarding SSR patients ("Patient Information"), and Physician, Foundation and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of SSR and SMCS's Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

a. **Business Associate Requirements.** By signing and/or acknowledging this Agreement, the parties and Physician hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"). The parties and Physician also agree to comply with the requirements set forth in Exhibit 7.d. ("Business Associate Requirements") attached to this Agreement and incorporated herein by reference.

b. **Remedy.** Unauthorized disclosure of Patient Information or SSR Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, SSR shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this

Agreement upon written notice to Foundation. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

c. **Intellectual Property Ownership and Assignment.** SSR shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Physician, Group or Foundation, or to which Physician, Group or Foundation is given access by SSR in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Physician, Group or Foundation either solely or jointly with SSR (collectively "Intellectual Property"). Physician, Group and/or Foundation shall have no interest in such Intellectual Property. Accordingly, Group, Physician and Foundation hereby assign to SSR all of Physician's, Group's and/or Foundation's right, title and interest in and to the Intellectual Property. Physician, Group and Foundation further acknowledge their obligation to assist SSR or its designee, at its expense, in every proper way to secure SSR's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to SSR or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to SSR or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit SSR's sole and exclusive intellectual property rights in and to its own data provided to Physician, Group or Foundation during the course of this Agreement.

8. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, officers, employees or agents.

Additionally, each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party or any of its officers, directors, agents, Subcontractors or employees, of its obligations under the Agreement with respect to PHI.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Foundation (including Group and Physician) and SSR arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Streamlined Arbitration Rules and Procedures of JAMS, which service shall be selected by SSR at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 10 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require SSR or any Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the

arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by SSR and Foundation, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

f. **Venue.** Venue for the arbitration shall be the county in which the contract was executed or the County of Sacramento.

10. NOTICES

All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W9 tax form to SSR. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection. Except for notification regarding termination, initiation of a dispute resolution process, indemnification obligations or breach of or failure to comply with any provision of this Agreement, written notification shall be sufficient if sent via email (together with acknowledgment of receipt) or by facsimile (together with proof of transmission) provided that the email addresses or facsimile numbers for the parties are provided below. Email addresses and facsimile numbers may be changed by either party from time to time if notification of such change is delivered in compliance with this Section.

If to SSR:	Sutter Health Sacramento Sierra Region 2700 Gateway Oaks, 2 nd Floor Sacramento, CA 95833 Attn: John Mesic, M.D., Chief Medical Officer
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If to Foundation:	Sutter Medical Foundation 2700 Gateway Oaks, Suite 1200 Sacramento, CA 95833 Attn: Thomas Blinn, Chief Executive Officer
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Copies of all notices shall be sent to: Sutter Health Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.
VP and Regional Counsel

11. GENERAL PROVISIONS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein and any Statements of Work between the parties that refer to this Agreement, are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law (including California Civil Code Section 1654 or any other similar applicable federal or state law or statute) or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

d. **Severability.** Except as provided in Section 4.b.(3) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the Term and Termination provisions of this Agreement.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If SSR gives written consent for Foundation to assign or subcontract any of its services to a third party, Foundation agrees to (i) identify the subcontracting physician and the services provided by that physician on all Time Reports submitted to SSR, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation and Expenses). Notwithstanding the foregoing, SSR may assign its rights and obligations under this Agreement to another Sutter Health affiliate without the other party's consent.

f. **No Third Party Rights.** Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

g. **Governing Law.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the State of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

h. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

i. **Other Service Agreements.** SSR represents that its TractManager databases include copies of all other agreements under which Foundation, Group, any Group physician (or any immediate family member of Group physician), provides services to SSR.

j. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement.

k. **Excess Payment.** If SSR makes a payment or payments to Foundation in excess of the amount(s) due and payable under this Agreement (the "Excess Payment"), SSR may offset the Excess Payment from future payments owed to Foundation under this Agreement, any other existing agreement between the parties, or any future agreement entered into between the parties. In the event that there are no future payments owed under this Agreement or other existing agreements between the parties, or that future payments are not sufficient to cover the Excess Payment, SSR may seek repayment of the Excess Payment or the remaining Excess Payment from Foundation and Foundation shall repay within ninety (90) days.

l. **No Referrals/Non-Exclusivity.** Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party.

m. **Tax Reporting.** To ensure proper tax reporting of the compensation paid under this Agreement, Foundation shall complete, execute and deliver to SSR an IRS Form W 9 and California Form FTB-590 (if requested by SSR) which sets forth the correct taxpayer identification number for Foundation. To the extent required by law,

SSR shall report all payments to Foundation on IRS form 1099 and its state law counterpart.

n. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

o. **Execution.** By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

SSR:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION**

Date: 4-28-14

By: 

Name: John Mesic, M.D.

Title: Chief Medical Officer

FOUNDATION:

SUTTER MEDICAL FOUNDATION

Date: _____

By: _____

Name: Thomas Blinn

Title: Chief Medical Officer

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

By: _____

Name: David K. Roberts, III, M.D.

SSR shall report all payments to Foundation on IRS form 1099 and its state law counterpart.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

SSR:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION**

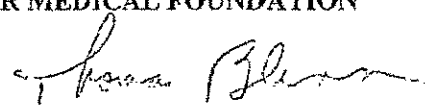
Date: _____

By: _____
Name: John Mesic, M.D.
Title: Chief Medical Officer

FOUNDATION:

SUTTER MEDICAL FOUNDATION

Date: 4/18/14

By: 
Name: Thomas Blinn
Title: Chief Medical Officer

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

By: _____
Name: David K. Roberts, III, M.D.

SSR shall report all payments to Foundation on IRS form 1099 and its state law counterpart.

n. Counterparts. This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

o. Execution. By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

SSR:

SUTTER HEALTH SACRAMENTO
SIERRA REGION

Date: _____

By: _____
Name: John Mesic, M.D.
Title: Chief Medical Officer

FOUNDATION:

SUTTER MEDICAL FOUNDATION

Date: _____

By: _____
Name: Thomas Blinn
Title: Chief Medical Officer

PHYSICIAN ACKNOWLEDGMENT

The undersigned Physician hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

By:  _____
Name: David K. Roberts, III, M.D.

GROUP ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of a copy of this Agreement on behalf of Group, and agrees that Group shall carry out the duties of Group as set forth in this Agreement and shall cause Physician to carry out the duties of medical director as set forth in this Agreement.

Sutter Medical Group, A California
Corporation

By: 

Name: Christine Griger, M.D.

Title: President and CEO

EXHIBIT 1.a.

PHYSICIAN DUTIES AND RESPONSIBILITIES

Physician shall be responsible to perform the administrative services set forth below. The administrative services set forth below shall be the only duties to be performed by Physician, regardless of whether the time reporting form attached to this Agreement or included in the "Terms" (or other electronic time reporting module) contains additional categories.

Physician shall not report any time performing administrative services on his/her Time Report that are related to the care of his/her own patients, including supervision, training and education and/or charting or chart review.

- a. Quality, Program and Service Line growth and development.
- b. Service and physician deployment.
- c. Integration, and reducing unnecessary clinical variation.
- d. Work with the service line steering committee, Service Line Executive, SSR CEO's, Sutter Medical Group President and designees, and Medical Staffs to drive quality and service line development initiatives across the region.
- e. Work in a "Paired Leadership" capacity with the Service Line Executive to build and manage the activities and resources of assigned departments within the overall activities of SSR. The paired leadership team will be accountable for the program growth stemming from all counties within the region and the 27 county catchment area. This will entail working closely with the regional support staff, physicians, Chief Nurse Executives, Chief of Staff and Vice Presidents of Medical Affairs and the local hospital, foundation and physician leadership in the target areas.
- f. He/she will also ensure coordinated and harmonious working relationships within and among assigned department, other hospital departments, Sutter Medical Foundation, other SSR hospitals, medical staffs and the public.
- g. A key function will be to make certain that activities and the regional strategy re integrated within SSR resources (both ambulatory and acute).
- h. Recommend to the Regional Performance Committee (RPC) the Regional strategy for quality, growth, technology, recruitment, and strategic position within the community.
- i. Develops metrics and a dashboard to measure each of the pillars and takes corrective actions when required.

Other Duties:

A. Clinical Care – SMCS/Sutter Memorial Campus

1. Overall supervision of medical standards provided within the Service Line.
2. Insure that all services are adequately covered by clinicians with appropriate clinical privileges.
3. May intervene in the care of a patient to assure patient safety and document issues for Medical Staff peer review.

B. Medical Staff Interface (Department of Cardiovascular Medicine)

1. Provide continuity in department initiatives.
2. Assists department chair in communicating medical staff priorities and objectives to Hospital administration and staff.
3. Communicates Hospital priorities and objectives to the department chair.
4. Obtains department chair's input related to the service and strategic planning initiatives.
5. Serves as a standing member of department administrative and quality improvement committees.
 - a. Provides reports and recommendations for committee action, and provides continuity within the departments.
6. Provides continuity in the assessment of quality
7. Serves as the Chair of the Cardiac Service Line Committee and participates in monthly service line meetings conducted by the Business Development Director
8. Assists department chair in investigations to support clinical privileging decisions or disciplinary actions.

C. Quality Initiatives, Clinical Effectiveness, Outcomes

1. Determine priorities for clinical paths and facilitates development within Service Line.
2. Participates in implementation.
3. Evaluates compliance and shares outcome results with medical staff.
4. Works with Hospital Directors to maintain quality and safety within the department including compliance to CORE Measure requirements, STS and ACC documentation requirements.

D. Regulatory Compliance

1. Communicates to staff, Joint Commission, Title 22 and other regulatory requirements.
2. Provides guidance to service line and medical staff so as to maintain accreditation.

E. Managed Care

1. Identifies to administration and physician groups issues and priorities for managed care contracting.
2. Develops relationships with medical directors of major IPAs and payers.
3. Supports contract negotiations as requested.
4. Coordinate contracting efforts between service line and medical groups as needed.

F. Service Supervision

1. Participate in the recruiting, evaluation and retention of key service line employees.
2. Develops a direct reporting relationship with all Medical Directors within the service line to include:
 - a. performance evaluation
 - b. contract negotiations/renewals
 - c. communication of individual service needs and priorities to administration
 - d. communication of administration's priorities and objectives to medical directors
 - e. ensure appropriate participation of medical directors in service line activities

G. Budgeting

1. Participate in the development of all service line budgets
2. Directly prepare and manage budgets for areas with direct management responsibilities
3. Assist medical staff in preparing financial analyses for capital equipment requests

H. Strategic Planning, Marketing and Program Development

1. Coordinate strategic planning activities within the service line
2. Insure full participation of key service line staff, medical directors and physicians
3. Work with service line administrator and Director of Women's and Children's operations to develop and monitor business plan
4. Lead new program development initiatives

I. Facilities Planning and Development

1. Recommend space and other resources needed by service line
2. Assist in space and facility planning for service line

J. Education and Training

1. Advise and participate in outreach educational activities provided by the service line
2. Monitor the quality and cost-effectiveness of education provided.
3. Ensure appropriate supervision and evaluation of resident physicians rotating through clinical areas within the service line
4. Coordinate continuing medical education activities provided by the service line

K. Regional Responsibilities

1. Provide assistance to medical staffs at other facilities and within the Sacramento Sierra Region as requested, including the identification of appropriate specialists to review care or personally participating in peer review
2. Work to extend clinical path initiatives throughout the Region
3. Participate in short and long-range regional strategic and business planning initiatives
4. Assist in coordinating the delivery of clinical services under this service line throughout the Region

L. Community Benefit Activities

1. Assist in the prioritization of community activities supported by the service line
2. Participate on key organizational boards and committees as appropriate to advance the mission and status of the service line or to improve the well being of its patients.

EXHIBIT 2.d.

PERFORMANCE ASSESSMENT

[Form Attached]

PHYSICIAN ADMINISTRATIVE SERVICES ANNUAL PERFORMANCE ASSESSMENT

Based on Duties/Responsibilities/Services Set forth in Physician's Written Agreement

Name of Physician: _____ Position Title: _____ Department: _____

Performance Expectation/Measure (As applicable, developing, maintaining, obtaining, assisting in, etc.)	Met/Exceeded Expectations	Did not Meet Expectations	N/A	Comments
Licensure/Accreditation				
Policies/Procedures				
Personnel, Supervision & Training/Education				
Budgets & Planning				
Quality Improvement/Assessment				
Compliance				
Communication (Outreach, Education)				
Strategic Initiatives				
Other: _____				

Key Accomplishments During Review Period	Comments

Action Plans*	Target Date	Responsible Person(s)	Comments

*If an action plan requires changes/additions to duties of the Physician, be sure to contact the OGC Contract Service Team to include in the contract renewal.

Signature of Physician: _____ Date: _____

Signature of Administrator: _____ Date: _____

Name and Title of Administrator: _____

EXHIBIT 7.d.

BUSINESS ASSOCIATE REQUIREMENTS

SSR and Foundation understand and agree that in providing the administrative services set forth in this Agreement, Foundation and Physician are each acting as a Business Associate of SSR (who shall be referred to in this Exhibit as the "Covered Entity").

The parties desire to comply with federal and California laws regarding the Use and Disclosure of individually identifiable health information, in particular with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under these laws.

Now therefore, in consideration of the promises set forth herein, the parties agree as follows:

1. **Definitions.** The parties agree that any capitalized terms shall have the same definition as given to them under HIPAA and HITECH and regulations promulgated under these laws.
2. **Protected Health Information.** Business Associate agrees that it shall keep confidential all Individually Identifiable Health Information protected under California and federal law, including, but not limited to, Protected Health Information that Business Associate receives from Covered Entity, or creates or receives on behalf of Covered Entity (hereafter "PHI"). Such PHI shall be and remain the property of Covered Entity.
3. **Obligations of Business Associate.** Business Associate shall limit its Use and Disclosure of PHI only as necessary and appropriate to fulfill its specific obligations to Covered Entity, and agrees to the following, without limiting the foregoing:
 - (a) **Use of Protected Health Information ("PHI"):** Business Associate agrees that it, and its agents, employees and Subcontractors, shall not Access, Use or Disclose PHI other than as permitted or required by the Agreement or as required by law.
 - (b) **Safeguards:** Business Associate shall comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement. Additionally, Business Associate will comply with the following specific requirement relevant to Subpart C of 45 CFR Part 164 ("Security Rule"):
 - i. Business Associate will securely sanitize all media containing Covered Entity's PHI (i.e., make the PHI unreadable or unusable through encryption or physical destruction) prior to disposal or re-use.
 - (c) **Reporting:** Business Associate shall report to the Privacy Officer of Covered Entity any Use or Disclosure of protected health information not provided for by the

Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR § 164.410 within forty-eight (48) hours of Discovery. Reports shall include, to the extent possible: A description of what happened, including the date of the discovery; the types of PHI that were involved; any steps individuals should take to protect themselves from potential harm; and what Business Associate is doing to investigate, mitigate, and protect against further unauthorized Disclosures or Breaches. Business Associate shall also promptly report in electronic form to the Security Officer of Covered Entity any Security Incident relating to Electronic PHI of which Business Associate becomes aware, except that no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, such as "pings" on a firewall. Reports required under section shall be made to the following individuals, as applicable:

Sutter Health, Chief Privacy Officer
2200 River Plaza Drive, 3rd Fl E
Sacramento, CA 95833
Ph: (916) 286-6587

Sutter Health, Chief Information Security Officer
3707 Schriever Avenue
Mather, CA 95655
Ph: (916) 454-8975

(d) Workforce, Agents and Subcontractors: Business Associate shall not disclose PHI to any member of its Workforce, or to any of its agents or Subcontractors, unless such Disclosure is necessary for Business Associate to fulfill the terms of the Agreement. Business Associate shall also ensure that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information in accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(1). Business Associate shall not disclose PHI, nor allow an agent or Subcontractor to Disclose PHI, outside of the United States of America without the express written consent of Covered Entity.

(e) Access to PHI: Upon the request by Covered Entity, Business Associate shall promptly provide PHI to Covered Entity within five (5) days to permit any individual whose PHI is maintained by Business Associate to have Access to and to copy his/her PHI in accordance with 45 CFR § 164.524, and applicable California law. Such PHI shall be produced in the format requested by Covered Entity, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. If an individual contacts Business Associate directly for such Access, Business Associate shall direct the individual to contact the Covered Entity. This requirement to provide Access to the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(f) Amendment of PHI: Upon the request of Covered Entity, Business Associate shall amend PHI and/or make PHI available to Covered Entity within five (5) business days for amendment, in such manner as Covered Entity may from time to time request, in accordance with 45-CFR § 164.526 and applicable California law. If an individual contacts Business Associate directly to amend PHI, Business Associate shall direct the individual to contact the Covered Entity. This requirement to amend the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(g) Accounting of Disclosures of PHI: Upon the request of Covered Entity, Business Associate shall provide to Covered Entity within five (5) business days an accounting of all Disclosures of PHI in order for Covered Entity to comply with 45 CFR § 164.528. Business Associate shall provide the date of the Disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the Disclosure. If an individual contacts Business Associate directly for such an accounting, Business Associate shall direct the individual to contact the Covered Entity.

(h) Minimum Necessary: Business Associate and its agents or Subcontractors shall request from Covered Entity and so Use and disclose only the Minimum Necessary PHI necessary to accomplish the purpose of the request, Use, or Disclosure. In all cases, Business Associate agrees to comply with guidance issued from time to time by the Secretary of Health and Human Services regarding Minimum Necessary.

(i) Prohibition on Sale of PHI: Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI.

(j) Audits, Investigations Inspections: Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created by the Business Associate on behalf of, the Covered Entity available to the Secretary of the United States Department of Health and Human Services ("Secretary"), or the Secretary's designee, for purposes of determining the Covered Entity's and/or Business Associate's compliance with the applicable laws and regulations. Business Associate shall cooperate with Covered Entity related to government or regulatory investigations, including making Business Associate's information relating to the Use and Disclosure of PHI available to Covered Entity.

(k) Mitigation Procedures: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI in violation of this Agreement.

(l) Legal Process: In the event that Business Associate is served with legal process (e.g., a subpoena) or request from a government agency (e.g., the Secretary) that potentially could require the Disclosure of PHI, Business Associate shall provide prompt notice of such legal process to the Privacy Officer of Covered Entity. In addition,

Business Associate shall not disclose the PHI without the express written consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a request by a governmental regulatory agency under its statutory or regulatory authority.

4. **Permitted Uses and Disclosures by Business Associate.**

(a) **Management and Administration.** Business Associate and its respective agents, employees and Subcontractors are authorized to Use or disclose PHI for Business Associate's own proper management and administration, and to fulfill any of Business Associate's legal responsibilities; provided, however, that the Disclosures are required by law or Business Associate has received from any third-party recipient of PHI written assurances that (i) the PHI will be held confidentially and Used or further disclosed only as required by law or for the purposes for which it was disclosed to the third-party, and (ii) the third-party will notify Business Associate of any instances of which the third-party becomes aware that the confidentiality of the PHI has been breached.

5. **Obligations of Covered Entity.**

(a) **Authorizations:** Covered Entity shall obtain from individuals any applicable consents, authorizations and other permissions necessary or required by law for Covered Entity and Business Associate to fulfill their obligations under this Agreement.

(b) **Restrictions:** Covered Entity shall notify Business Associate in writing of any unique restrictions in the Use or Disclosure of an individual's PHI that Covered Entity has agreed to that may affect Business Associate's performance of its obligations under this Agreement. Covered Entity must agree to the request of an individual to restrict Disclosure of PHI about the individual to a Health Plan if the Disclosure is for the purpose of carrying out Payment or Health Care Operations and is not otherwise required by law; and the PHI pertains solely to a health care item or service for which the individual, or person other than the Health Plan on behalf of the individual, has paid Covered Entity in full.

(c) **Revocations:** Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an individual relating to the Use or Disclosure of PHI, if such changes or revocation may affect Business Associate's performance obligations under this Agreement.

6. **Procedure Upon Termination of the Agreement.** Upon termination of the Agreement, and unless the Agreement is renewed, Business Associate shall return or destroy, at Covered Entity's option, all PHI that it maintains in any form, and shall retain no copies of PHI, if feasible. Business Associate shall certify to Covered Entity that Business Associate has destroyed and/or returned all PHI, in accordance with Covered Entity's request. If the parties agree that the return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections set forth in this Exhibit to the PHI, and limit further Use of the PHI to those purposes that make the return or destruction of the PHI infeasible. Business Associate

shall notify Covered Entity what PHI Business Associate shall retain. This obligation on Business Associate shall survive any termination of the Agreement.

EXHIBIT 17
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER EAST BAY HOSPITALS dba
ALTA BATES SUMMIT MEDICAL CENTER**
Alta Bates Campus

**PERINATAL AND OBSTETRICAL COVERAGE
AND ADMINISTRATIVE SERVICES AGREEMENT**

This Perinatal and Obstetrical Coverage and Administrative Services Agreement ("Agreement") is effective as of **June 1, 2014, or the date last signed, whichever is later**, (the "Effective Date"), between **Sutter East Bay Hospitals**, a California nonprofit public benefit corporation, doing business as **Alta Bates Summit Medical Center** ("Hospital") and **East Bay Perinatal Medical Associates**, a California general partnership, ("Group").

RECITALS

A. Hospital owns and operates a licensed general acute care hospital in Berkeley, California (the "Alta Bates Campus"). The Alta Bates Campus operates a clinical program of maternal-fetal medicine (providing high-risk obstetrical services) as part of Hospital's comprehensive Women and Infants Service Program (the "Program").

B. The East Bay service area served by Hospital contains a large population of indigent and other underprivileged patients who experience a disproportionately large number of "high risk" pregnancies requiring greater medical expertise and greater coordination among health professionals. An important part of the charitable health care mission of Hospital is to improve access of East Bay residents to high quality women/infant medicine, reduce the morbidity and mortality rates, and improve the quality of care provided to pregnant women and their fetuses and newborns.

C. Group is a general partnership comprised of physicians licensed to practice medicine in the State of California ("Physicians"), who specialize in perinatology ("Perinatologists") and obstetrics and gynecology ("OB Generalists"), and non-physician providers (e.g., certified nurse midwives, nurse practitioners, and other mid-level professionals) also licensed or otherwise authorized to practice in California ("Non-Physician Providers") who specialize in gynecological, obstetrics and perinatology services. Physicians and Non-Physician Providers employed by or contracted with Group are collectively referred to herein as "Practitioners."

D. Pursuant to a separate Medical Director and Professional Services Agreement, Group contracts to provide professional services at Hospital's community clinic known as the Alta Bates Summit Perinatal Center.

E. Hospital is in need of qualified Physicians and Non-Physician Providers to be available on-site and on-call to render professional services to unassigned patients in the Program. Hospital is also in need of Physicians to serve as Medical Director of the Program and a Chief OB Generalist to provide general medical direction

and administrative services to Hospital and the Program. Group is willing to provide Practitioners to be available to provide professional services to patients in the Program and is willing to provide Physicians to serve as Medical Director of the Program and as Chief OB Generalist, as defined in Section 1.3 (Administrative Services).

F. Hospital has had the arrangement described in this Agreement reviewed by an experienced independent health care financial consultant which has determined that the terms of this Agreement are commercially reasonable and the compensation to be provided herein to Group represents fair market value compensation for the services to be provided by Group.

G. Effective as of the Effective Date, this Agreement shall replace, supersede and terminate the Strike & Force Majeure Coverage Agreement between Hospital and Group entered into as of May 1, 2012, as amended and extended.

H. Hospital wishes to contract with Group, and Group wishes to contract with Hospital, to provide a Medical Director to serve as medical director of the Program and a Chief OB Generalist to provide general medical direction and administrative services to Hospital and the Program, and to provide Practitioners to provide coverage services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. GROUP'S SERVICES

During the term of this Agreement, Group shall perform and comply with, or, as applicable, cause Practitioners to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

1.1 Coverage Services. Group agrees to ensure the on-site and on-call availability of Practitioners twenty-four (24) hours per day, seven (7) days per week to provide professional consultations and to render professional services to Unassigned Patients in the Program at the Alta Bates Campus as further specified in this Section. ("Coverage Services"). For the purposes of this Agreement "Unassigned Patients" shall mean any of the following: (i) patients who are indigent; (ii) patients who have had little or no prenatal care; (iii) patients who have received some level of prenatal care at the Alta Bates Summit Perinatal Center; and/or (iv) patients who have received some level of prenatal care by a physician who is unaffiliated with Hospital. At least two (2) weeks prior to the first day of each month, Group shall (i) provide Hospital with the names of Practitioners who will provide Coverage Services that month, along with a schedule of which Practitioners will be present at the Hospital and available each day during that month, and (ii) inform Hospital if Group is unable to meet the Staffing Requirements listed in Section 1.1(a) (Staffing Requirements). To the extent Group is unable to meet the Staffing Requirements listed in Section 1.1(a) (Staffing Requirements), Group shall use best efforts to lump any anticipated missed shifts into a continuous time period such

that Hospital may obtain locum tenens coverage pursuant to Section 1.1(d) (Locum Tenens Coverage).

(a) Staffing Requirements. In order to ensure that there is sufficient on-site and on-call coverage to provide services to Unassigned Patients, Group shall provide the following staffing:

(1) At least two (2) OB Generalists on-site at the Alta Bates Campus at all times, twenty-four (24) hours per day, seven (7) days per week, who meet the requirements and perform the responsibilities set forth in **Exhibit 1.1(a)(1)**;

(2) At least one (1) additional OB Generalist on-site at the Alta Bates Campus for eight (8) hours per day each Monday through Friday and for six (6) hours per day each Saturday and Sunday (whose primary duty shall be to provide rounding on post-partum patients who arrived to the Alta Bates Campus as Unassigned Patients, which should begin, in most circumstances, no later than 8:00 a.m.);

(3) At least one (1) Perinatologist on-site at the Alta Bates Campus for ten (10) hours per day each Monday through Friday and for six (6) hours per day each Saturday and Sunday;

(4) At least one (1) Perinatologist on-call at all times when a Perinatologist is not on-site at the Alta Bates Campus; and

(5) At least one (1) certified nurse midwife on-site at the Alta Bates Campus at all times, twenty-four (24) hours per day, seven (7) days per week.

(6) In the event of a substantial decrease in patient volume, Hospital, through the Administrator, shall have the right, subject to prior written notice to Group, to decrease the Staffing Requirements described in this Section. If the Administrator elects to decrease the Staffing Requirements, the compensation shall also be decreased pursuant to Section 3.1(a)(2) (Monthly Reconciliation of Compensation for Coverage Services).

(b) Anticipated FTEs. The parties anticipate that the Staffing Requirements set forth in Section 1.1(a) above shall require at least 10.86 FTE OB Generalists, 1.74 FTE Perinatologists and 4.7 FTE certified nurse midwives.

(c) Staffing Schedules. The OB Generalists and certified nurse midwives providing on-site Coverage Services shall work twelve (12) hour shifts (7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m.). Both OB Generalists and the certified nurse midwife shall be equally available to provide active coverage of the Labor and Delivery ("L&D") Unit during both shifts, but expressly including the 7:00 p.m. to 7:00 a.m. shift. Group shall submit staffing schedules to the L&D Unit in a timely manner and provide prompt updates or notice of any changes in such schedules to the L&D Unit. Practitioners providing Coverage Services may not have been scheduled for call

coverage, provide professional services or otherwise worked for compensation during the twelve (12) hours prior to the commencement of their shift. In addition, no Physician shall provide any administrative services required under Section 1.3 (Administrative Services) of this Agreement at the same time as providing Coverage Services.

(d) Locum Tenens Coverage. If Group is unable to provide any portion or all of the Coverage Services described in Section 1.1 (Coverage Services), Hospital shall have the right to contract directly with a locum tenens agency or another medical group or non-Group physician for the requisite coverage and Hospital shall be solely responsible for compensating such locum tenens agency or another medical group or non-Group physician. Hospital will document any and all of Group's missed shifts and include such information in the Monthly Reconciliation of Compensation for Coverage Services process described in Section 3.1(a)(2).

(e) Patient Services. While providing the Coverage Services, Group shall ensure that Practitioners provide the following professional services to Unassigned Patients:

(1) *Perinatal and Delivery Services*. Practitioners shall provide perinatal diagnostic and consulting services and delivery services;

(2) *Emergency Obstetrical Care*. Practitioners shall provide emergency obstetrical care (including the care of spontaneous abortion patients) to patients when their regular attending physician has not arrived at the Alta Bates Campus (such care is to be rendered only until the attending physician becomes available and assumes responsibility for care);

(3) *Back-up for Emergencies*. Practitioners shall provide back-up professional services to cover emergencies if all OB Generalists required to be on site under Section 1.1(a) (Staffing Requirements) are unavailable due to high activity;

(4) *ED Care*. Practitioners shall provide obstetrical care to patients who arrive at the Hospital (including presentation in the Alta Bates Campus Emergency Department) with no prior patient/professional relationship with an obstetrician, if Alta Bates Campus Emergency Department personnel make a reasoned determination that (i) the patient is pregnant and the fetus is viable; or (ii) the patient is pregnant but is undergoing a spontaneous abortion, and that the fetus has a gestational age of twelve weeks or less.

a. The following process shall be followed to ensure appropriate triaging of obstetrics and gynecology patients in the Alta Bates Campus Emergency Department: (i) the Alta Bates Campus Emergency Department physician shall first call the obstetrics & gynecology physician on-call for the Alta Bates Campus Emergency Department; (ii) the obstetrics & gynecology physician on-call for the Alta Bates Campus Emergency Department shall then triage the patient and decide who shall assume care, with Group assuming care for patients with incomplete abortions needing

dilatation and curettage and patients with viable pregnancies, and the obstetrics & gynecology physician on-call for the Alta Bates Campus Emergency Department assuming care for patients with ectopic pregnancies and all gynecology cases. If the Group physician cannot perform the dilation and curettage for patients with incomplete abortions, the Group physician will call the obstetrics & gynecology physician on-call for the Alta Bates Campus Emergency and the obstetrics & gynecology physician on-call for the Alta Bates Campus Emergency will assume care of the patient.

(5) Obstetrical Care for Clinic Patients. Obstetrical care (including the care of spontaneous abortion patients) to patients who arrive at the Alta Bates Campus (including patients presenting in the Emergency Department at the Alta Bates Campus) if the presenting patient has a pre-existing Physician-Patient relationship with Alta Bates Summit Perinatal Center, or with any community clinic identified in **Exhibit 1.1(e)(5)**. Notwithstanding the foregoing, Hospital shall not enter into arrangements with new community clinics that would substantially increase Group's responsibilities under this Agreement without first meeting and conferring with Group to determine if additional Coverage Services will be needed due to the substantial increase, with a corresponding increase in compensation.

(f) Perinatal Transport. While providing Coverage Services, Group shall ensure the on-site or on-call availability of at least one (1) Perinatologist to accept and coordinate perinatal transports twenty-four (24) hours per day, seven (7) days a week. Prior to acceptance of any maternal transport the Perinatologist must:

(1) consult with both an OB Generalist who is currently at the Alta Bates Campus and the L&D Charge Nurse, to ensure there is sufficient capacity in the L&D unit and the Newborn Intensive Care Unit; and

(2) confirm the OB Generalist has the skill and availability necessary to care for the maternal transport patient, unless the Perinatologist travels to the Alta Bates Campus to care for the maternal transport patient.

(g) Antenatal Testing. While providing Coverage Services, Group shall ensure the availability of Perinatologists to provide ultrasonography, genetic screening and other antenatal testing services for outpatient referrals.

(h) Antepartum Unit – Coordination of Care. Group shall ensure that for each Unassigned Patient in the Antepartum Unit, a Perinatologist who is providing Coverage Services shall coordinate a twenty-four (24) hour plan of care, including but not limited to (i) daily review and updating of the plan of care for each Unassigned Patient, and (ii) daily communication with the OB Generalists who are providing Coverage Services for that patient and with the Antepartum Unit's Charge Nurse regarding the plan of care for that patient. Hospital may require the Perinatologist providing Coverage Services to be in the Antepartum Unit for the OB Generalist shift change if, in the reasonable opinion of the Hospital's Director of Women and Infant

Services (the "Administrator"), coordination of care between OB Generalist shifts requires the physical presence of the Perinatologist providing Coverage Services.

(i) Specific Communication Responsibilities. The Perinatologist providing Coverage Services, before the end of his or her shift, shall speak with at least one of the OB Generalists providing Coverage Services for a "hand-off communication" to include a discussion of current patient care needs and clinical conditions in the Antepartum Unit and the L&D Unit. After having this conversation, that Perinatologist will have a "hand-off communication" with the incoming Perinatologist either in person or by telephone. A "hand-off communication," per Joint Commission standards, means a real-time process of passing patient-specific information from one caregiver to another or from one team of caregivers to another for the purpose of ensuring patient safety and the continuity of patient care.

(i) Back-Up Services. While providing Coverage Services, Group shall provide the following back-up services:

(1) Nurse Midwife Back-Up. Group shall reasonably cooperate with nurse midwives who are neither Group employees nor Group contractors to facilitate the availability of appropriate supervision and back-up for these nurse midwives, including their private practice patients in accordance with all Hospital medical staff requirements;

(2) Family Practice Back-Up. Group shall reasonably cooperate with those family practice physicians who maintain medical staff privileges at either the Alta Bates or Summit Campuses, but who are not permitted to perform deliveries for their patients without the supervision and back-up of an obstetrician, to facilitate the availability of a covering obstetrician to provide back-up for the family practice physicians in accordance with all Hospital medical staff requirements.

(j) Outreach Clinics. Hospital may desire to establish outreach clinics at other affiliated hospitals. If requested by Hospital, and upon terms mutually agreeable to the parties, Group shall provide a Perinatologist (and/or other appropriate Practitioners) on site at such outreach clinics as appropriate to ensure the development and support of such outreach clinics.

(k) Right to Subcontract. Subject to any other limitations expressly set forth in this Agreement, Group shall have the right, subject to the prior written approval of the Administrator, which shall not be unreasonably withheld, to subcontract with physicians who are not Group employees for the Coverage Services required to be provided by Group under this Agreement so long as: (i) the subcontracted physicians are qualified to perform services required under this Agreement; (ii) a written subcontract is in place; and (iii) the services provided by the subcontracted physicians comply with all provisions of this Agreement. Group shall be solely responsible for compensating such subcontracted physicians for Coverage Services.

1.2 Additional Coverage Services. Upon request of Hospital, and as deemed appropriate by the Administrator, Group shall provide additional Practitioners, beyond the coverage requirements set forth in Section 1.1 (Coverage Services), to be available on-site at the Alta Bates Campus to provide services to Unassigned Patients in the event of a high census, a strike/labor dispute or a force majeure (including, but not limited to, acts of God, acts of war, fire, insurrection, riots, earthquakes, or other acts of nature) ("Additional Coverage Services"). The compensation paid to Group for such Additional Coverage Services shall be paid on a per hour, per Practitioner rate as provided in Section 3.1(c) (Compensation for Additional Coverage Services) of this Agreement. While providing the Additional Coverage Services, Group shall ensure that all Practitioners provide patient services as required under Section 1.1(c) (Patient Services) of this Agreement.

1.3 Administrative Services.

(a) **Services.** Group shall provide a Medical Director and Chief OB Generalist as follows. The services provided by the Medical Director and Chief OB Generalist shall be collectively referred to herein as the "Administrative Services." The Administrative Services shall be limited to administrative and teaching services and shall not include any professional services to patients.

(1) *Medical Director.* Group shall provide **Stuart M. Lovett, M.D.** to serve as medical director of Maternal-Fetal Medicine ("Medical Director"). The Medical Director shall be responsible for carrying out the administrative responsibilities described in **Exhibit 1.3(a)(1)**, attached hereto, shall provide overall management services for the Program in accordance with this Agreement, shall be responsible for overseeing community outreach, education, and support of community clinics, shall be responsible for overseeing Group's performance under this Agreement, and shall have such other responsibilities as are set forth in this Agreement. To the extent allowed by law, the Medical Director shall be accountable to the Chief Medical Executive of Hospital (the "CME") or his or her designee.

(2) *Chief OB Generalist.* Medical Director, with the consent of the Administrator, shall appoint a Chief Obstetrical ("OB") Generalist. The Chief OB Generalist shall oversee the daily operations of the OB Generalists and the OB Generalists' performance under this Agreement. The Chief OB Generalist shall be responsible for carrying out the administrative responsibilities described in **Exhibit 1.3(a)(2)** attached hereto and be qualified pursuant to the job description for OB Generalists as described in **Exhibit 1.1(a)(1)**.

(b) **Time Requirements.** Medical Director, together with the Chief OB Generalist and other Group physicians performing Administrative Services responsibilities to the extent permitted under this Agreement, shall collectively devote a **maximum of one hundred thirty-one (131) hours per month** performing the Administrative Services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month; however,

the annual compensation paid to Group for Administrative Services shall be capped as provided in Section 3.1(d) (Compensation for Administrative Services) of this Agreement, regardless of the number of hours collectively expended by Medical Director, Chief OB Generalist, and other Group physicians performing Administrative Services above one hundred thirty-one (131) hours in any given month.

(c) **Time Reports.** Medical Director, the Chief OB Generalist, and other Group physicians performing Administrative Services shall contemporaneously record the hours and actual administrative services provided on a monthly basis using Hospital's electronic time reporting system for administrative services ("Electronic Time Report"), or if an exception to using the electronic system is granted by Hospital, a paper time report in the format to be provided by Hospital ("Paper Time Report"), as modified from time to time by Hospital. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Medical Director and the Chief OB Generalist, or Group, shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within ten (10) days after the end of each calendar month, or as otherwise requested by Accounts Payable during the term of this Agreement, to allow for Hospital's verification of services. Hospital shall have no obligation to pay Group for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Medical Director, Chief OB Generalist and Group shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

(d) **Coordination of Services.** Hospital, Group, Medical Director and Chief OB Generalist shall coordinate their activities in connection with Group's provision of services in the Program. Group shall cause Medical Director and Chief OB Generalist to inform the Administrator of any extended periods (i.e., one [1] week or more) during which Medical Director and Chief OB Generalist, respectively, will be unavailable due to vacation, professional meetings, or other personal or professional commitments. Subject to Hospital's prior written approval, Medical Director may delegate the performance of certain of his administrative duties and services to other OB Generalists and Perinatologists employed by Group, provided that Medical Director shall retain ultimate responsibility and accountability for such administrative duties and services. Group shall be solely responsible for compensating any Physician to whom Administrative Services are delegated, and shall cause such Physician to perform all duties of Medical Director under this Agreement. It is expressly understood that all rights, duties and responsibilities of Medical Director in this Agreement shall also apply to any Physician providing Administrative Services on behalf of Medical Director.

1.4 Professional Qualifications. Each Practitioner providing Administrative or Coverage Services shall at all times:

(a) Hold an unrestricted license to practice medicine in the State of California, and at all times remain in good standing with the Medical Board of California

or the California Board of Osteopathic Examiners, or, in the case of Non-Physician Providers, an unrestricted license or certificate as may be required for the practice of their profession under California law;

(b) For Physicians only, be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;

(c) For OB Generalists only, hold a certificate by the American Board of Obstetrics & Gynecology;

(d) For Perinatologists only, hold a certificate by the American Board of Obstetrics & Gynecology and be duly qualified in the subspecialty of maternal-fetal medicine;

(e) Be a member in good standing of Hospitals's Alta Bates Medical Staff or, in the case of Non-Physician Providers, be credentialed as an Active Allied Health Professional by Hospital's Alta Bates Medical Staff ("Allied Health Professional Staff"), and be subject to all of the attendant privileges, responsibilities and conditions of such membership; and

(f) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating provider.

1.5 Representations and Warranties. Group represents and warrants to Hospital that:

(a) Neither Group nor any Practitioner is bound by any agreement or arrangement which would preclude Group from entering into this Agreement, or Group or any Practitioner from fully performing the Coverage Services or the Administrative Services;

(b) No Practitioner's license (or certification in the case of Non-Physician Providers) to practice medicine (or provide health care services) in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(c) No Practitioner's medical staff or allied health professional staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(d) No Practitioner has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and

(e) Group has no information that would reasonably indicate that any Practitioner is not able to perform the services required under this Agreement.

1.6 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify Hospital of any event causing or likely to cause a failure by any Practitioner to meet the professional qualifications set forth in Section 1.4 (Professional Qualifications) and Section 1.5 (Representations and Warranties) hereof, and any of the following:

(a) Any investigation of any Practitioner or disciplinary proceeding against any Practitioner by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(b) Any malpractice action against any Practitioner or other action against any Practitioner in connection with any Practitioner's administrative or professional services;

(c) Any investigation of any Practitioner or disciplinary action against any Practitioner by a hospital medical staff, allied health professional staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by any Practitioner; or

(d) Any other material breach of the terms of this Agreement.

1.7 Group – Practitioner Agreements. Group shall enter into a written agreement with each Practitioner providing Coverage Services or Administrative Services under this Agreement satisfying the following conditions:

(a) The agreement shall obligate the Practitioner to abide by all applicable terms of this Agreement;

(b) The agreement shall specify the services to be performed by the Practitioner;

(c) The agreement shall provide compensation for the Practitioner that is fair market value for the services actually provided, not taking into account the value or volume of referrals or other business generated by the Practitioner for Hospital (within the meaning of the Stark law); and

(d) The agreement shall not contain any term that would violate any anti-kickback statute or any laws or regulations governing billing or claims submission.

1.8 Compliance with Rules and Laws. Group shall comply, and shall ensure that Practitioners comply, with all policies, bylaws, rules and regulations of Hospital and the Alta Bates Medical Staff and applicable standards and recommendations of the Joint Commission. Group also shall comply, and shall ensure that Practitioners comply, with all applicable provisions of federal, state and local laws, rules and regulations, as well as

rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the Hospital; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payors whose members/beneficiaries receive care from Hospital. This shall specifically include compliance with applicable provisions of Title 22 of the California Code of Regulations.

1.9 Corporate Compliance Program. Group and each Practitioner shall comply with Hospital's corporate compliance program. Group and each Practitioner shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group or any Practitioner and/or any of the services provided by Group or any Practitioner under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Group or Practitioner, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and each Practitioner shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

1.10 Quality Improvement and Risk Management. Group and Practitioners shall participate in the quality improvement, utilization review and risk management programs of Hospital, and shall cooperate with any related audits, reviews or investigations.

1.11 System-wide Clinical Integration. Group and Practitioners shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

1.12 Use of Hospital Facilities. Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Practitioners solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. No part of Hospital's premises shall be used at any time by Group or any Practitioner for their own purposes or as an office for the general practice of medicine. Furnished office space shall be provided by Hospital for the purposes of performing the Administrative Services set forth in this Agreement.

1.13 Expenses. Neither Group nor any Practitioner shall incur any financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Practitioners shall be solely responsible for the following: (a) Practitioner compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings; (d) professional liability insurance; and (e) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or a Practitioner.

1.14 Expert Witness Conflict of Interest. Group shall use its best efforts to ensure that Practitioners providing services under this Agreement shall not accept any consulting assignment or otherwise contract, agree or enter into any engagement to

provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (i) Hospital, (ii) any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or (iii) any employee of Hospital or such other Sutter Health hospital or health care facility, if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing shall prevent any Practitioner from testifying as a factual witness in an action in which both Practitioner and Hospital or Group and Hospital (or any other Hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other Hospital or health care facility) are defendants.

1.15 Anti-Referral Laws. Nothing in this Agreement, or any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Practitioner and Hospital. This Agreement is not intended to influence Group's or any Practitioner's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Practitioner from establishing medical staff membership or clinical privileges at any other healthcare facility.

1.16 Best Efforts. Group shall devote its best efforts toward carrying out the terms of this Agreement and shall cause Practitioners to devote sufficient time to support the efficient and effective operation of the Program.

1.17 Service Excellence Commitment. Group, along with Hospital, shall lead the Program efforts to enhance patient satisfaction and achieve Hospital's service goals. Further, the dedication of all Practitioners toward the achievement of this goal is a key indicator of success for Hospital and an essential element of this Agreement. Group and Practitioners shall participate fully and provide leadership in service excellence teams and other quality improvement efforts focused on Program services.

1.18 Non-Discrimination. Group and each of its Practitioners shall provide services under this Agreement without regard to any person's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law.

1.19 Cost Control. Group shall use its best efforts to monitor and control the expenses of the Program in order to provide clinically appropriate, high quality, cost-effective service in the Program.

1.20 Failure to Provide Coverage Services. In the event Group fails to provide any of the Coverage Services as required in this Agreement, Hospital, in its discretion, shall have the right to engage the dispute resolution process set forth in Section 12 (Dispute Resolution) and may contract with another provider to render such Coverage Services and shall not be required to compensate Group for the duration of any such failure by Group to provide the Coverage Services.

Section 2. HOSPITAL FACILITIES AND SERVICES

2.1 Equipment, Supplies, Etc. Hospital shall operate the Program with all customary and necessary equipment, furniture, computers, supplies, maintenance, utilities and personnel reasonably required for operation of the Program. The selection, deletion and purchasing of additional or replacement equipment and the selection, removal and retention of personnel shall be the exclusive function of Hospital, with input from Medical Director as requested by the Administrator. Notwithstanding any other provision of this Agreement, if Group should ever allege that Hospital has materially breached its obligations under this Section 2.1, Group's sole and exclusive remedy shall be termination of this Agreement.

2.2 Performance Assessment. Hospital shall assess Group's performance annually, including monitoring the performance of the contracted services, communicating performance expectations in writing and working with the Group to improve performance as appropriate.

2.3 Responsibility for Program. To the extent required by applicable laws and regulations, Hospital shall retain administrative responsibility for the services rendered to patients in the Program.

Section 3. COMPENSATION AND BILLING

3.1 Compensation. As payment in full for Group's, Practitioners', Medical Director's, and Chief OB Generalist's services provided pursuant to this Agreement, Hospital shall pay to Group the following compensation:

(a) **Coverage Services.** For all Coverage Services provided by Group under Section 1.1 (Coverage Services) of this Agreement, Hospital shall pay **Six Million Four Hundred Twelve Thousand Five Hundred Sixty-One Dollars and Thirty-Two Cents (\$6,412,561.32)** per year to Group payable in equal monthly installments of Five Hundred Thirty-Four Thousand Three Hundred Eighty Dollars and Eleven Cents (\$534,380.11) within fifteen (15) days after the end of each month.

(1) **Annual Reconciliation of Compensation for Coverage Services.** If, upon expiration of this Agreement, the sum of (a) Group's professional collections and (b) the total compensation for Coverage Services paid by Hospital to Group under Section 3.1(a) (Compensation for Coverage Services) of this Agreement exceeds Eight Million Six Hundred Eighty-Eight Thousand Dollars (\$8,688,000), Group shall repay to Hospital any such amount over Eight Million Six Hundred Eighty-Eight Thousand Dollars (\$8,688,000) which shall be considered "Excess Payment" and shall be repaid pursuant to the process described in Section 14.12 (Excess Payment).

(2) **Monthly Reconciliation of Compensation for Coverage Services.** If Group fails to meet the Staffing Requirements set forth in Section 1.1(a) (Staffing Requirements) in any particular month, or if Hospital requests a decrease in staffing level pursuant to Section 1.1(a)(6), the Group's compensation in the next month shall be reduced according to the Monthly Reconciliation Schedule set forth in **Exhibit 3.1(a)(2)**. For example, if Group fails to provide one (1) OB Generalist for an eight (8) hour shift on a Monday pursuant to Section 1.1(a)(2), Hospital shall have the right to deduct a prorated payment to Group for this shift from the next month's payment to Group. If Group fails to meet the Staffing Requirements in May 2015, the final month of the term of this Agreement, Group shall repay to Hospital the Excess Payment pursuant to the process described in Section 14.12 (Excess Payment).

(b) **Physician Coverage for Certified Nurse Midwife.** If Group is unable to provide the requisite number of certified nurse midwives to provide Coverage Services, Group may, subject to prior approval of Hospital's Administrator, provide a Physician to provide such Coverage Services. Hospital shall pay to Group **One Hundred Three Dollars (\$103) per hour per Physician** who provides Coverage Services in lieu of the certified nurse midwife required to perform such Coverage Services.

(c) **Additional Coverage Services.** As payment in full for the Additional Coverage Services provided by Group and Practitioners pursuant to this Agreement, and to assure the availability of sufficient Practitioners to provide professional services in the Program, Hospital shall pay to Group the sum of **One Hundred Fifty Dollars (\$150) per hour for each OB Generalist** who provides Additional Coverage Services and **Seventy-Two Dollars (\$72) per hour for each certified nurse midwife** who provides Additional Coverage Services, up to a maximum of **One Hundred Thousand Dollars (\$100,000)** per year. Compensation shall be issued within thirty (30) days of Hospital's receipt of a completed and signed invoice for Additional Coverage Services.

(d) **Administrative Services.** Hospital shall pay to Group **One Hundred Fifty Dollars (\$150) per hour** for Medical Director's and Chief OB Generalist's Administrative Services under Sections 1.3(a)(1) and 1.3(a)(2), respectively, that are documented in completed and signed Time Reports, **up to a maximum of Nineteen Thousand Six Hundred Fifty Dollars (\$19,650)** per month. Payments hereunder shall be made to Group and not to Medical Director or Chief OB Generalist, it being specifically understood and agreed that Medical Director and Chief OB Generalist shall be and remain on Group's payroll and not on Hospital's payroll. Neither Group nor any Physician shall bill or assert any claim for payment against any patient or payor for Administrative Services performed by Medical Director or Chief OB Generalist under this Agreement. Compensation shall be payable monthly within thirty (30) days after Hospital receives the Time Report for the applicable month.

(e) **Services to Indigent Patients.** Compensation under this Section includes compensation for services rendered to indigent patients, and neither Group nor any Practitioner shall be eligible to receive or shall receive separate payments from Hospital or from Sutter East Bay Medical Foundation ("SEBMF") for such services under this Agreement, under any other agreement between Group, Practitioners and Hospital or SEBMF or under Hospital's Reimbursement Policy for Physicians Seeking Payment for Charity/Indigent/Medi-Cal Pending Patients Seen In Or Admitted To the Alta Bates Summit Medical Center or any other policy related to the payment of services for indigent patients.

3.2 **Billing for Professional Services.**

(a) **Hospital Billing.** Hospital shall bill and collect for the technical component of medical services delivered to all Program patients.

(b) **Group Billing.** Group shall be solely responsible for the billing and collection of all charges for the professional component of medical services delivered to all patients by Group or any Practitioner. All such billings shall be billed under a single group provider number assigned to Group and shall comply with all applicable federal and state laws, regulations, rules, and guidelines. Hospital shall have no liability for bad debts or uncollectible accounts billed by Group or Group's billing agent.

(c) **Billing information.** Hospital shall provide Group with any information reasonably available to Hospital necessary for Group to bill patients or payors for services rendered by Group and its Practitioners pursuant to this Agreement. Hospital shall assist Group in obtaining patients' signatures on assignment of insurance benefits and other reasonably appropriate forms supplied to Hospital by Group.

(d) **Billing Records.** Hospital and Group shall each make, keep and maintain, complete and accurate records of all charges and billings, and each party shall have the right to examine, inspect or make copies of the records of the other party pertaining to such charges and billings, at its own expense if such access is necessary to comply with any laws, rules or regulations.

(e) **Assignment.** Group shall accept Medicare and Medi-Cal assignment with respect to services provided to Medicare and Medi-Cal beneficiaries as payment in full for the respective services rendered, and further agrees not to bill said patients for any deductibles or co-payments except where permitted by law.

3.3 **Fair Market Value Compensation.** The compensation provided under Section 3.1 (Compensation) represents the parties' good faith determination of the reasonable fair market value compensation for the Administrative and Coverage Services

to be provided by Group under this Agreement, taking into account the number of hours of service required and an estimate of the professional fees that Group will be able to collect for patient services.

3.4 Discount and Prospective Payment Arrangements. Group and Hospital, through its agents and affiliated corporations, shall separately enter into healthcare contracts with third-party payors on a discount basis. Group shall submit to Hospital and Hospital shall submit to Group, upon request, a list of payors with which it has contracted to provide services. If Hospital deems it advisable for Group to contract with a payor (including government payors, health maintenance organizations, prepaid health plans, preferred provider groups and the like) with which Hospital has a contract ("Hospital-Contracted Plans"), Group agrees in good faith to negotiate and to use its best efforts to enter into a contractual agreement equal to the reasonable prevailing reimbursement rates for Specialty physician specialists within the San Francisco Bay Area. For purposes of this Section, good faith shall be evaluated in each instance by Group's willingness to negotiate and offer acceptable rates. This evaluation shall be made if Group and a third party payor have not been able to reach agreement on rates. Failure to meet this requirement of good faith shall be deemed a material breach by Group of the terms and conditions of this Agreement, and in such event, Hospital may, at its option terminate this Agreement for cause.

3.5 SutterSelect. Hospital and its affiliates provide medical benefits to their employees through an ERISA self-funded plan administered by SutterSelect. Group recognizes the importance to Hospital that hospital-based providers such as Group are contracted with SutterSelect and available to provide professional services to the employees of Hospital and its affiliates. Therefore, Group will enter into a Network Provider Agreement, pursuant to which Group will provide services to SutterSelect enrollees at rates set by SutterSelect from time to time. The term of the SutterSelect Network Provider Agreement will run concurrently with the term of this Agreement.

3.6 Nondiscrimination Based on Payor Status. For the purposes of this Agreement, "Member" means a person who is enrolled with a third-party payor as a subscriber, beneficiary, employee or dependent, or a person who is enrolled with a payor under the Medicare Risk Program or Medicare+Choice Program Plan as a subscriber, beneficiary, employee or dependent, and who is eligible to receive professional services at the Hospital. Group shall not impose any limitations on the acceptance of Members for care or treatment unless such limitations are applied generally to all Members. Group shall not differentiate or discriminate in the provision of professional services to Members and shall render professional services to such Members in the same manner and in accordance with the same standards, and within the same time availability, as offered to non-Members consistent with existing medical, ethical, or legal requirements for providing continuity of care to any patient. Group and all Practitioners and subcontractors under the Agreement, (if any), shall not request, demand, require or otherwise seek, directly or indirectly, the transfer of, or termination from any health care service plan of any Member based upon the

Member's need for or utilization of professional services or in order to gain financially or otherwise from such termination.

3.7 Cooperation with Payor Medical Directors. Medical Director, Chief OB Generalist and Group understand that payors may place certain obligations upon Hospital regarding the quality of care received by and utilization of professional services provided to Hospital patients and that payors, in certain instances, will have the right to oversee and review the quality of care and utilization of professional services provided to Members. Medical Director, Chief OB Generalist and Group agree to cooperate with the Medical Director of the various payors in the review of the quality of care and utilization of professional services provided to Members.

3.8 Group's Compensation of Individual Practitioners. Group shall be solely responsible for developing and implementing its own system for compensating Practitioners, whether employees or subcontractors of Group; provided, however, that Group represents, warrants and covenants that its compensation system shall at all times be structured in a manner that complies with all federal and state physician self-referral laws (including section 1877 of the Social Security Act known as the Stark Law), anti-kickback and other applicable laws as they may apply to the direct and indirect relationships created under this Agreement among Hospital, Group and individual Practitioners. Without limiting the generality of the foregoing, Group represents, warrants, and covenants that compensation paid to each Practitioner shall be fair market value compensation for the service provided by that Practitioner and shall not take into account the value or volume of referrals of "designated health services" (as defined under the Stark Law) or other business generated by the Practitioner for Hospital.

3.9 Professional Receipt Data. Group acknowledges that Hospital has the right to periodically study compensation payable under this Agreement under the guidance of independent valuation experts who will examine whether that compensation is at fair market value. Practitioner professional service receipts generated while providing Coverage Services may be deemed relevant to a determination of the fair market value of the Coverage Services. Accordingly, Group shall maintain a system that will distinguish between (a) receipts derived by performing professional services outside the Hospital, and (b) professional service receipts derived by its Perinatologists, OB Generalists and certified nurse midwives from performing professional services in the Hospital. The system shall be able to separately identify in-Hospital service receipts by category of Group provider who rendered the service (i.e., Perinatologist, OB Generalist or certified nurse midwife).

Section 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year unless terminated earlier pursuant to this Section.

4.2 Early Termination. This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

- (1) The inaccuracy of any representation of Group in Section 1.5 (Representations and Warranties);
- (2) Failure of Group to remove a Practitioner after requested by Hospital pursuant to Section 5 (Removal of a Practitioner);
- (3) Loss or restriction of Hospital's license or accreditation, or destruction of the Hospital or the portion(s) thereof dedicated to the operation of the Program, such that Hospital is not able to continue the uninterrupted operation of the Program;
- (4) Either party becomes insolvent or declares bankruptcy;
- (5) If professional liability insurance is not available for Practitioners performing Group's staffing obligations under this Agreement;
- (6) Group's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 10 (Confidentiality and Intellectual Property);
- (7) The dissolution or discontinuance of the operations of Group; or loss or restriction of Group's authority to operate as a professional corporation;
- (8) Exclusion of Group from the participation in any federal health care program; including the Medicare or Medi-Cal programs; or
- (9) Closure of the Program or sale or closure of the Hospital at which the Program is located.

(b) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.2(a) (Immediate Termination by Hospital), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: failure to provide the Coverage Services described in Section 1.1 (Coverage Services); failure to address any act or omission by a Practitioner that jeopardizes the quality of care provided to Hospital's patients; or failure to meet the requirement of good faith negotiations

and best efforts to enter into contractual agreements with third-party payors in accordance with Section 3.4 (Discount and Prospective Payment Arrangements).

(c) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medicaid programs, or in the case of Hospital, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(d) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon sixty (60) days' advance written notice to the other party.

(e) **Termination by Mutual Agreement.** This Agreement may be terminated at any time upon the written concurrence of the parties.

4.3 **Effect of Expiration or Termination.**

(a) **Termination of Obligations/No Procedural Rights.** Except as otherwise provided in this Section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Continuation of this Agreement is not a condition of Medical Staff membership. This Agreement may be terminated in accordance with Section 4 (Term and Termination) without the necessity of a hearing with respect to any individual Practitioner before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body.

(b) **Continuation of Patient Services.** Except for termination due to legal jeopardy, illegality or risk to patient welfare, Group shall continue to be obligated under this Agreement, until the effective date of its termination, to continue to provide professional services to Hospital's patients, in full cooperation with Hospital. In addition, if circumstances applicable to particular patients require the continuation of such services after the effective date of this Agreement's termination, Group shall continue to provide for a reasonable period Specialty services to any patient for whom Group had professional responsibility.

(c) **Liability for Breach.** With the exception of Section 2.1 (Equipment, Supplies, Etc.), a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 12 (Dispute Resolution) of this Agreement.

(d) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Group shall cause all Practitioners to immediately vacate Hospital premises and remove all of their personal property. Any personal property that is not removed shall be removed by Hospital at Group's expense.

(e) **Survival.** The provisions of Sections 1.3(c) (Time Reports), 1.9 (Corporate Compliance Program), 3.2(d) (Billing Records), 4 (Term and Termination), 6 (Insurance), 7 (Medical Records), 8 (Access to Books and Records), 10 (Confidentiality and Intellectual Property), 11 (Indemnity), 12 (Dispute Resolution), 13 (Notices) and 14 (General Provisions) shall survive termination of Agreement.

(f) **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Group prior to the first anniversary of the Effective Date of this Agreement.

Section 5. REMOVAL OF A PRACTITIONER

5.1 Cause for Removal. Hospital may require the immediate cessation of services by any Practitioner and/or require Group to immediately remove from the coverage schedule under this Agreement any Practitioner for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

(a) Failure of Practitioner to meet any of the requirements of Section 1.4 (Professional Qualifications);

(b) The disability of Practitioner (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Practitioner from carrying out one or more of the essential functions of Practitioner's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to Hospital);

(c) Practitioner uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of Hospital's drug-free workplace rules;

(d) Practitioner's unauthorized disclosure of Patient Information or Hospital Information as defined in Section 10 (Confidentiality and Intellectual Property);

(e) Any act or omission by Practitioner that appears to create the risk of imminent danger to the health of any individual pursuant to Medical Staff bylaws; or

(f) Material failure to abide by any of the terms and conditions of this Agreement applicable to Practitioner.

Section 6. INSURANCE

6.1 Professional Liability Insurance for Physicians. Group at its sole cost and expense shall maintain professional liability insurance for services rendered by Group and each Practitioner in the Program in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate from an insurance company which is acceptable to Hospital. Group's insurance shall cover Group's, Medical Director's, and Chief OB Generalist's obligations (as set forth in detail in Exhibit 10.4 of this Agreement) concerning the Protected Health Information received from, or created by Group, Medical Director, and/or Chief OB Generalist on behalf of, Hospital pursuant to this Agreement. Upon Hospital's request, Group shall provide to Hospital a copy of the Certificates of Insurance evidencing the insurance coverage required under this Section. Such insurance policy or policies shall also provide for not less than thirty (30) days' notice to Hospital of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section. If Group's professional liability coverage is on a "claims made" rather than an "occurrence" basis, and such coverage is later terminated, or converted to an occurrence coverage (or vice versa), Group shall at its expense obtain prior acts or tail coverage (as applicable) with the same liability limits required above covering all periods that this Agreement is or has been in force.

6.2 Professional Liability Insurance for Non-Physicians. Hospital shall maintain adequate professional liability insurance with respect to Hospital's non-physician employees that assist Physicians under the terms of this Agreement, and Hospital shall provide a certificate evidencing such coverage to Group upon request.

6.3 Insurance for Administrative Services. With respect to Administrative Services provided under this Agreement, Medical Director and Chief OB Generalist shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual

aggregate. This insurance shall be applicable only to the Medical Director's and Chief OB Generalist's Administrative Services and not to any Coverage Services nor any professional services provided to patients.

Section 7. MEDICAL RECORDS

7.1 Creation of Medical Records. Group and Practitioners shall cause a complete medical record to be created and maintained for each patient evaluated and/or treated by Group. Group and Practitioners shall complete these medical records within the time frames set forth in Hospital's Medical Staff Bylaws. All medical records shall be kept current and complete and prepared in compliance with all state and federal regulations, the regulations of all accreditation institutions in which Hospital participates, the Medical Staff bylaws, and Hospital's rules and regulations.

7.2 Patient Records. Any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the sole property of Hospital. Both during and after the term of this Agreement, Group shall be permitted to inspect and/or duplicate, at Group's expense, any individual chart or record to the extent necessary to meet professional responsibilities to such patient(s) and/or to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent; provided, however, that such inspection or duplication shall be 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 obtained by Group pursuant to this Section 7.2. This provision shall survive the expiration or termination of this Agreement for any reason.

7.3 Record Requirements. Each party agrees in connection with the subject matter of this Agreement to cooperate fully with the other party in order to assure that each party will be able to meet all requirements for record keeping associated with public or private third-party payment programs.

Section 8. ACCESS TO BOOKS AND RECORDS

8.1 Access. Group shall maintain and make available all necessary books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of four (4) years after furnishing services pursuant to this Agreement, Group shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement, books, documents,

and records of Group that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period through a subcontract with a related organization, such agreement must contain a clause to the effect that until the expiration of 4 years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

8.2 Limits. The availability of Group's books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

Section 9. INDEPENDENT CONTRACTOR RELATIONSHIP

In the performance of all Administrative and Coverage Services, and all duties and other obligations under this Agreement, Group (and each Practitioner) shall be and at all times is, acting and performing as an independent contractor, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Group (and its Practitioners) shall look only to Group for setting and administering the terms and conditions of their employment. Except as required by law, Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Practitioner shall perform services required under this Agreement. The standards of medical practice and professional duties of Group (and its Practitioners) shall be determined by Group. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall remain the sole employer of each Practitioner, and neither Group nor any Practitioner shall have a claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Practitioners; make state or federal unemployment insurance contributions on Practitioners' behalf; withhold state and federal income tax from payments to Practitioners; make disability insurance contributions on behalf of Practitioners; and obtain workers' compensation insurance on behalf of Practitioners. Group, and/or each Practitioner, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to any and all income tax withholding, estimated income tax, social

security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to any Practitioner employed, contracted or engaged by Group.

Section 10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

10.1 Hospital Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Practitioner and Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that neither Group nor any Practitioner will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Group's or a Practitioner's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

10.2 Terms of this Agreement. Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Practitioner shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

10.3 Patient Information. Group shall not disclose, and shall ensure that the Practitioners not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act, (Public Law 104-191 ("HIPAA")) and Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. Section 17921 et seq.) and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.)

10.4 Business Associate Requirements. By signing and/or acknowledging this Agreement, the parties, Medical Director, and Chief OB Generalist hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"). The parties, Medical Director and Chief OB Generalist also agree to comply with the requirements set forth in Exhibit 10.4 ("Business Associate Requirements") attached to this Agreement and incorporated herein by reference.

10.5 Intellectual Property Ownership and Assignment. Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Medical Director, Chief OB Generalist or Group, or to which Medical Director, Chief OB Generalist or Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Medical Director, Chief OB Generalist or Group either solely or jointly with Hospital (collectively "Intellectual Property"). Neither Medical Director, Chief OB Generalist, nor Group shall have any interest in such Intellectual Property. Accordingly, Group, Medical Director, and Chief OB Generalist hereby assign to Hospital all of Medical Director's and/or Group's right, title and interest in and to the Intellectual Property. Medical Director, Chief OB Generalist and Group further acknowledge their obligation to assist Hospital or its designee, at its expense, in every proper way to secure Hospital's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to Hospital or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to Hospital or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital's sole and exclusive intellectual property rights in and to its own data provided to Medical Director, Chief OB Generalist or Group during the course of this Agreement.

Section 11. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

Additionally, each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party or any of its officers, directors, agents, subcontractors or employees, of its obligations under the Agreement with respect to PHI.

Section 12. DISPUTE RESOLUTION

12.1 Meet and Confer. In the event of any dispute between Group (including Practitioners) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 12.2 (Agreement to Arbitrate).

12.2 Agreement to Arbitrate. The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 12.1 (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Streamlined Arbitration Rules and Procedures of JAMS, which service shall be selected by Hospital at its sole discretion.

12.3 Initiating Arbitration. To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 13 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

12.4 Powers of Arbitrator. The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

12.5 Attorneys' Fees and Costs. The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 12.4 (Powers of Arbitrator).

12.6 Venue. Venue for the arbitration shall be the county in which the contract was executed or the County of Sacramento.

Section 13. NOTICES

13.1 Notices. All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W9 tax form to Hospital. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection.

If to Hospital: Sutter East Bay Hospitals
dba Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attention: Charles J. Prosper, Chief Executive Officer

With a copy to: Sutter Health Office of the General Counsel
633 Folsom Street, 7th Floor
San Francisco, California 94107
Attention: East Bay Regional Counsel

If to Group: East Bay Perinatal Medical Associates
350 30th Street, Suite 208
Oakland, California 94609
Attention: Stuart M. Lovett, M.D.

Buchalter Nemer, A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, California 90017-2457
Attn: Carol Lucas

13.2 Notice to Practitioners. All obligations and prohibitions imposed on Group pursuant to this Agreement are equally applicable to each Practitioner engaged by

Group to provide services in the Program. Group shall obtain from each Practitioner a written acknowledgment and agreement to be bound by the terms and conditions of this Agreement in the form set forth as **Exhibit 13.2**.

Section 14. GENERAL PROVISIONS

14.1 Recitals Exhibits, and Appendices. The recitals, exhibits, and appendices attached hereto or referred to herein and any Statements of Work between the parties that refer to this Agreement, are hereby incorporated into this Agreement by reference.

14.2 Ambiguities. This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law (including California Civil Code Section 1654 or any other similar applicable federal or state law or statute) or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

14.3 No Waiver. No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

14.4 Severability. Except as provided in Section 4.2(c) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the Term and Termination provisions of this Agreement.

14.5 Assignability and Subcontracting. The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all Time Reports submitted to Hospital, and (ii) pay the subcontracting physician at the same rate, or a prorated portion of the same rate, specified in Section 3.1 (Compensation). Notwithstanding the foregoing, Hospital may assign its rights and obligations under this Agreement to another Sutter Health affiliate without the other party's consent.

14.6 Use of Name. Group shall not use the name of Hospital or any affiliated entity of Hospital, or any of their trademarks, service marks, or trade names for any purpose without the prior written consent of Hospital.

14.7 No Third Party Rights. Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

14.8 Governing Law. This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the State of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

14.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

14.10 Other Service Agreements. Hospital's TractManager databases include copies of all other agreements under which Group, any Group physician (or any immediate family member of Group physician), provides services to Hospital.

14.11 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement.

14.12 Excess Payment. If Hospital makes a payment or payments to Group in excess of the amount(s) due and payable under this Agreement (the "Excess Payment"), Hospital may offset the Excess Payment from future payments owed to Group under this Agreement, any other existing agreement between the parties, or any future agreement entered into between the parties. In the event that there are no future payments owed under this Agreement or other existing agreements between the parties, or that future payments are not sufficient to cover the Excess Payment, Hospital may seek repayment of the Excess Payment or the remaining Excess Payment from Group and Group shall repay within ninety (90) days. If Group cannot repay the entire Excess Payment within ninety (90) days, the parties may agree upon a reasonable repayment plan, in which case Group shall execute a promissory note. Interest shall accrue on any repayment plan agreed upon pursuant to this Section at a per annum rate equal to the prime rate reported in The Wall Street Journal on the date the first repayment payment is made plus two (2) percentage points, but in no event in excess of the maximum rate of interest Hospital is permitted to charge from time to time under applicable law.

14.13 No Referrals/Non-Exclusivity. Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party.

14.14 Tax Reporting. To ensure proper tax reporting of the compensation paid under this Agreement, Group shall complete, execute and deliver to Hospital an IRS Form W 9 and California Form FTB-590 (if requested by Hospital) which sets forth the correct taxpayer identification number for Group. To the extent required by law, Hospital shall report all payments to Group on IRS form 1099 and its state law counterpart.

14.15 Counterparts. This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

14.16 Execution. By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

Signature Page Follows

HOSPITAL:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

GROUP:

East Bay Perinatal Medical Associates

By: 

Name: David Bradley

Title: President

By: _____

Name: Stuart M. Lovett, M.D.

Title: President

Date: 5/30/2014

Date: _____

By: _____

Name: Jonathan D. Weiss, M.D.

Title: _____

Date: _____

Acknowledgment Page Follows

HOSPITAL:

GROUP:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

East Bay Perinatal Medical Associates

By: _____
Name: David Bradley
Title: President

By: Stuart Lovett
Name: Stuart M. Lovett, M.D.
Title: President

Date: _____

Date: 5/26/14

Acknowledgment Page Follows

HOSPITAL:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

GROUP:

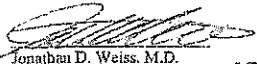
East Bay Perinatal Medical Associates

By: _____
Name: David Bradley
Title: President

By: _____
Name: Stuart M. Lovett, M.D.
Title: President

Date: _____

Date: _____

By: 
Name: Jonathan D. Weiss, M.D.
Title: PRESIDENT, JONATHAN WEISS, MD, A
PROFESSIONAL CORPORATION
GENERAL PARTNER
Date: 5/31/14

Acknowledgment Page Follows

MEDICAL DIRECTOR ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of Exhibit _____ to this Agreement between Group and Hospital effective as of June 1, 2014, and accepts the position of Medical Director, and agrees to carry out the duties as set forth in Exhibit _____.

Stuart Lovett, M.D.
Stuart Lovett, M.D.

CHIEF OB GENERALIST ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of Exhibit _____ to this Agreement, and accepts the position of Chief OB Generalist, and agrees to carry out the duties as set forth in Exhibit _____.

Printed Name: _____ Signature: _____

NON-BINDING ADMINISTRATIVE ACKNOWLEDGMENT

The undersigned acknowledges responsibility for administrative oversight of the contract preparation process. This signature is not required for this Agreement to be effective or binding and is not incorporated therein.

Date: _____

Stephen F. O'Brien, M.D., Chief Medical
Executive

MEDICAL DIRECTOR ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of Exhibit 1.3(a)(1) to this Agreement between Group and Hospital effective as of June 1, 2014, and accepts the position of Medical Director, and agrees to carry out the duties as set forth in Exhibit 1.3(a)(1).

Stuart Lovett, M.D

CHIEF OB GENERALIST ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of Exhibit 1.3(a)(2) to this Agreement, and accepts the position of Chief OB Generalist, and agrees to carry out the duties as set forth in Exhibit 1.3(a)(2).

Printed Name: _____ Signature: _____

NON-BINDING ADMINISTRATIVE ACKNOWLEDGMENT

The undersigned acknowledges responsibility for administrative oversight of the contract preparation process. This signature is not required for this Agreement to be effective or binding and is not incorporated therein.

Date: 6/27/14

Stephen F. O'Brien
Stephen F. O'Brien, M.D., Chief Medical
Executive

EXHIBIT 1.1(a)(1)

OB GENERALIST JOB DESCRIPTION AND DUTIES

Each OB Generalist shall meet the following job description and perform the following duties:

Accountability: OB Generalists shall be responsible to the Medical Director, Maternal-Fetal Medicine and to the Chief OB Generalist to ensure safe, quality medical care to Unassigned Patients at Hospital.

Overview: Each OB Generalist is responsible for providing obstetrical care to Unassigned Patients as described in this Agreement, for collaborating with Hospital management in the identification of safe, quality care for perinatal patients, and for participating in the implementation and maintenance of the Team Leadership Communication Initiative ("TLC") in Labor and Delivery (L&D) Unit.

Principal Duties and Responsibilities:

1. Provide perinatal diagnostic, consulting, and delivery services to Unassigned Patients as defined in this Agreement.
2. Provide emergency obstetrical care to patients when their regular attending has not arrived at the Alta Bates Campus.
3. Prioritize early morning rounding on postpartum patients in the Family Care Center (FCC) to affect efficient discharge of Unassigned Patients.
4. Provide continuous availability, twenty-four (24) hours per day, seven (7) days per week, to the L&D Unit such that patients are effectively and efficiently managed and delivered.
5. Coordinate effective communication among the OB Generalists, Certified Nurse Midwives (CNM's), and L&D Charge Nurses so that the plan of care on all Unassigned Patients is known and appropriately addressed.
6. Coordinate the acceptance, assessment, and admission of all maternal transports with the Perinatologist providing Coverage Services and the L&D Charge Nurse. This requires direct communication between the Perinatologist and the OB Generalist providing Coverage Services prior to the acceptance of any maternal transport.
7. Participate in team briefings and debriefings prior to surgeries, vaginal births after caesarean (VBACs), and other appropriate procedures as defined by the TLC initiative.
8. Regularly participate in core team meetings on all shifts.

9. Assume the role of Coordinating Team Leader as requested, in rotation with other physicians.
10. In support of the TLC initiative, prioritize staff knowledge of availability at all times.
 - a) Inform L&D Charge Nurse when leaving the unit and expected time of return.
 - b) Facilitate availability through use of Vocera badge.
11. Communicate and consult with on-call Perinatologist when patient volume and acuity in L&D supports the need for additional providers.
12. Be equally available to provide active coverage of the L&D Unit at all times during a scheduled shift including those hours between 7 p.m. to 7 a.m.
13. An OB Generalist may assist private practitioners with non-emergent procedures provided these tasks do not delay or interfere with their performance of the duties listed above for Unassigned Patients. The OB Generalist will notify the second OB Generalist providing Coverage Services and the L&D Charge Nurse when performing such services.
14. Due to the high activity of the role, all OB Generalists are expected to not have engaged in other professional work commitments, including being on-call for another medical group, physician, or clinic, for a minimum of twelve (12) hours preceding the scheduled shift. Shifts are limited to twelve (12) hours. No twenty-four (24) hours shifts may be scheduled.

Effective division of duties among the two (2) OB Generalists and the CNM providing Coverage Services is the responsibility of Group. Such division of duties must be continually evaluated in collaboration with OB Department physician leadership and perinatal management, and revised as needed to affect the safe and effective care of patients. The present division of daily tasks is as below.

- OB Generalist 1 (Day Shift) shall be primarily responsible for the following:
 - Serve as L&D Coordinating Team Leader, a part of the TLC safety initiative;
 - Attend Core Team meetings;
 - Lead scheduled and unscheduled Coordinating Team meetings and facilitate conflict resolution;
 - Review fetal heart rate monitor strips;

- Review labor management of Unassigned Patients and other private physician patients as requested by nursing or other physicians;
 - Admit and manage maternal transports in consultation with the Perinatologist providing Coverage Services;
 - Manage Unassigned Patients in the antepartum unit in consultation with the Perinatologist providing Coverage Services;
 - Manage labor for Unassigned Patients;
 - Perform scheduled cesarean sections on Unassigned Patients;
 - Respond to all emergency situations (including for private physician patients whose physicians have not yet arrived at the Alta Bates Campus), e.g., fetal distress, postpartum hemorrhage, etc.;
 - Provide in-house availability required for Trial of Labor after Cesarean patients (including for private physician patients);
 - Supervise and consult with Group CNMs regarding low-risk labor patients;
 - Primarily manage and deliver labor patients beyond the scope of the CNMs because of acuity or census;
 - Performed missed deliveries for private physicians;
 - Perform cesarean sections for private Family Practice physicians or private CNMs;
 - Consult with private Family Practice Physicians and private CNMs regarding their labor patients;
 - Assist the OB Generalist 2 on the Day Shift with overflow, specifically in triage;
 - Assist private physicians with cesarean sections as time allows; and
 - Sign out to oncoming shift of Physicians and CNMs.
- OB Generalist 2 (Day Shift) shall be primarily responsible for the following:
- Assist OB Generalist 1 with postpartum rounds, and prioritize the early morning on patients in the Family Care Center (FCC) to affect efficient discharge of Unassigned Patients;

- Round, in coordination with the Perinatologist providing Coverage Services; on patients in the Intensive Care Unit;
 - Triage, assess and admit Unassigned Patients;
 - Perform postpartum tubal ligations;
 - Perform Alta Bates Emergency Department consultation as specified in Section 1.1(e)(4) (ED Care) of this Agreement;
 - Complete admissions to the antepartum unit in consultation with the Perinatologist providing Coverage Services;
 - Complete procedures, including but not limited to Fetal Fibronectin tests, sterile specs, etc., in the antepartum unit;
 - Provide coverage for telephone calls from the antepartum unit and postpartum units and advice calls from Unassigned outpatients when the Alta Bates Summit Perinatal Center is closed;
 - Attend Core Team meetings;
 - Attend or lead scheduled and unscheduled Coordinating Team meetings, as requested by nursing and OB Generalist 1;
 - Assist OB Generalist 1 in all work;
 - If time permits, assist private physicians with cesarean sections when OB Generalist 1 is too busy; and
 - Sign out to oncoming shift of Physicians and CNMs.
- OB Generalist 1 & 2 (Night Shift) shall be primarily responsible for the following:
- Be readily available to attend to all required L&D activities. It is understood that all patients will be actively managed in labor during the night shift to facilitate the best utilization of resourced in L&D.

EXHIBIT L1(e)(5)

OBSTETRICAL CARE FOR CLINIC PATIENTS

Alta Bates Summit Perinatal Center

Asian Health Services

Berkeley Primary Care Access Clinic

Brookside Contra Costa

Contra Costa Regional Medical Center

Eastmont Wellness Center

East Oakland Health Center

Great Beginnings

Highland General Hospital

Lifelong

Native American Health Center

North Richmond County Health Center

Tiburcio Vasquez Health Center

West Berkeley Family Practice

West County Health Center

EXHIBIT 1.3(a)(1)

MEDICAL DIRECTOR ADMINISTRATIVE SERVICES

Medical Director shall be responsible to perform the administrative services set forth below. The administrative services set forth below shall be the only duties to be performed by Medical Director, regardless of whether the time reporting form attached to this Agreement or included in the "Terms" (or other electronic time reporting module) contains additional categories.

Medical Director shall not report any time performing administrative services on his/her Time Report that are related to the care of his/her own patients, including supervision, training and education and/or charting or chart review.

Medical Director's Administrative Services shall include the following:

1. Provide overall medical oversight for the Program, and consult with Hospital management in the development, maintenance, and implementation of policies and procedures for the effective operation of the Program and participation in Hospital's strategic planning process for the Program;
2. Be routinely available to consult with Hospital management at mutually scheduled times, participate on Alta Bates Medical Staff committees pertaining to perinatology, and attend meetings, as reasonably requested, of the following groups and conferences: Department of Obstetrics and Gynecology ("OB/GYN Department"), OB/GYN Department Executive Committee, OB Peer Review, Sutter Obstetrics and Gynecology conference planning and conferences, and Hospital perinatology conferences;
3. Oversee quality management of the Program, including participation in OB/Pediatric Quality Management meetings and in monthly Perinatal/Neonatal case conferences and weekly Perinatal rounds, overseeing the quality of care delivered by covering nurse midwives and obstetricians, and with Hospital, jointly develop and implement appropriate performance improvement, quality and risk management activities for the Program;
4. Monitor utilization of Program services and recommend all reasonable steps necessary to remedy deficiencies in the quality or efficiency of the operation of the Program;
5. Participate with Hospital administrative staff in managing the effective operation of the Program in accordance with approved budgets, including managing the costs related to the Program, developing and administering applicable operating and capital expenditure budgets and cost controls for the proper and efficient operation of the Program;

6. Provide guidance and supervision as necessary to maintain the Program's accreditation and Medicare/Medi-Cal certification and assist in securing and maintaining necessary licenses and certifications for the Program, including cooperation with Hospital to maintain California Children's Services status in the Newborn Intensive Care Unit;
7. Oversee the quality of clinical care provided by the Perinatologists, OB Generalists and certified nurse midwives providing Coverage Services;
8. Monitor the Chief OB Generalist's conformance to the requirements of the Chief OB Generalist job description, attached as **Exhibit 1.3(a)(2)**;
9. Ensure representation by an OB Generalist in committees as requested by the Chair, Department of OB/GYN or the Administrator;
10. Provide strong leadership in the implementation and ongoing maintenance of TLC including: (1) attending TLC meetings, (2) participating in the development of a team model that supports the activity in L&D unit, and (3) taking an active role in coaching and mentoring physicians in the role of Team Coordinator;
11. Manage the relationships and assist in the resolution of issues and disputes that may arise among Practitioners and/or other members of Hospital staff or the Alta Bates Medical Staff related to the Program;
12. Work with the Director to recommend methods to coordinate the provision of perinatology services with designated community clinics, including but not limited to Alta Bates Summit Perinatal Center;
13. Participate in and oversee community outreach programs, and participate in education and support of community clinics;
14. Advise Hospital on the selection, replacement, maintenance and repair of all equipment related to the Program;
15. Develop and implement continuing education and training for physicians and nurses related to the Program;
16. Evaluate and address all complaints and inquiries of patients concerning the Program and furnish Hospital with an analysis of all complaints and recommendations for improving any deficiencies, as appropriate;
17. Advise in the recruiting, evaluation and retention of non-physician personnel for the Program;
18. Comply with Hospital's and Sutter Health's corporate compliance programs, and cooperate with any corporate compliance audits, reviews or investigations which relate to the Program;

19. At Hospital's request, prepare and submit an annual report of activities and accomplishments with respect to the Program and such other reports as reasonably requested;
20. At all times observe Hospital's rules and regulations, as made known to Medical Director, and use reasonable best efforts to maintain harmonious professional relationships with members of Hospital staff in order to assure that Hospital's patients receive quality medical care to avoid disruption to Hospital's operations;
21. Attend and participate at weekly OB Leadership Group meetings;
22. Develop and manage back-up system if Practitioners are unavailable to provide Coverage Services due to high activity;
23. Ensure Practitioners provide timely patient intervention twenty-four (24) hours per day to facilitate efficient flow of patients in L&D Unit to postpartum;
24. Appoint, with the consent of the Director, a Chief OB Generalist;
25. Support Clinical Quality Management (CQM) efforts of the OBGYN Department to discourage elective inductions prior to thirty-nine (39) weeks gestation and to encourage observation of the pitocin protocol.
26. Support Program efforts to improve the patient experience by utilizing methods identified by patient experience survey results from Hospital.
27. Participate in the transition of the Alta Bates Summit Perinatal Center in the event ownership of the Alta Bates Summit Perinatal Center is transferred to a local Federally Qualified Health Center.
28. Support and participate in Program efforts to improve patient throughput in all Women and Infant patient care areas, including, but not limited to, triage and labor and delivery (OR, PACU, antepartum, and postpartum).

EXHIBIT 1.3(a)(2)

CHIEF OB GENERALIST DUTIES

Chief OB Generalist shall be responsible to perform the administrative services set forth below. The administrative services set forth below shall be the only duties to be performed by Chief OB Generalist, regardless of whether the time reporting form attached to this Agreement or included in the "Terms" (or other electronic time reporting module) contains additional categories.

Chief OB Generalist shall not report any time performing administrative services on his/her Time Report that are related to the care of his/her own patients, including supervision, training and education and/or charting or chart review.

The Chief OB Generalist's Administrative Services shall include the following:

1. Completion of the monthly schedule that complies with the Staffing Requirements for Coverage Services pursuant to Section 1.1(a) (Staffing Requirements);
2. Represents OB Generalists on Alta Bates Medical Staff committees and other committees as requested by the Chair, Department of OB/GYN or by the Medical Director;
3. Meets with the Director and the Manager of Perinatal Services on operational clinical issues as requested and follows up as needed;
4. Ensures that the Medical Director, Director and Manager of Perinatal Services are informed of operational issues affecting quality and efficiency of practice;
5. Meets with L&D staff as requested by management to address and solve problems in operational units affecting patient safety;
6. Coordinates participation of OB Generalists in TLC activities/strategies; and
7. Ensures that operational changes are communicated to all OB Generalists.

The Chief OB Generalist shall be accountable to the Medical Director and the Chief Medical Executive in the performance of the duties described above.

EXHIBIT 3.1(a)(2)**MONTHLY RECONCILIATION SCHEDULE**

The following rates shall be used in calculating the prorated amounts per shift, per Practitioner with respect to the Monthly Reconciliation process described in Section 3.1(a)(2) (Monthly Reconciliation of Compensation for Coverage Services) of the Agreement:

Practitioner	Rate
OB Generalist	\$216.88 per hour
Perinatologist (on-site)	\$312.30 per hour
Perinatologist (on-call)	\$104.10 per hour
Certified Nurse Midwife	\$72.29 per hour

For example, if Group fails to provide one (1) OB Generalist for an eight (8) hour shift on a Monday pursuant to Section 1.1(a)(2), Hospital shall have the right to deduct One Thousand Seven Hundred Thirty-Five Dollars and Four Cents (\$1,735.04) from the next month's payment to Group. One Thousand Seven Hundred Thirty-Five Dollars and Four Cents (\$1,735.04) is the product of the hourly rate for an OB Generalist (\$216.88) multiplied by the number of hours in the missed shift (8).

EXHIBIT 10.4

BUSINESS ASSOCIATE REQUIREMENTS

Hospital and Group understand and agree that in providing the Administrative Services set forth in this Agreement, Group, Medical Director and Chief OB Generalist are each acting as a Business Associate of Hospital (who shall be referred to in this Exhibit as the "Covered Entity").

The parties desire to comply with federal and California laws regarding the Use and Disclosure of individually identifiable health information, in particular with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under these laws.

Now therefore, in consideration of the promises set forth in this Agreement, the parties agree as follows:

1. **Definitions.** The parties agree that any capitalized terms shall have the same definition as given to them under HIPAA and HITECH and regulations promulgated under these laws.
2. **Protected Health Information.** Business Associate agrees that it shall keep confidential all Individually Identifiable Health Information protected under California and federal law, including, but not limited to, Protected Health Information that Business Associate receives from Covered Entity, or creates or receives on behalf of Covered Entity (hereafter "PHI"). Such PHI shall be and remain the property of Covered Entity.
3. **Obligations of Business Associate.** Business Associate shall limit its Use and Disclosure of PHI only as necessary and appropriate to fulfill its specific obligations to Covered Entity, and agrees to the following, without limiting the foregoing:
 - (a) **Use of Protected Health Information ("PHI"):** Business Associate agrees that it, and its agents, employees and Subcontractors, shall not Access, Use or Disclose PHI other than as permitted or required by the Agreement or as required by law.
 - (b) **Safeguards:** Business Associate shall comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement. Additionally, Business Associate will comply with the following specific requirement relevant to Subpart C of 45 CFR Part 164 ("Security Rule"):

- i. Business Associate will securely sanitize all media containing Covered Entity's PHI (i.e., make the PHI unreadable or unusable through encryption or physical destruction) prior to disposal or re-use.

(c) Reporting: Business Associate shall report to the Privacy Officer of Covered Entity any Use or Disclosure of protected health information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR § 164.410 within forty-eight (48) hours of Discovery. Reports shall include, to the extent possible: A description of what happened, including the date of the discovery; the types of PHI that were involved; any steps individuals should take to protect themselves from potential harm; and what Business Associate is doing to investigate, mitigate, and protect against further unauthorized Disclosures or Breaches. Business Associate shall also promptly report in electronic form to the Security Officer of Covered Entity any Security Incident relating to Electronic PHI of which Business Associate becomes aware, except that no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, such as "pings" on a firewall. Reports required under this section shall be made to the following individuals, as applicable:

Sutter Health, Chief Privacy Officer
2200 River Plaza Drive, 3rd Fl E
Sacramento, CA 95833
Ph: (916) 286-6587

Sutter Health, Chief Information Security Officer
3707 Schriever Avenue
Mather, CA 95655
Ph: (916) 454-8975

(d) Workforce, Agents and Subcontractors: Business Associate shall not disclose PHI to any member of its Workforce, or to any of its agents or Subcontractors, unless such Disclosure is necessary for Business Associate to fulfill the terms of the Agreement. Business Associate shall also ensure that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information in accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(1). Business Associate shall not disclose PHI, nor allow an agent or Subcontractor to Disclose PHI, outside of the United States of America without the express written consent of Covered Entity.

(e) Access to PHI: Upon the request by Covered Entity, Business Associate shall promptly provide PHI to Covered Entity within five (5) days to permit any

individual whose PHI is maintained by Business Associate to have Access to and to copy his/her PHI in accordance with 45 CFR § 164.524, and applicable California law. Such PHI shall be produced in the format requested by Covered Entity, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. If an individual contacts Business Associate directly for such Access, Business Associate shall direct the individual to contact the Covered Entity. This requirement to provide Access to the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(f) Amendment of PHI: Upon the request of Covered Entity, Business Associate shall amend PHI and/or make PHI available to Covered Entity within five (5) business days for amendment, in such manner as Covered Entity may from time to time request, in accordance with 45 CFR § 164.526 and applicable California law. If an individual contacts Business Associate directly to amend PHI, Business Associate shall direct the individual to contact the Covered Entity. This requirement to amend the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(g) Accounting of Disclosures of PHI: Upon the request of Covered Entity, Business Associate shall provide to Covered Entity within five (5) business days an accounting of all Disclosures of PHI in order for Covered Entity to comply with 45 CFR § 164.528. Business Associate shall provide the date of the Disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the Disclosure. If an individual contacts Business Associate directly for such an accounting, Business Associate shall direct the individual to contact the Covered Entity.

(h) Minimum Necessary: Business Associate and its agents or Subcontractors shall request from Covered Entity and so Use and disclose only the Minimum Necessary PHI necessary to accomplish the purpose of the request, Use, or Disclosure. In all cases, Business Associate agrees to comply with guidance issued from time to time by the Secretary of Health and Human Services regarding Minimum Necessary.

(i) Prohibition on Sale of PHI: Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI.

(j) Audits, Investigations, Inspections: Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created by the Business Associate on behalf of, the Covered Entity available to the Secretary of the United States Department of Health and Human Services ("Secretary"), or the Secretary's designee, for purposes of determining the Covered Entity's and/or Business Associate's compliance with the applicable laws and regulations. Business Associate shall cooperate with

Covered Entity related to government or regulatory investigations, including making Business Associate's information relating to the Use and Disclosure of PHI available to Covered Entity.

(k) Mitigation Procedures: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI in violation of this Agreement.

(l) Legal Process: In the event that Business Associate is served with legal process (e.g., a subpoena) or request from a government agency (e.g., the Secretary) that potentially could require the Disclosure of PHI, Business Associate shall provide prompt notice of such legal process to the Privacy Officer of Covered Entity. In addition, Business Associate shall not disclose the PHI without the express written consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a request by a governmental regulatory agency under its statutory or regulatory authority.

4. Permitted Uses and Disclosures by Business Associate.

(a) Management and Administration. Business Associate and its respective agents, employees and Subcontractors are authorized to Use or disclose PHI for Business Associate's own proper management and administration, and to fulfill any of Business Associate's legal responsibilities; provided, however, that the Disclosures are required by law or Business Associate has received from any third-party recipient of PHI written assurances that (i) the PHI will be held confidentially and Used or further disclosed only as required by law or for the purposes for which it was disclosed to the third-party, and (ii) the third-party will notify Business Associate of any instances of which the third-party becomes aware that the confidentiality of the PHI has been breached.

5. Obligations of Covered Entity.

(a) Authorizations: Covered Entity shall obtain from individuals any applicable consents, authorizations and other permissions necessary or required by law for Covered Entity and Business Associate to fulfill their obligations under this Agreement.

(b) Restrictions: Covered Entity shall notify Business Associate in writing of any unique restrictions in the Use or Disclosure of an individual's PHI that Covered Entity has agreed to that may affect Business Associate's performance of its obligations under this Agreement. Covered Entity must agree to the request of an individual to restrict Disclosure of PHI about the individual to a Health Plan if the Disclosure is for the purpose of carrying out Payment or Health Care

Operations and is not otherwise required by law; and the PHI pertains solely to a health care item or service for which the individual, or person other than the Health Plan on behalf of the individual, has paid Covered Entity in full.

(c) Revocations: Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an individual relating to the Use or Disclosure of PHI, if such changes or revocation may affect Business Associate's performance obligations under this Agreement.

6. Procedure Upon Termination of the Agreement. Upon termination of the Agreement, and unless the Agreement is renewed, Business Associate shall return or destroy, at Covered Entity's option, all PHI that it maintains in any form, and shall retain no copies of PHI, if feasible. Business Associate shall certify to Covered Entity that Business Associate has destroyed and/or returned all PHI, in accordance with Covered Entity's request. If the parties agree that the return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections set forth in this Exhibit to the PHI, and limit further Use of the PHI to those purposes that make the return or destruction of the PHI infeasible. Business Associate shall notify Covered Entity what PHI Business Associate shall retain. This obligation on Business Associate shall survive any termination of the Agreement.

EXHIBIT 13.2

NOTICE AND PRACTITIONER ACKNOWLEDGEMENT

Each of the undersigned Practitioner hereby acknowledges receipt of a copy of this Agreement and accepts the position and agrees to carry out the duties, of Practitioner as set forth in this Agreement. Each Practitioner acknowledges that he or she has read the Agreement and has had an opportunity to seek legal or other counsel to evaluate the Agreement's terms. Based upon Practitioner's review and legal counsel, if applicable, each Practitioner confirms that he or she understands and agrees to all terms of the Agreement.

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

EXHIBIT 16-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**ALTA BATES SUMMIT MEDICAL CENTER
PERINATAL SERVICES
EXTENSION AGREEMENT**

This Extension Agreement ("Extension Agreement") is entered into by and between Alta Bates Summit Medical Center, a California nonprofit public benefit corporation ("Hospital"), and **Easy Bay Perinatal Medical Associates** ("EBPMA").

RECITALS

A. Alta Bates Medical Center, Summit Medical Center, and Easy Bay Perinatal Medical Associates entered into an Agreement dated as of June 20, 2002 attached hereto as Exhibit A (the "Agreement"). Summit Medical Center merged into Alta Bates Medical Center effective June 30, 2002 and the surviving corporation changed its name to Alta Bates Summit Medical Center.

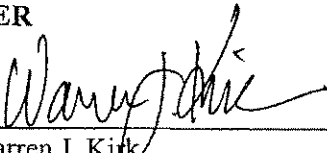
B. Hospital and Easy Bay Perinatal Medical Associates wish to extend the term of the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Extended Term. The term of the Agreement shall be extended through September 30, 2003 subject to earlier termination as set forth in the Agreement.
2. Amendments. No purported amendment of this Extension Agreement, or waiver, discharge or termination of any obligation under it, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the parties.
3. Governing Law. This Extension Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.
4. Entire Agreement. This Extension Agreement, together with the Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof.
5. Counterparts. This Extension Agreement may be executed in multiple counterparts, and counterpart signature pages may be assembled to form a single, fully executed document.
6. Conflicting Provisions. If there is any conflict or inconsistency between this Extension Agreement and the Agreement, the provisions of this Extension Agreement shall control and govern. Except as otherwise amended by this Extension Agreement, all of the terms and conditions of the Agreement will remain the same and in full force and effect.

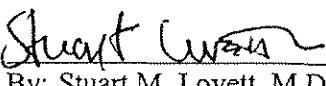
IN WITNESS WHEREOF, the parties have executed this Extension Agreement as of the date first written above.

**ALTA BATES SUMMIT MEDICAL
CENTER**



By: Warren J. Kirk
Its: President and Chief Executive Officer

**EASY BAY PERINATAL MEDICAL
ASSOCIATES**



By: Stuart M. Lovett, M.D.
Its: President

EXHIBIT A

ATTACHED



*Alta Bates Summit
Medical Center*

A Sutter Health Affiliate

350 Hawthorne Avenue
Oakland, CA 94609
510.655.4000

FILE

July 9, 2003

Stuart Lovett, MD
East Bay Perinatal Medical Associates, Inc.
350 - 30th Street, Suite 205
Oakland, California 94609

Dear Stu:

The Perinatal Services Agreement dated June 20, 2002 between East Bay Perinatal Medical Associates and Alta Bates Medical Center and Summit Medical Center expires in a few days. We are currently in the process of the performing the financial analysis of the practice, and will have that completed within this month and a new agreement executed.

In the interim, we will provide the compensation for services under the existing contract in the amount of \$410,416.67 for the month of July. The other provisions in the existing contract will remain in effect until a new agreement has been signed. This July payment will be considered the first payment under the new contract. Accordingly, future monthly payments for services rendered, as part of the annual compensation under that new contract, will be adjusted to reflect this July payment.

Thanks, and please acknowledge by signing in the space below and returning to me.

Sincerely,

Victor E. Meinke
Vice President -- Business Development

VEM/II

By:

Stuart Lovett, M.D.
East Bay Perinatal Medical Associates, Inc.

July 10, 2003
Date

www.altabatesummit.org

PERINATAL SERVICES AGREEMENT

THIS PERINATAL SERVICES AGREEMENT ("Agreement") is made and entered into as of June 20, 2002 by and among ALTA BATES MEDICAL CENTER, a California nonprofit public benefit corporation ("ABMC"), SUMMIT MEDICAL CENTER, a California nonprofit public benefit corporation ("Summit") and EAST BAY PERINATAL MEDICAL ASSOCIATES, a California professional medical partnership ("Medical Group").

RECITALS

A. ABMC owns and operates a licensed general acute care hospital located at 2450 Ashby Avenue, Berkeley, California, and an outpatient clinic providing perinatal services located at 5730 Telegraph Avenue, Oakland, California (the "Perinatal Clinic"). Summit owns and operates a licensed general acute care hospital located at 350 Hawthorne Avenue, Oakland, California. (The ABMC and Summit hospital facilities are referred to herein individually as "Hospital" and together as "Hospitals.") ABMC and Summit are both members of the Sutter Health system. It is anticipated that Summit will be merged into ABMC on or about July 1, 2002, that ABMC will then change its name to "Alta Bates Summit Medical Center" and that this Agreement will continue thereafter, without any further action required by the parties, between Alta Bates Sutter Medical Center ("ABSMC") and Medical Group.

B. Medical Group is a professional medical partnership organized under the laws of the State of California whose partners are professional corporations whose sole shareholders are licensed physicians duly qualified in the subspecialty of perinatology.

C. ABMC and Summit each operate clinical programs of maternal-fetal medicine (providing high-risk obstetrical services) as part of their comprehensive Women and Infants Service Programs (the "Programs"). The East Bay service area served by ABMC and Summit contains a large population of indigent and other underprivileged patients who experience a disproportionately large number of "high risk" pregnancies requiring greater medical expertise and greater coordination among health professionals. An important part of the charitable healthcare mission of both ABMC and Summit is to improve access of all East Bay residents to high quality women/infant medicine, reduce the morbidity and mortality rates, and improve the quality of care provided to all pregnant women and their fetuses and newborns.

D. In order to fulfill this important charitable healthcare mission, ABMC currently contracts with four individual perinatologists for the provision of certain administrative and clinical coverage services related to its Program, and Summit currently contracts with Medical Group for the provision of certain administrative and clinical coverage services related to its Program. ABMC and Summit wish to consolidate and integrate the operation of their two Programs in order to improve quality of care and the availability of cost effective maternal-fetal healthcare services. As part of such consolidation and integration efforts, ABMC and Summit wish to consolidate the provision of all medical director, administrative and coverage services with Medical Group. ABMC also wishes to cease operating the Perinatal Clinic as an outpatient department of the ABMC hospital and arrange for Medical Group to assume full responsibility

for the interim operation of the Perinatal Clinic and eventual closure and consolidation of the Perinatal Clinic.

E. ABMC and Summit have had all aspects of the arrangements described in this Agreement reviewed by an experienced independent healthcare financial consultant which has determined that the compensation to be provided herein to Medical Group represents fair market value compensation for the services to be provided by Medical Group and that the terms upon which certain assets and operations of the Perinatal Clinic are to be transferred from ABMC to Medical Group are reasonable, fair market value terms.

F. In order to provide the parties with a reasonable period of time to effect a smooth transition of services and responsibilities with respect to the Programs, the operative provisions of this Agreement will not become effective until a date between July 1 and July 15, 2002 as mutually agreed by the parties (the "Effective Date"). Because at that time the merger of Summit and ABMC will have been completed, this Agreement refers to ABSMC as the applicable party in the operative provisions below.

G. Effective as of the Effective Date, this Agreement shall replace, supersede and terminate the Women's Medicine Medical Director and Services Agreement between Summit and Medical Group, originally dated February 8, 1995, as subsequently amended and extended.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

MEDICAL DIRECTOR SERVICES

1.1 Perinatal Services Medical Director. Medical Group shall provide Stuart M. Lovett, M.D. to serve as Medical Director for perinatal services at both Hospitals ("Medical Director"). Medical Director shall provide overall management services for the Programs in accordance with this Agreement, shall be responsible for overseeing community outreach, education, and support of community clinics, shall be responsible for overseeing Medical Group's performance under this Agreement, and shall have such other responsibilities as are set forth in this Agreement ("Administrative Services"). Medical Director shall be accountable to the Chief Executive Officer of ABSMC or another person designated by the Chief Executive Officer (the "Administrator") and shall coordinate his activities with the Director of Women and Infants Services at each Hospital (the "Program Director"). Medical Director may delegate the performance of certain of his administrative duties and services to other perinatologists or other qualified physicians employed by or under contract with Medical Group, provided that Medical Director shall retain ultimate responsibility and accountability for such administrative duties and services.

1.2 Medical Director Duties. Medical Director's Administrative Services shall include the following:

(a) Provide overall medical oversight for the Programs, and consult with ABSMC management in the development, maintenance, and implementation of policies and procedures for the effective operation of the Programs and participation in ABSMC's strategic planning process for the Programs;

(b) Consult with ABSMC management with respect to the consolidation and integration of the two Programs;

(c) Be routinely available to consult with Hospital management at mutually scheduled times, participate on Hospital or medical staff committees pertaining to perinatology, and attend meetings, as reasonably requested, of the following groups and conferences: Labor and Delivery Collaborative Practice, Obstetrical Department, Obstetrical Department Executive Committee, Pediatrics Department, Sutter Health's Women's Health work group for the Western Region, Sutter Obstetrics and Gynecology conference planning and conferences, Hospital perinatology conferences, the Perinatal Network Program and the East Bay Regional Perinatal Program;

(d) Oversee quality management of the Programs, including participation in OB/Peds Quality Management meetings and in monthly morbidity and mortality rounds, overseeing the quality of care delivered by covering nurse midwives and obstetricians, and, with Hospitals, jointly develop and implement appropriate performance improvement, quality and risk management activities for the Programs;

(e) Monitor utilization of Program services and recommend all reasonable steps necessary to remedy deficiencies in the quality or efficiency of the operation of the Programs;

(f) Participate with the Hospitals' administrative staffs in managing the effective operation of the Programs in accordance with approved budgets, including managing the costs related to the Programs, developing and administering applicable operating and capital expenditure budgets and cost controls for the proper and efficient operation of the Programs;

(g) Provide guidance and supervision as necessary to maintain the Programs' accreditation and Medicare/Medi-Cal certification and assist in securing and maintaining necessary licenses and certifications for the Programs, including cooperation with the Hospitals to maintain California Children's Services status in the Neonatal Intensive Care Unit;

(h) Oversee the quality of clinical care provided by the perinatologists, covering obstetricians and covering nurse midwives providing services to Program patients ("Covering Providers);

(i) Manage the relationships and assist in the resolution of issues and disputes that may arise among Covering Providers and/or other members of Hospital staff or medical staff related to the Programs;

- (j) Work with the Program Director to recommend methods to coordinate the provision of perinatology services with designated community clinics;
- (k) Participate in and oversee community outreach programs, and participate in education and support of community clinics;
- (l) Advise the Hospitals on the selection, replacement, maintenance and repair of all equipment related to the Programs;
- (m) Assist Hospital in developing and implementing continuing education and training for physicians and nurses related to the Programs;
- (n) Assist Hospital in evaluating and addressing all complaints and inquiries of patients concerning the Programs and furnish the Hospitals with an analysis of all complaints and recommendations for improving any deficiencies, as appropriate;
- (o) Advise in the recruiting, evaluation and retention of non-physician personnel for the Programs;
- (p) Comply with each Hospital's and Sutter Health's corporate compliance programs, and cooperate with any corporate compliance audits, reviews or investigations which relate to the Programs;
- (q) At ABSMC's request, prepare and submit an annual report of activities and accomplishments with respect to the Programs and such other reports as reasonably requested;
- (r) At all times observe Hospitals' rules and regulations, as made known to Medical Director, and use reasonable best efforts to maintain harmonious professional relationships with members of Hospitals' staff in order to avoid disruption to Hospitals' operations and assure that Hospitals' patients receive quality medical care.

1.3 Minimum Time Requirements. Medical Director (together with other Medical Group perinatologists and qualified physicians) shall devote a minimum average of 66 hours per week to the performance of the Administrative Services described in this Article I.

1.4 Monthly Time Reports. Medical Director (and other Medical Group perinatologists and qualified physicians performing Administrative Services) shall contemporaneously record the actual number of hours and a description of the actual Administrative Services provided under this Article I on a weekly time report ("Time Report") in the form attached hereto as Exhibit 1.4, as modified from time to time by ABSMC. Medical Director shall deliver to the Administrator completed and signed Time Reports for each month within 10 days after the end of each calendar month during the term of this Agreement. Upon request of ABSMC, Medical Director (and other Medical Group perinatologists performing Medical Director's administrative services) shall from time to time complete and execute such other time reports or allocation statements on forms provided by ABSMC as may be required to comply with applicable Medicare, Medi-Cal or other legal requirements.

ARTICLE II
CLINICAL COVERAGE SERVICES

2.1 Clinical Coverage. Medical Group agrees to ensure the on-site and on-call availability of qualified perinatologists and obstetricians ("Covering Providers") to provide professional consultations and to render professional services to patients of the Hospitals who receive services pursuant to the Programs ("Program Patients") upon appropriate request and/or referral from other health care practitioners. Subject to Hospital approval (which approval shall not be unreasonably withheld or delayed), Medical Group shall develop a system for assuring the availability of appropriate on-site and on-call Covering Providers for the Programs twenty-four (24) hours per day, seven (7) days per week, 365 days per year. Medical Group shall submit schedules to the Program Director in a timely manner and provide the Hospitals with written notice of any changes in such schedules.

2.2 Coverage Requirements. Without limiting the generality of Section 2.1, Medical Group shall ensure the availability of Covering Providers to provide clinical coverage services to the Programs ("Coverage Services"), as follows:

(a) Program Patient Services. Medical Group shall ensure the on-site availability of obstetricians and the on-call availability of perinatologists twenty-four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year at both Hospitals, to provide the following:

(1) perinatal diagnostic and consulting services and delivery services to Program Patients;

(2) emergency obstetrical and gynecological care to Program Patients when their regular attending physician has not arrived at the Hospitals, such care to be rendered only until the attending physician becomes available and assumes responsibility for care;

(3) obstetrical and gynecological care to patients who arrive at the Hospitals (including presentation in the Emergency Room) with no prior patient/professional relationship with an obstetrician or gynecologist.

(b) Perinatal Transport. Medical Group shall ensure the availability of qualified Covering Providers to accept and coordinate perinatal transport.

(c) Antenatal Testing. Medical Group shall ensure the availability of perinatologists and other providers to provide ultrasonography, genetic screening and other antenatal testing services for outpatient referrals.

(d) Anticipated Staffing Level. The parties expect that the perinatal Coverage Services under this Article II together with the Administrative Services under Article I will require Medical Group to employ or otherwise contract with a minimum of 5.5 full time equivalent (FTE) perinatologists, and Medical Group agrees to provide at least this number of FTE perinatologists during the term of this Agreement. The appropriate level of obstetrical and

gynecological coverage under this Agreement shall be determined by mutual agreement of the parties from time to time.

(e) Shift Scheduling. Medical Group shall provide the Program Director with current updated copies of the coverage shift schedules in effect from time to time.

2.3 ABMC Perinatologists. On or before the Effective Date, Medical Group agrees to make good faith offers of employment to existing ABMC perinatologists for positions representing 2.5 FTEs. Such offers of employment shall include annual base compensation at least equal to the base compensation currently being provided to such perinatologists by ABMC.

2.4 Right to Subcontract. Subject to Section 2.3 and any other limitations expressly set forth in this Agreement, Medical Group shall have the right, subject to the prior written approval of ABSMC, which shall not be unreasonably withheld, to subcontract with other physicians for the Coverage Services required to be provided by Medical Group under this Agreement so long as such subcontracted physicians are qualified to perform services required under this Agreement and comply with all provisions of this Agreement. Medical Group shall be solely responsible for compensating such subcontracted physicians, including any and all payments to Covering Providers for their Coverage Services.

2.5 Requirements for Covering Providers. Medical Group shall ensure that Covering Providers meet all requirements for active and unrestricted Medical Staff privileges, have current licenses to practice medicine, comply with the Hospitals' nondiscrimination policies, be eligible to and agree to treat Medicare and Medi-Cal patients, and provide services in accordance with all applicable Medical Staff bylaws, rules, regulations and policies. Without limiting the generality of the foregoing, all covering perinatologists must be certified or board eligible in maternal-fetal medicine and all covering obstetricians must be board certified or board eligible in obstetrics and gynecology or maternal-fetal medicine. Medical Group shall also cause Covering Providers to provide such administrative services as are required from them for the efficient operation of the Programs and maintenance of high quality patient care, as reasonably requested by the Hospitals.

2.6 Medical Group – Physician Agreements. Medical Group shall enter into a written agreement with each physician providing Administrative Services or Coverage Services under this Agreement satisfying the following conditions:

(1) The agreement shall obligate the physician to abide by all applicable terms of this Agreement;

(2) The agreement shall specify the services to be performed by the physician;

(3) The agreement shall provide compensation for the physician that is fair market value for the services actually provided not taking into account the value or volume of referrals or other business generated by the physician for the Hospitals (within the meaning of the Stark law set forth at 42 U.S.C. §1395nn); and

(4) The agreement shall not contain any term that would knowingly violate any anti-kickback statute or any laws or regulations governing billing or claims submission.

2.7 Notice of Loss or Limitation on Qualifications. Medical Group shall immediately notify ABSMC of any loss, suspension, or material limitations imposed upon any Covering Provider's license, Medicare or Medi-Cal participation, Medical Staff membership privileges, prerogatives, or professional liability insurance coverage, and shall also promptly notify Hospital when any malpractice claim or professional disciplinary action is initiated or asserted against any Covering Provider.

2.8 Outreach Clinics. ABSMC may desire to establish outreach clinics at Sutter Solano, Sutter Delta and other affiliated hospitals. If requested by ABSMC, and upon terms mutually agreeable to the parties, Medical Group shall provide a perinatologist (and/or other appropriate medical personnel) on-site at such outreach clinics as appropriate to ensure the development and support of such outreach clinics.

2.9 Back-Up. Medical Group shall provide the following back-up services:

(a) Nurse Midwife Back-Up. Medical Group shall reasonably cooperate with covering nurse midwives to facilitate the availability of appropriate supervision and back-up for these nurse midwives, including their private practice patients in accordance with all Hospital Medical Staff requirements.

(b) Family Practice Back-Up. Medical Group shall reasonably cooperate with those family practice physicians who maintain Medical Staff privileges at either Hospital, but who are not permitted to perform deliveries for their patients without the supervision and back-up of an obstetrician, to facilitate the availability of a covering obstetrician to provide back-up for the family practice physicians in accordance with all Hospital Medical Staff requirements.

2.10 Expenses. Except as provided in Article III and Section 8.2, Medical Group shall be responsible for all of the expenditures of Medical Group and its partners and employees, including but not limited to all expenses attributable to the conduct of Medical Group's private practice and all expenses incurred in connection with the performance of all Administrative Services and Coverage Services provided under this Agreement, including all expenses related to the provision of an OB/GYN coverage panel.

2.11 Integration of Programs. Medical Group and ABSMC shall work together in good faith to plan for and implement the consolidation and integration of the two Programs operated at the two Hospitals with the objective of improving both quality of care and cost efficiency of the Programs.

ARTICLE III **RESPONSIBILITIES OF HOSPITALS**

3.1 Space, Equipment, Supplies and Personnel. During the term of this Agreement, the Hospitals shall provide and maintain all customary and necessary space,

equipment, supplies, utilities and non-professional personnel reasonably required for operation of the Programs within the Hospitals (but not at the Perinatal Clinic or any other private practice location of Medical Group). The addition or removal of space, equipment, supplies and personnel at the Hospitals shall be the exclusive prerogative of ABSMC, after consultation with Medical Group. Medical Group, the Medical Director and the Covering Providers may use such Hospital space, equipment, supplies and personnel only for the performance of services under this Agreement, and in no event may Medical Group or any individual physician use any part thereof for any other purpose.

3.2 Responsibility for Service. To the extent required by applicable laws and regulations (including Title 22, Section 70713 of the California Code of Regulations), the Hospitals shall retain professional and administrative responsibility for the services rendered to Program Patients.

ARTICLE IV COMPENSATION

4.1 Compensation for Medical Group's Services. Provided that the Medical Group is not in material breach of its obligations under this Agreement (including, but not limited to, the timely completion and delivery of the Time Reports required under Section 1.3), ABSMC shall pay Medical Group an annual amount equal to \$429,000 as consideration for the Medical Group's Administrative Services under Article I and an annual amount equal to \$4,496,000 as consideration for Medical Group's Coverage Services under Article II. The aggregate annual compensation of \$4,925,000 shall be payable at the rate of \$410,416.67 per month; provided, however, that ABSMC has agreed to make prepayments in the first six months of the term of this Agreement equal to \$150,000 per month which will be credited against the monthly payments in the second six months of the term. As a result, ABSMC shall make the following payments to the Medical Group on the 15th day of the month in the month in which the services are being provided: \$560,416.67 for each of the first six months, and \$260,416.67 for each of the second six months. Payment for any partial month shall be prorated based on the actual number of days in such month that this Agreement was in effect.

4.2 IRS Forms 1099. All compensation shall be reported by ABSMC as income to Medical Group on IRS Forms 1099.

4.3 Compensation for Professional Services to Patients.

(a) No Hospital Responsibility. The provision of professional services by Medical Group and Covering Providers to Program Patients is not deemed part of this Agreement. Therefore, Medical Group and Covering Providers shall look solely to the responsible patients and third party payors (and not to ABSMC or the Hospitals) for compensation for professional services to patients.

(b) Fee Schedule. Medical Group agrees to cause Covering Providers to charge professional service fees not in excess of usual, customary and reasonable fees for comparable services. Medical Group shall provide to the Hospitals proposed fee schedules for advance approval, which approval shall not be unreasonably withheld. In the event of

disagreement regarding any schedule of fees for professional services, the matter shall be referred to each Hospital's Professional Services Agreements Committee, and then to ABSMC's Board of Directors for a final determination. Such fee schedules shall at all times comply with all applicable laws, rules, regulations and contractual arrangements with third party payors.

(c) Billing and Collection. Medical Group shall use commercially reasonable efforts to bill patients and third-party payors promptly (meaning that all bills for services shall be sent within 30 days of the date that a physician performed the services) for all professional services rendered by Medical Group's physicians and collect all bills as soon as practicable.

(d) Medical Group Financial Records. Medical Group shall maintain books of account and other appropriate financial records showing all professional fees for its physicians (and, if applicable, Covering Providers) and all other income and expenses of Medical Group, which shall be open to inspection by ABSMC and its authorized representatives at any reasonable time. Medical Group shall deliver to the Administrator on or before the date which is 90 days before the expiration of the term of this Agreement a copy of Medical Group's financial statements for the preceding months during the term, including an income statement, cash flow statement and balance sheet.

(e) Hospital Records. Each Hospital shall provide to Medical Group, or its designee, information and records that Hospital maintains for its billing purposes, to the extent that such information and records are relevant to Medical Group's billing for services, and in a format reasonably acceptable to Medical Group. Such records and data may include legible copies of the following: (i) the patient registration form; (ii) the patient's insurance card; (iii) the patient's assignment of insurance benefits; (iv) the patient's consent to release information to third party payors; (v) the charge ticket which includes a description of the procedure, CPT code, and diagnosis code; (vi) the transcribed time report; and (vii) the daily department logs. All information shall be provided in a timely manner.

4.4 Third Party Payor Agreements. Medical Group shall itself, and shall cause each Covering Provider to, participate in all third-party payment or managed care programs in which Hospitals participate, render services to patients covered by such programs, and accept the payment amounts provided for under these programs as payment in full for services of Covering Providers to Program Patients.

ARTICLE V

PERINATAL CENTER

5.1 Termination of ABSMC's Operation. As of the Effective Date of this Agreement, ABSMC shall cease operating the Perinatal Center as an outpatient department of Alta Bates Hospital, and Medical Group, from and after the Effective Date, shall assume sole responsibility for the continued operation of, and all costs and expenses incurred on and after the Effective Date related to, the Perinatal Center.

5.2 Transfer of Operating Responsibility to Medical Group. In order to provide for continuity of care to patients receiving services at the Perinatal Center and to transfer

sole responsibility for operation of the Perinatal Center to Medical Group, ABSMC and Medical Group agree as follows:

- (a) Space and Equipment. As of the Effective Date, ABSMC shall sublease the real property and shall lease the personal property used in connection with the Perinatal Clinic to Medical Group at a fair market value rent under the terms of a separate written lease agreement.
- (b) Continued Services. Medical Group and Hospitals agree to cooperate to consolidate all outpatient services now provided at the Perinatal Center and at the Summit campus at a single location as soon as practicable. Until such consolidation has been completed, Medical Group shall use its commercially reasonable efforts to continue to make available at the Perinatal Center the types of services, during reasonable office days and hours, as provided at the Perinatal Center prior to the Effective Date. Medical Group agrees to notify and consult with ABSMC prior to adopting any material change to the types of services or office days or hours of the Perinatal Center.
- (c) Name and Signage. Medical Group shall not use either Hospital's name in connection with operation of the Perinatal Center and shall immediately remove any signage that includes such names.
- (d) Compliance with Law. Medical Group shall be solely responsible for obtaining and maintaining all licenses and permits necessary to operate the Perinatal Center and for complying with all applicable laws.
- (e) Billing and Collection. ABSMC shall retain sole right and responsibility for billing and collecting for all medical services and supplies provided at the Perinatal Center before the Effective Date. Medical Group shall have the sole right and responsibility for billing and collecting for all medical services and supplies provided at the Perinatal Center on and after the Effective Date.
- (f) Medical Records. ABSMC shall retain and maintain all medical records relating to services provided at the Perinatal Center prior to the Effective Date, and Medical Group shall create and maintain all medical records relating to services provided at the Perinatal Center on and after the Effective Date; provided, however, that Medical Group shall retain medical records for patients actively under care at the Perinatal Center on the Effective Date and the parties shall mutually agree on the appropriate disposition and maintenance of such medical records after such active care has ceased, consistent with all applicable laws.
- (g) No Representations or Warranties. Medical Group acknowledges and agrees that it has performed its own investigation and due diligence with respect to the Perinatal Center and the assets to be leased by it under this Article V and the separate lease, and that neither ABMC nor Summit have made any representations or warranties of any kind with respect to the Perinatal Center, its assets or operations or its future profitability.

ARTICLE VI
COMPLIANCE WITH LAWS; ACCREDITATION; OTHER STANDARDS

6.1 Laws and Regulations. In providing services under Articles I and II of this Agreement, Medical Group and Covering Providers shall comply with all applicable provisions of federal, state, and local laws, regulations, guidelines, and policies, including, but not limited to, Medicare and Medi-Cal guidelines and policies, including any additions, amendments, and modifications thereto and official interpretations thereof, to include the requirements of third party payors and all governmental agencies having jurisdiction over the operation of Hospital and the Programs, the licensing of healthcare practitioners, and the delivery of services to patients of governmentally-regulated third party payors whose members/beneficiaries receive services at the Hospitals. Such compliance shall specifically include, but is not limited to: (i) compliance with applicable provisions of Title 22 of the California Code of Regulations; and (ii) compliance with Medicare billing, time allocation, record keeping, and record access requirements, as follows:

(a) Access to Books and Records. In compliance with United States Code Section 1395x(v)(1)(I) and its implementing regulations:

(1) If Medical Group provides services to Hospitals or their related organizations (as defined at Title 42 Code of Federal Regulations ("CFR") Section 413.17) valued at, or costing, Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period, Medical Group agrees to allow the Secretary of Health and Human Services, the Comptroller General, and their duly authorized representatives access to the written contracts between ABSMC and Medical Group, and to such of Medical Group's books, documents, and records as are necessary to verify the costs of services provided. Such access shall be granted until the expiration of four years after the services are furnished, and shall be subject to the provisions of 42 CFR Part 420; and

(2) Medical Group agrees to ensure that organizations related to it, as described at 42 CFR Section 420.301, ("Subcontractors") providing services for Hospital (or its related organizations) valued at or costing Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period shall agree, in writing, to allow like access to the Subcontractor's books, documents, and records.

If Medical Group is requested to disclose any books, documents, or records relevant to this Agreement for the purposes of an audit or investigation, Medical Group shall notify ABSMC of the nature and scope of such request, and shall make available to ABSMC, upon request of ABSMC, all such books, documents, or records. In the event of any breach of this Agreement to provide access to Medical Group's or any Subcontractor's records, ABSMC shall have the right to terminate this Agreement upon ten (10) days' written notice. Medical Group shall indemnify and hold harmless ABSMC in the event that any amount of reimbursement is denied or disallowed by the reimbursement program because of the failure of Medical Group or any of its Subcontractors to comply with the obligation of this Section. Such indemnity shall include, but not by way of limitation, the amount of reimbursement denied or disallowed, plus any interest, penalties, and legal costs (including reasonable attorneys' fees).

(b) Documentation. Medical Group and Medical Director shall cooperate with ABSMC and Hospitals, and shall require Covering Providers to cooperate with ABSMC and Hospitals in completing such physician time studies that may reasonably be required by ABSMC and Hospitals from time to time to satisfy Medicare cost reporting requirements for such documentation, and shall maintain appropriate documentation supporting the allocation of his or her time between professional and administrative duties as required by 42 CFR Section 415.60.

(c) Services Provided to Hospitals. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.55, and shall not bill patients (or responsible third party payors) for services provided to ABSMC or Hospitals.

(d) Services Provided to Patients. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.100 et seq. in all billings for professional services provided to patients.

(e) Anti-Referral and Anti-Kickback Laws. In addition to the obligations of the parties to comply with applicable federal, state and local laws as provided herein above, the parties acknowledge that they are subject to certain federal and state laws governing the referral of patients and payment of remuneration amongst providers which are in effect as of the execution of this Agreement including:

- (1) Prohibition on payments for referrals or to induce the referral of patients;
- (2) Prohibition on the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship; and
- (3) Prohibition on ABMC, Summit and ABSMC entering into an excess benefit transaction with a disqualified person or persons.

Each party acknowledges that it has had the opportunity to engage independent counsel to advise it as to the requirements of such laws and each further acknowledges and agrees that the consideration to be paid to Medical Group by ABSMC for the Administrative Services and Coverage Services to be provided by Medical Group pursuant to this Agreement and the compensation to be paid by Medical Group to ABSMC under the separate lease agreement related to the Perinatal Clinic are intended to be consistent with the fair market value thereof determined in an arms length transaction. The parties acknowledge and agree that no payment made under this Agreement is in return for the referral of patients or in return for the purchasing, leasing or ordering of any products or services or the recommending of the purchasing, leasing or ordering of any products or services. Nothing in this Agreement is intended or shall be construed to require either party to violate the California or federal laws described herein, and this Agreement shall not be interpreted to: (i) require Medical Group to make referrals to any health care facility operated by either Hospital; or (ii) restrict Medical Group or any Covering Provider from establishing staff privileges at, referring any patient to, or from otherwise generating any business for, any other entity of such party's choosing.

6.2 Corporate Practice of Medicine. Neither ABSMC nor either Hospital shall involve itself in those aspects of Medical Group's or any Covering Provider's practice of medicine for which a license to practice medicine is required.

6.3 Accreditation and Other Standards. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with all applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, performing such duties under the direction of the Medical Director. Services provided to patients being treated at the Hospital facilities are to be rendered in accordance with Hospitals' standards of quality and efficiency, and in accordance with all applicable Medical Staff Bylaws, rules and regulations, and policies and procedures, and in accordance with applicable Comprehensive Perinatal Service Program standards, American College of Obstetrics and Gynecology ("ACOG") Standards for Obstetric-Gynecological Service, American College of Nurse Midwives ("ACNM"), and the Joint Statement of ACOG and ACNM. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with the Bylaws, rules and regulations, and policies and procedures of the Medical Staffs and Hospitals, and the current community standards of quality medical practice as they relate to the Program.

6.4 Nondiscrimination. Medical Group, the Medical Director, and Covering Providers shall provide professional services to patients of the Hospitals regardless of a patient's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, handicap, reimbursement source or financial status.

6.5 Confidentiality of Patient Medical Information. Neither Medical Group nor Medical Director nor any Covering Provider shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by the applicable Hospital in writing, any patient or medical record information regarding the Hospital or any Hospital patient, and Medical Group, Medical Director and each Covering Provider shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of each Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

ARTICLE VII

RELATIONSHIP OF THE PARTIES.

7.1 Independent Contractors. In performing the services and duties under this Agreement, the parties acknowledge and agree that Medical Group, Medical Director and any Covering Provider providing services under this Agreement are at all times acting and performing as independent contractors with respect to ABSMC; that neither Medical Group, Medical Director nor any Covering Provider shall hold themselves out or act as agents of, or have any power to obligate, ABSMC or the Hospitals; and that neither Medical Group, Medical Director nor any Covering Provider shall have any right to make any claim against ABSMC or the Hospitals for any social security benefits, payroll taxes, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave or any other employee benefits of any kind. ABSMC shall not exercise control over the methods

by which Medical Group, Medical Director nor any Covering Provider performs services under this Agreement, the sole interests of ABSMC being to ensure that such services are performed in a competent, efficient and satisfactory manner and in accordance with the standards set forth in this Agreement. Medical Group shall be solely responsible for all compensation, benefits, tax withholding and other payroll taxes, workers' compensation insurance disability insurance and unemployment insurance with respect to its employed and contracted physicians and other personnel.

7.2 Nonexclusive. The parties acknowledge and agree that this Agreement does not create an exclusive relationship between the parties for any purpose.

ARTICLE VIII

INSURANCE

8.1 Medical Group Insurance. Medical Group shall obtain and maintain professional liability insurance policies covering Medical Group and all Covering Providers employed by Medical Group, and shall ensure that all Covering Providers not employed by Medical Group obtain and maintain professional liability insurance policies. All such policies shall provide for professional liability coverage in the minimum amounts of Three Million Dollars (\$3,000,000) per occurrence, Five Million Dollars (\$5,000,000) for perinatologists, and One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate for other Covering Providers annual aggregate. If such insurance is on a "claims made" basis, and such coverage is later terminated or converted to "occurrence" coverage (or vice versa), Medical Group shall require Covering Providers to acquire "prior acts" or "tail" coverage in the above amounts covering all periods during which this Agreement is or has been in force. Medical Group shall annually certify to ABSMC that all required coverage is in force. Medical Group shall regularly provide to ABSMC updated copies of certificates evidencing all required coverage and shall give ABSMC 30 days advance written notice of any proposed changes or termination of coverage under such policies.

8.2 ABSMC's Obligation to Pay for Tail Coverage for OB Call Panel Physicians. Notwithstanding Section 8.1, upon termination of this Agreement for any reason, ABSMC shall fund the cost of "prior acts" or "tail" coverage required under Section 8.1 for those physicians with whom Medical Group has contracted to provide Coverage Services as members of the obstetrical call panel; provided, however, that this Section 8.2 shall not apply to (1) any shareholder or partner of Medical Group, (2) any shareholder or employee of any professional corporation which is a shareholder or partner of Medical Group or (3) any perinatologist employed or under contract with Medical Group or any professional corporation which is a shareholder or partner of Medical Group.

8.3 Insurance for Administrative Services. With respect to Administrative Services pursuant to this Agreement, ABSMC shall maintain liability insurance or self insurance covering Medical Director and other physicians providing such services with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate. This insurance or self-insurance shall be applicable only to Administrative Services and is not applicable to any professional services provided by Medical Group, Medical Director, or Covering Providers.

8.4 Acknowledgment.

(a) By Medical Group. Medical Group is responsible for (i) any untrue representation, breach, or nonfulfillment by Medical Group of any covenants contained in this Agreement; and (ii) any negligent or intentional act or omission of Medical Group or its employees or agents (including Covering Providers providing services on behalf of Medical Group under this Agreement), officers, or directors while such person is performing duties in connection with the operation of the Programs.

(b) By ABSMC. ABSMC is responsible for: (i) any untrue representation, breach, or nonfulfillment by ABSMC of any covenant contained in this Agreement; and (ii) any negligent or intentional act or omission of ABSMC, or its employees or agents, officers or directors while such person is performing duties in connection with the operation of the Programs.

(c) No Liability. By virtue of this Agreement, neither party assumes responsibility for the acts or omissions of the other.

ARTICLE IX
TERM AND TERMINATION

9.1 Term. This Agreement shall become effective as of 12:01 am on the Effective Date, and shall remain in effect for a term of one year thereafter, unless terminated sooner in accordance with Section 9.2.

9.2 Termination. This Agreement may be terminated pursuant to any of the following applicable provisions:

(a) Mutual Agreement. This Agreement may be terminated at any time upon the written consent of the parties.

(b) With Cause. This Agreement may be terminated immediately or on shortened notice for cause in the following cases:

(1) A material breach of this Agreement by any party, where the defaulting party has been given written notice of such breach and has failed to correct such breach within thirty (30) days after receipt of such notice. Termination pursuant to this subsection shall be effective at the expiration of the thirty (30) day notice period.

(2) Loss or restriction of Medical Group's authority to operate as a professional medical partnership or corporation, unless such loss or restriction does not restrict or impair Medical Group's ability to provide services under this Agreement. Termination pursuant to this subsection shall be effective immediately.

(3) Loss or restriction of Medical Group's qualification as a Medicare or Medi-Cal provider. Termination pursuant to this subsection shall be effective immediately on the effective date of such loss or restriction.

(4) Loss or restriction of either Hospital's license or accreditation, or destruction of Hospital or the portion(s) thereof dedicated to the operation of the Program, such that Hospital is not able to continue the uninterrupted operation of the Program. Termination pursuant to this subsection shall be effective immediately upon receipt of written notice from any party.

(5) Loss, cancellation or reduction of the insurance coverage required under Section 8.1.

(c) Covering Providers. In addition, it is specifically understood that ABSMC may require Medical Group to immediately remove from the coverage schedule any Covering Provider who:

(1) Loses his/her license to practice medicine or midwifery, as the case may be, or has such license substantially restricted;

(2) Loses his/her Medical Staff membership, clinical privileges, prerogatives, or has such membership, privileges, or prerogatives substantially restricted;

(3) Loses his/her eligibility to provide professional services to Medicare or Medi-Cal patients, or has such eligibility substantially restricted;

(4) Becomes legally incompetent, is disabled, is convicted of a felony, or uses, possesses, or is found under the influence of, alcohol, drugs, or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription; or

(5) Loses, cancels or reduces, or causes the loss, cancellation or reduction of, the insurance coverage required under Section 8.1.

ABSMC may immediately terminate this Agreement should Medical Group fail to so remove any such Covering Provider.

(d) Remedies. It is understood that ABSMC's remedies under subsection (c) above do not preclude termination under subsection (b) above, in the event ABSMC reasonably determines that the acts or omissions of an individual Covering Provider also causes Medical Group to fail to meet one or more of the termination criteria set forth in subsection (b) above.

(e) Legal Jeopardy. If any party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs or other government payor programs, or in the case of ABSMC, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal

concern. In the event that the parties are unable to reach agreement on new terms within twenty days of their meeting, this Agreement shall automatically terminate.

9.3 Rights on Expiration or Termination.

(a) Hospital Records. Custody of all Hospital records including Hospital patient medical records shall be turned over to Hospital. Medical Group may retain duplicate copies of patient medical records, at its own expense.

(b) Transfer of Responsibilities. Medical Group shall cooperate with Hospital toward an orderly transfer of responsibilities under Articles I and II to Medical Group's successor, if any.

(c) Vacating Hospital Premises. Within 30 days after termination, Medical Group and Medical Director shall vacate Hospital premises and remove any and all of the personal property of Medical Group and Medical Director. Any personal property not so removed may be removed by that Hospital at Medical Group's expense.

(d) Survival of Obligations. Section 1.4 (Monthly Time Reports), Article VI (Compliance with Laws and Regulations), Article VIII (Insurance), Section 7.4 (Trade Secrets), Section 10.1 (Indemnification), Section 10.2 (Arbitration), Section 10.5 (Confidentiality), and Section 10.7 (Attorneys' Fees), of this Agreement shall survive termination of this Agreement.

9.4 No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership for any Covering Provider. Therefore, this Agreement may be terminated and any Covering Provider may be removed from the group of physicians providing Coverage Services in accordance with Section 9.2 without necessitating a hearing before either Hospital's Medical Staff, ABSMC's Board of Directors or any other body, except if the termination is for a medical disciplinary cause or reason. Termination of this Agreement and removal of a Covering Provider shall be governed by the terms of this Agreement and not by the terms of any Medical Staff Bylaws or procedures, including any procedure relating to the termination of Medical Staff membership of any physician or nurse midwife employee or subcontractor of Medical Group or to any other change in the nature or status of such membership, unless the termination is for a medical disciplinary cause or reason

9.5 Renewal or Extension. On or before the date which is 90 days prior to expiration of the one-year term of this Agreement, the parties agree to begin meeting to discuss in good faith the possible renewal or extension of this Agreement with such modifications in the compensation and other terms of this Agreement as mutually agreed by the parties; provided, however, that neither party shall have any binding obligation to renew or extend this Agreement unless they are able to reach mutual agreement on the terms of any such renewal or extension, which shall be in each party's sole and absolute discretion. If this Agreement is terminated prior to the expiration of its one-year term for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services prior to the expiration of such one-year period.

ARTICLE X
GENERAL/MISCELLANEOUS PROVISIONS

10.1 Indemnification.

(a) ABSMC. Subject to the provisions of Sections 10.1(c) and (d), ABSMC shall defend, indemnify and hold Medical Group and Medical Group's officers, partners, employees, agents, successors, and assigns ("Medical Group Affiliates") harmless from and against all claims, losses, liabilities, damages, costs, judgments and expenses, including reasonable attorneys' fees (collectively, "Losses"), incurred by Medical Group or any Medical Group Affiliate as a result of or related to (a) a breach of any representation, warranty, or covenant made in this Agreement by ABSMC, or (b) the operation of the Perinatal Center by ABMC (or ABSMC) prior to the Effective Date.

(b) Medical Group. Subject to the provisions of Sections 10.1(c) and (d), Medical Group shall defend, indemnify and hold harmless ABMC, Summit and ABSMC and each of their respective affiliates, officers, directors, employees, agents, successors, and assigns ("ABSMC Affiliates") harmless from and against all Losses incurred by ABMC, Summit, ABSMC or any ABSMC Affiliate as a result of or related to (a) a breach of any representation, warranty, or covenant made in this Agreement by Medical Group or any Covering Provider, or (b) the operation of the Perinatal Center by Medical Group on and after the Effective Date.

(c) Notification and Settlement of Claims. A party seeking indemnification (the "Indemnatee") shall, within 30 days from the date the Indemnatee receives actual knowledge of a claim from a third party that could result in any Losses (or by such earlier date after the Indemnatee has received actual knowledge of a claim as may be necessary to avoid material prejudice to the other party), notify the other party (the "Indemnitor"), in writing, of such claim (the "Indemnification Notice"), shall provide the Indemnitor with a copy of such claim or other documents received, and shall upon request otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnatee's possession. (If the Indemnatee fails to give a timely Indemnification Notice, then the indemnification obligation of the Indemnitor shall be reduced and modified to take into account the impact, if any, of Indemnatee's failure on Indemnitor's ability to adequately defend such claim.) If the Indemnitor notifies the Indemnatee in writing within 10 days after an Indemnification Notice is given to the Indemnitor that the Indemnatee is entitled to indemnification hereunder or defense with respect to such claim, then Indemnitor shall have the right by notice given to the Indemnatee within 15 days after the date of the Indemnification Notice to assume and control the defense thereof, including the employment of counsel, selected by the Indemnitor, and the Indemnitor shall pay all reasonable expenses of such defense. The Indemnatee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnatee unless the employment thereof has been specifically authorized by the Indemnitor in writing; provided, however, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnatee and Indemnitor, and if the Indemnitor requires that the same counsel represent both the Indemnatee and the Indemnitor and if representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, as set forth in an opinion of counsel addressed to such

parties, then the Indemnitee shall have the right to retain its own counsel at the reasonable cost and expense of the Indemnitor. If the Indemnitor shall have failed to assume the defense of any claim in accordance with the provisions of this subsection c, then the Indemnitee shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the reasonable fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor and paid by Indemnitor to Indemnitee within 15 business days of written demand therefor, but the Indemnitor shall be entitled, at its own expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such claim in its sole and absolute discretion and without consultation with the Indemnitee so long as the Indemnitor agrees to pay the entire cost of such settlement or compromise and such settlement or compromise does not impose any obligations (including without limitation, any notice or reporting obligation) on the Indemnitee (except with respect to providing releases of the third party). The Indemnitee shall not settle or compromise the claim without satisfying one of the following conditions (otherwise the Indemnitor shall be released from all indemnification obligations hereunder to the Indemnitee with respect to such claim): (a) the Indemnitee shall first obtain the written consent of the Indemnitor or (b) the Indemnitor shall have failed, after written notice to it of such claim, to take action to defend the same within the 15-day period described above.

(d) Limitations on Losses. The indemnifications under Sections 10.1(a) and (b) shall cover only out-of-pocket Losses actually suffered by an Indemnitee, and shall not cover Losses in the nature of consequential damages, lost profits, diminution in value, damage to reputation or goodwill, or the like. The amount of Losses shall also be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies or other related payments received or receivable from any other person or entity and net of any tax benefits actually received by the Indemnitee, taking into account the income tax treatment of the receipt of indemnification payments.

10.2 Dispute Resolution. In the event that any dispute arises between Medical Group (or Medical Director) and ABSMC arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, any party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore, or otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. Subject to Section 10.7, the cost of such arbitration shall be shared equally by ABSMC and Medical Group.

10.3 Assignment; Successors. Except for the anticipated merger of Summit into ABMC, no party may assign its rights or delegate its duties hereunder without the express written approval of the other parties. The rights and obligations of any party under this Agreement shall inure to the benefit of and be binding upon that party's permitted assigns and legal successors.

10.4 Notice. All notices required or allowed in this Agreement shall be in writing and shall be sent to the addresses shown below. A party may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

If to ABSMC: Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attn: President

Copy to: Sutter Health Legal Counsel Department
345 California Street, Suite 2000
San Francisco, CA 94104
Attention: Nancy O. Benn, Esq.

If to Medical Group: East Bay Perinatal Medical Associates
350 – 30th Street, Suite 205
Oakland, CA 94609
Attn: Stuart M. Lovett, M.D.

Copy to: Stephen J.M. Morris, Esq.
Musick, Peeler & Garrett LLP
One Wilshire Boulevard
Los Angeles, CA 90017-3383

10.5 Confidentiality.

(a) This Agreement. This Agreement is confidential. The parties agree not to release information concerning this Agreement to any third party without consent of the other party. This prohibition against release of information shall not apply to fiscal intermediaries, public agencies, or commissions with governmental powers and duties related to disclosure of information or having the right to compel disclosure of such information; nor shall it apply to the disclosure of information compelled to be released by process of law.

(b) Other Confidential Information. During the term of this Agreement, each party and its employees and contractors will have access to and become acquainted with confidential information and trade secrets of the other party, consisting of, but not limited to, financial statements and information, accounts, clients, patients, patient groups, billing practices and procedures, business techniques and methods, strategic plans, operations,

and related data ("Confidential Information"), all of which Confidential Information is the property of each respective party and is used in the course of each party's business. Neither party (nor their respective employees or contractors) shall disclose, or permit or suffer to be disclosed, to anyone, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Confidential Information of the other party, or use them other than in the course of performing services under this Agreement. All documents containing Confidential Information of a party are the exclusive property of such party, even if given to the other party during the term of this Agreement. Under no circumstances shall any documents containing Confidential Information or Trade Secrets of a party be duplicated or copied, or divulged to anyone other than employees or agents of the other party without the owning party's written consent first being obtained, and all such Confidential Information shall be returned to the other party upon request.

10.6 No Third Party Beneficiary. Except for the indemnification of Medical Group Affiliates and ABSMC Affiliates under Section 10.1, nothing contained in this Agreement is intended, nor shall it be construed, to create rights running to the benefit of third parties.

10.7 Attorneys' Fees. In the event of arbitration or litigation between the parties relating to or arising from this Agreement, the prevailing party shall be entitled to receive reasonable attorneys' fees, costs, and other expenses, in addition to whatever other relief may be awarded. In addition, any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

10.8 Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the parties, or would place either party in violation of its articles of incorporation or bylaws or partnership agreement or create a legal jeopardy event under Section 9.2(e), as the case may be, in which case the Agreement may be immediately terminated.

10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10.10 Headings. The headings of sections in this Agreement are for reference only and not to be construed in any way as part of this Agreement.

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

10.12 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disasters, strikes, or any cause beyond the control of the nonperforming party.

10.13 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such

term, undertaking or condition. To be effective a waiver must be in writing, signed and dated by the parties.

10.14 Entire Agreement; Modification. This Agreement contains the entire agreement of the parties relating to this subject matter. The Agreement may only be modified in writing signed by all parties, effective on the date set forth therein.

10.15 Execution. By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date specified below.

ALTA BATES MEDICAL CENTER

By: Warner J. Kirk
Name: Warner J. Kirk
Title: President / CEO

SUMMIT MEDICAL CENTER

By: Warner J. Kirk
Name: Warner J. Kirk
Title: President / CEO

EAST BAY PERINATAL MEDICAL
ASSOCIATES

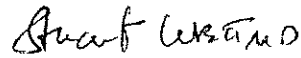
By Stuart M. Lovett, M.D., a Professional
Corporation

By: Stuart M. Lovett
Name: Stuart M. Lovett, M.D., President

ACKNOWLEDGMENT AND AGREEMENT

The undersigned Medical Director acknowledges that he has read this Agreement and agrees to the terms and conditions thereof.

MEDICAL DIRECTOR:

A handwritten signature in cursive script, appearing to read "Stuart Lovett", is written above a horizontal line.

Stuart M. Lovett, M.D.

EXHIBIT 1.4

FORM OF TIME REPORT

(copy attached)

PHYSICIAN TIME REPORT

Physician: _____

Week Beginning: ____/____/____

ADMINISTRATIVE SERVICES	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Weekly Totals
Management/Staff Meeting								
Committee Meeting								
Utilization Management								
Quality Review								
Supervision/Education of Interns, Residents								
Supervision/Education of Nurses, Technicians, Staff								
Physician Education/Consultation								
Community Presentation								
Protocol/Policy Development								
Program Development								
Other, describe:								
Other, describe:								
Total Administrative Hours								

I certify that this Time Report is a true and accurate record of my services and hours during the week indicated.

Date: _____

Signature

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EXHIBIT 16-2
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

PERINATAL SERVICES AND OB COVERAGE AGREEMENT

THIS PERINATAL SERVICES AGREEMENT ("Agreement") is made and entered into as of August 28, 2007 by and among ALTA BATES SUMMIT MEDICAL CENTER, a California nonprofit public benefit corporation ("ABSMC"), and EAST BAY PERINATAL MEDICAL ASSOCIATES, a California professional medical partnership ("Medical Group").

RECITALS

A. ABSMC owns and operates two licensed general acute care hospitals, one located at 2450 Ashby Avenue, Berkeley, California, (referred to as "Alta Bates Campus" or "Hospital") and the other located at 350 Hawthorne Avenue, Oakland, California ("Summit Campus"). Prior to September 2004, each Campus operated a clinical program of maternal-fetal medicine (providing high-risk obstetrical services) as part of ABSMC's comprehensive Women and Infants Service Program (the "Program"). In September 2004, those services were integrated with the Alta Bates Campus providing substantially all obstetrical services.

B. Medical Group is a professional medical partnership organized under the laws of the State of California whose partners are professional corporations whose sole shareholders are licensed physicians duly qualified in the subspecialty of perinatology.

C. The East Bay service area served by ABSMC contains a large population of indigent and other underprivileged patients who experience a disproportionately large number of "high risk" pregnancies requiring greater medical expertise and greater coordination among health professionals. An important part of the charitable health care mission of ABSMC is to improve access of East Bay residents to high quality women/infant medicine, reduce the morbidity and mortality rates, and improve the quality of care provided to pregnant women and their fetuses and newborns.

D. ABSMC's affiliate, East Bay Perinatal Center, a California non-profit public benefit corporation doing business as Alta Bates Summit Perinatal Center, is in the process of acquiring Medical Group's office located at 350 - 30th Street, Oakland, California, Suites 230 and 205, and converting that location into a community clinic specializing in antepartum perinatal care. Pursuant to a separate Professional Services Agreement, Medical Group will contract to provide professional services at the community clinic.

E. ABSMC has had all aspects of the arrangements described in this Agreement reviewed by an experienced independent health care financial consultant which has determined that the compensation to be provided herein to Medical Group represents fair market value compensation for the services to be provided by Medical Group.

F. Effective as of the Effective Date, this Agreement shall replace, supersede and terminate the Perinatal Services Agreement between ABSMC and Medical Group entered into as of October 7, 2003, subsequently extended and amended effective August 1, 2006.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other valuable consideration,

the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
MEDICAL DIRECTOR SERVICES

1.1 Perinatal Services Medical Director. Medical Group shall provide Stuart M. Lovett, M.D. to serve as "Medical Director of Maternal-Fetal Medicine" ("Medical Director"). Medical Director shall provide overall management services for the Program in accordance with this Agreement, shall be responsible for overseeing community outreach, education, and support of community clinics, shall be responsible for overseeing Medical Group's performance under this Agreement, and shall have such other responsibilities as are set forth in this Agreement ("Administrative Services"). Medical Director shall be accountable to the Vice President of Medical Affairs of ABSMC (the "VPMA") or his or her designee and shall coordinate his activities with ABSMC's Director of Women and Infants Services (the "Program Director"). Medical Director may delegate the performance of certain of his administrative duties and services to other obstetricians and perinatologists employed by Medical Group, provided that Medical Director shall retain ultimate responsibility and accountability for such administrative duties and services.

1.2 Medical Director Duties. Medical Director's Administrative Services shall include the following:

(a) Provide overall medical oversight for the Program, and consult with ABSMC management in the development, maintenance, and implementation of policies and procedures for the effective operation of the Program and participation in ABSMC's strategic planning process for the Program;

(b) Be routinely available to consult with ABSMC management at mutually scheduled times, participate on ABSMC or Hospital medical staff committees pertaining to perinatology, and attend meetings, as reasonably requested, of the following groups and conferences: Labor and Delivery ("L&D") Collaborative Practice, Department of Obstetrics and Gynecology ("OB/GYN Department"), OB/GYN Department Executive Committee, Sutter Obstetrics and Gynecology conference planning and conferences, and ABSMC perinatology conferences;

(c) Oversee quality management of the Program, including participation in OB/Peds Quality Management meetings and in monthly Perinatal/Neonatal case conferences and weekly Perinatal rounds, overseeing the quality of care delivered by covering nurse midwives and obstetricians, and with ABSMC, jointly develop and implement appropriate performance improvement, quality and risk management activities for the Program;

(d) Monitor utilization of Program services and recommend all reasonable steps necessary to remedy deficiencies in the quality or efficiency of the operation of the Program;

(e) Participate with Hospital administrative staff in managing the effective operation of the Program in accordance with approved budgets, including managing the costs

related to the Program, developing and administering applicable operating and capital expenditure budgets and cost controls for the proper and efficient operation of the Program;

(f) Provide guidance and supervision as necessary to maintain the Program's accreditation and Medicare/Medi-Cal certification and assist in securing and maintaining necessary licenses and certifications for the Program, including cooperation with ABSMC to maintain California Children's Services status in the Newborn Intensive Care Unit;

(g) Oversee the quality of clinical care provided by the covering perinatologists, covering obstetricians ("OB Generalists") and covering nurse midwives providing services to Program patients (collectively, "Covering Providers", a term that encompasses providers who are subcontractors to Medical Group pursuant to Section 2.3);

(h) Monitor OB Generalist conformance to the requirements of the OB Generalist job description, attached as Exhibit 1.2(h);

(i) Ensure representation by an OB Generalist in committees as requested by the Chair, Department of OB/GYN or the Program Director;

(j) Provide strong leadership in the implementation and ongoing maintenance of the Team Leadership Communication Initiative ("TLC") including: (1) attending TLC meetings, (2) participating in the development of a team model that supports the activity in L&D unit, and (3) taking an active role in coaching and mentoring physicians in the role of Team Coordinator;

(k) Manage the relationships and assist in the resolution of issues and disputes that may arise among Covering Providers and/or other members of ABSMC staff or the Hospital medical staff related to the Program;

(l) Work with the Program Director to recommend methods to coordinate the provision of perinatology services with designated community clinics, including but not limited to Alta Bates Summit Perinatal Center;

(m) Participate in and oversee community outreach programs, and participate in education and support of community clinics;

(n) Advise ABSMC on the selection, replacement, maintenance and repair of all equipment related to the Program;

(o) Develop and implement continuing education and training for physicians and nurses related to the Program;

(p) Evaluate and address all complaints and inquiries of patients concerning the Program and furnish ABSMC with an analysis of all complaints and recommendations for improving any deficiencies, as appropriate;

(q) Advise in the recruiting, evaluation and retention of non-physician personnel for the Program;

(r) Comply with ABSMC's and Sutter Health's corporate compliance programs, and cooperate with any corporate compliance audits, reviews or investigations which relate to the Program;

(s) At ABSMC's request, prepare and submit an annual report of activities and accomplishments with respect to the Program and such other reports as reasonably requested;

(t) At all times observe Hospital's rules and regulations, as made known to Medical Director, and use reasonable best efforts to maintain harmonious professional relationships with members of Hospital staff in order to assure that Hospital's patients receive quality medical care to avoid disruption to Hospital's operations;

(u) Attend and participate at weekly OB Leadership Group meetings;

(v) Develop and manage back-up system if Covering Providers are unavailable due to high activity;

(w) Ensure Covering Providers provide timely patient intervention 24 hours per day to facilitate efficient flow of patients in L&D unit to postpartum; and

(x) Appoint, with the consent of the Program Director, a Chief OB Generalist.

1.3 Chief OB Generalist Duties. Medical Director, with the consent of the Program Director, shall appoint a Chief OB Generalist. The Chief OB Generalist shall oversee the daily operations of the OB Generalists and the OB Generalists' performance under this Agreement. The duties of the Chief OB Generalist shall include, but not be limited to, the following:

(a) Completion of the monthly schedule that complies with the coverage requirements in Section 2.2;

(b) Represents OB Generalists on Hospital medical staff committees and other committees as requested by the Chair, Department of OB/GYN or by the Medical Director of Womens' Services;

(c) Meets with the Program Director and the Manager of Perinatal Services on operational clinical issues as requested and follows up as needed;

(d) Ensures that the Medical Director, Program Director and Manager of Perinatal Services are informed of operational issues affecting quality and efficiency of practice;

(e) Meets with L&D staff as requested by management to address and solve problems in operational units affecting patient safety;

(f) Coordinates participation of OB Generalists in TLC activities/strategies;
and

(g) The Chief OB Generalist shall be accountable to the Medical Director and the VPMA.

1.4 Minimum Time Requirements. Medical Director (together with the Chief OB Generalist and other Medical Group physicians performing Administrative Services responsibilities to the extent permitted under this Agreement) shall collectively devote a minimum average of 80 hours per month to the performance of the Administrative Services required in this Article I. The parties recognize that the actual time required in performing Administrative Services may vary from month to month but the parties agree that Medical Group physicians shall in no event devote less than three times the minimum average monthly hours during any quarter during the term of the Agreement.

If Medical Group physicians devote less than 240 hours during any calendar quarter, ABSMC shall reduce the next monthly payment to Medical Group by an amount equal to \$150 times the number of hours devoted to Administrative Services in the previous calendar quarter below 240 hours. If Medical Group physicians devote more than 240 hours during any calendar quarter, ABSMC shall increase the next monthly payment to Medical Group by an amount equal to \$150 times the number of hours devoted to Administrative Services in the calendar quarter that is above 240 hours. Notwithstanding the preceding two sentences, hours in excess of 100 hours in any single month shall be disregarded in computing Administrative Services compensation. The preceding sentence is illustrated by these examples:

A. If Medical Group devotes 60 hours to Administrative Services in April, 110 hours to Administrative Services in May and 90 hours to Administrative Services in June, Medical Group shall be paid an additional \$1500.

B. Suppose the same facts, except that Medical Group devoted only 70 hours to Administrative Services in June. In that case, Medical Group's Administrative Services Compensation would be reduced by \$1500.

The principles of this section shall apply to partial calendar quarters on a prorated basis.

1.5 Monthly Time Reports. Medical Director, the Chief OB Generalist, and other Medical Group physicians performing Administrative Services shall contemporaneously record the actual number of hours and a description of the actual Administrative Services provided under this Article I on a time report ("Time Report") in the form attached hereto as Exhibit 1.5, as modified from time to time by ABSMC. A single Time Report shall be submitted to record the time devoted to Administrative Services by all Medical Group physicians pursuant to this Agreement. These single Time Reports shall be delivered to the Program Director completed and signed for each month within 10 days after the end of each calendar month during the term of this Agreement. If a Time Report required under this section is not timely delivered, then ABSMC shall suspend payment of compensation related to Administrative Services until the next regularly scheduled ABSMC check disbursement date following delivery of the missing Time Report. Upon request of ABSMC, Medical Director, the Chief OB Generalist, and other Medical Group physicians performing Administrative Services shall from time to time complete and execute such other Time Reports or allocation statements on forms provided by ABSMC as may be required to comply with applicable Medicare, Medi-Cal or other legal requirements.

ARTICLE II
CLINICAL COVERAGE SERVICES

2.1 Clinical Coverage. Medical Group agrees to ensure the on-site and on-call availability of Covering Providers to provide professional consultations and to render professional services to patients at the Alta Bates Campus as provided in Section 2.2(a). Subject to ABSMC approval (which approval shall not be unreasonably withheld or delayed), Medical Group shall develop a system for assuring the availability of appropriate on-site and on-call Covering Providers for the Program 24 hours per day, seven days per week, 365 days per year. The Chief OB Generalist shall submit schedules to the L&D Unit in a timely manner and provide prompt updates or notice of any changes in such schedules to the L&D Unit.

2.2 Coverage Requirements. Without limiting the generality of Section 2.1, Medical Group shall ensure the availability of Covering Providers to provide clinical coverage services to the Program ("Coverage Services"), as follows:

(a) Patient Services. Medical Group shall ensure the on-site availability of Covering Providers 24 hours per day, seven days per week, 52 weeks per year at the Alta Bates Campus, to provide the following:

- (1) perinatal diagnostic and consulting services and delivery services to Program patients;
- (2) emergency obstetrical care to patients when their regular attending physician has not arrived at the Alta Bates Campus, such care to be rendered only until the attending physician becomes available and assumes responsibility for care;
- (3) back-up system to cover emergencies if both OB Generalists required to be on site under 2.2(d)(1) are unavailable due to high activity;
- (4) obstetrical care to patients who arrive at the Hospital (including presentation in the Emergency Department) with no prior patient/professional relationship with an obstetrician, if Emergency Department personnel make a reasoned determination that (i) the patient is pregnant, and that the fetus has a gestational age equal to or greater than twenty weeks; or (ii) the patient is pregnant but is undergoing a spontaneous abortion, and that the fetus has a gestational age of twelve weeks or less; and
- (5) obstetrical care to patients who arrive at the Alta Bates Campus (including patients presenting in the Emergency Department at the Alta Bates Campus) if the presenting patient has a pre-existing Physician-Patient relationship with Alta Bates Summit Perinatal Center, or with any community clinic identified from time to time to Medical Group by the Program Director in writing. The first such notice is attached to this Agreement as Exhibit 2.2(a)(4). Notwithstanding the foregoing, ABSMC shall not enter into arrangements with new community clinics that would substantially increase Medical Group's responsibilities under this Agreement without first meeting and conferring with Medical Group to determine if additional Covering Providers will be needed due to the substantial increase, with a corresponding increase in Medical Group Compensation.

In this Agreement, "obstetrical care" includes the care of spontaneous abortion patients.

(b) Perinatal Transport. Medical Group shall ensure the availability of qualified Covering Providers to accept and coordinate perinatal transport. Such coordination shall include at a minimum the following:

(1) a physician who is board certified or board eligible in the specialty of obstetrics and gynecology, and who is duly qualified in the subspecialty of maternal-fetal medicine who is present at the Alta Bates Campus or on-call 24 hours per day, seven days a week, 52 weeks per year; and

(2) prior to acceptance of any maternal transport by the covering perinatologist, the covering perinatologist must:

(i) consult with both an OB Generalist who is currently at the Alta Bates Campus and the L&D Charge Nurse, to ensure there is sufficient capacity in the L&D unit and the Newborn Intensive Care Unit; and

(ii) confirm the OB Generalist has the skill and availability necessary to care for the maternal transport patient, unless the perinatologist travels to the Alta Bates Campus to care for the maternal transport patient.

(c) Antenatal Testing. Medical Group shall ensure the availability of perinatologists and other providers to provide ultrasonography, genetic screening and other antenatal testing services for outpatient referrals.

(d) Anticipated Staffing Level. The parties expect that the Coverage Services under this Article II together with the Administrative Services under Article I will require Medical Group to employ or otherwise contract with a minimum of 9.4 full time equivalent ("FTE") OB Generalists, 1.4 FTE perinatologists; and 4.7 FTE midwives. Medical Group agrees to provide at least this minimum level of staffing during the term of this Agreement. The appropriate level of obstetrical and gynecological coverage under this Agreement shall be determined by mutual agreement of the parties from time to time; provided the following minimum staffing levels and scheduling requirements will be met:

(1) Medical Group will provide a minimum staffing level of two OB Generalists and one midwife 24 hours per day, 365 days per year at the Alta Bates Campus L&D unit;

(2) Medical Group will provide a perinatologist in the hospital at the Alta Bates Campus five hours per day 365 days per year between the hours of 7:00 AM and noon, and during additional hours when clinical circumstances warrant. Medical Group will provide a perinatologist on-call the other 19 hours per day, 365 days per year;

(3) OB Generalists and midwives will work 12-hour shifts (7 a.m.-7 p.m. and 7 p.m.-7 a.m.). Each of the two OB Generalists and the midwife will be equally

available to provide active coverage of the L&D unit during both shifts, but expressly including the 7 p.m.-7 a.m. shift; and

(4) Covering Providers may not have been scheduled for call coverage, provided professional services or otherwise worked for compensation from any source during the 12 hours prior to commencement of their shift.

(5) ABSMC and Medical Group agree to re-examine the staffing levels contemplated in this Section 2.2 (and the corresponding Medical Group compensation) if monthly delivery volume substantially increases or substantially decreases at the Alta Bates Campus L&D unit, and either party reasonably expects the increase or decrease to be sustained. Substantial increases or decreases shall be measured from a baseline average of 273 deliveries per month.

(e) Antepartum Unit—Coordination of Care. Medical Group shall ensure that for each Program Patient in the Antepartum Unit, a perinatologist who is a Covering Provider shall coordinate a 24-hour plan of care, including but not limited to (i) daily review and updating of the plan of care for each Program Patient, and (ii) daily communication with the OB Generalists who are that patient's Covering Providers and with the Antepartum Unit's Charge Nurse regarding the plan of care for that patient. ABSMC may require the perinatologist Covering Provider to be in the Antepartum Unit for this OB Generalist shift change if, in the reasonable opinion of the Program Director, coordination of care between OB Generalist shifts requires the physical presence of the perinatologist Covering Provider. A perinatologist Covering Provider shall also attend weekly antepartum interdisciplinary rounds.

(f) Specific Communication Responsibilities. The Covering Provider perinatologist, before the end of his or her shift on call, will speak with at least one of the Covering Provider OB Generalists for a hand-off communication to include a discussion of current patient care needs and clinical conditions in the antepartum unit and the L&D unit. After having this conversation, that Covering Provider perinatologist will have a hand-off communication with the incoming Covering Provider perinatologist. A 'hand-off communication,' per Joint Commission standards, means a real-time process of passing patient-specific information from one caregiver to another or from one team of caregivers to another for the purpose of ensuring patient safety and the continuity of patient care.

2.3 Right to Subcontract. Subject to this Section 2.3 and any other limitations expressly set forth in this Agreement, Medical Group shall have the right, subject to the prior written approval of ABSMC, which shall not be unreasonably withheld, to subcontract with physicians who are not Medical Group employees for the Coverage Services required to be provided by Medical Group under this Agreement so long as such subcontracted physicians are qualified to perform services required under this Agreement, and the services provided by the subcontracted physicians comply with all provisions of this Agreement. Medical Group shall be solely responsible for compensating such subcontracted physicians, including any and all payments to Covering Providers for their Coverage Services.

2.4 Requirements for Covering Providers. Medical Group shall ensure that Covering Providers meet all requirements for active and unrestricted medical staff privileges, have current licenses to practice medicine, comply with the Hospital's nondiscrimination policies, be eligible

to and agree to treat Medicare and Medi-Cal patients, and provide services in accordance with all applicable medical staff bylaws, rules, regulations and policies and this Agreement. Without limiting the generality of the foregoing, all perinatologists who are Covering Providers must be board certified or board eligible in the specialty of obstetrics and gynecology, and duly qualified in the subspecialty of maternal-fetal medicine, and all OB Generalists must be board certified or board eligible in obstetrics and gynecology. Medical Group shall also cause Covering Providers to provide such Administrative Services as are required from them for the efficient operation of the Program and maintenance of high quality patient care, as reasonably requested by the Hospital.

2.5 Medical Group – Covering Provider Agreements. Medical Group shall enter into a written agreement with each physician and with each certified nurse midwife providing Administrative Services or Coverage Services under this Agreement satisfying the following conditions:

- (a) The agreement shall obligate the Covering Provider to abide by all applicable terms of this Agreement;
- (b) The agreement shall specify the services to be performed by the Covering Provider;
- (c) The agreement shall provide compensation for the Covering Provider that is fair market value for the services actually provided, not taking into account the value or volume of referrals or other business generated by the Covering Provider for the Hospital (within the meaning of the Stark law); and
- (d) The agreement shall not contain any term that would violate any anti-kickback statute or any laws or regulations governing billing or claims submission.

2.6 Notice of Loss or Limitation on Qualifications. Medical Group shall immediately notify ABSMC of any loss, suspension, or material limitations imposed upon any Covering Provider's license, Medicare or Medi-Cal participation, medical staff membership privileges, prerogatives, or professional liability insurance coverage, and shall also promptly notify Hospital when any malpractice claim or professional disciplinary action is initiated or asserted against any Covering Provider.

2.7 Outreach Clinics. ABSMC may desire to establish outreach clinics at other affiliated hospitals. If requested by ABSMC, and upon terms mutually agreeable to the parties, Medical Group shall provide a perinatologist (and/or other appropriate medical personnel) on site at such outreach clinics as appropriate to ensure the development and support of such outreach clinics.

2.8 Back-Up. Medical Group shall provide the following back-up services:

- (a) Nurse Midwife Back-Up. Medical Group shall reasonably cooperate with nurse midwives who are neither Medical Group employees nor Medical Group contractors to facilitate the availability of appropriate supervision and back-up for these nurse midwives,

including their private practice patients in accordance with all Hospital medical staff requirements;

(b) Family Practice Back-Up. Medical Group shall reasonably cooperate with those family practice physicians who maintain medical staff privileges at either the Alta Bates or Summit Campuses, but who are not permitted to perform deliveries for their patients without the supervision and back-up of an obstetrician, to facilitate the availability of a covering obstetrician to provide back-up for the family practice physicians in accordance with all Hospital medical staff requirements.

2.9 Expenses. Except as provided in Article III, Medical Group shall be responsible for all of the expenditures of Medical Group, its employees and subcontractors, including but not limited to all expenses attributable to the conduct of Medical Group's private practice and all expenses incurred in connection with the performance of all Administrative Services and Coverage Services provided under this Agreement, including all expenses related to furnishing the services of all Covering Providers.

ARTICLE III **RESPONSIBILITIES OF HOSPITAL**

3.1 Space, Equipment, Supplies and Personnel. During the term of this Agreement, ABSMC shall provide and maintain all customary and necessary space, equipment, supplies, utilities and non-professional personnel reasonably required for operation of the Program within the Hospital (but not at any private practice location of Medical Group). The addition or removal of space, equipment, supplies and personnel at the Hospital shall be the exclusive prerogative of ABSMC, after consultation with Medical Group. Medical Group, the Medical Director and the Covering Providers may use such Hospital space, equipment, supplies and personnel only for the performance of services under this Agreement, and in no event may Medical Group or any individual physician use any part thereof for any other purpose.

3.2 Responsibility for Service. To the extent required by applicable laws and regulations (including Title 22, Section 70713 of the California Code of Regulations), the Hospital shall retain professional and administrative responsibility for the services rendered to Program patients.

ARTICLE IV **COMPENSATION**

4.1 Compensation for Medical Group's Services. Provided that Medical Group is not in material breach of its obligations under this Agreement (including, but not limited to, the timely completion and delivery of the Time Reports required under Section 1.5), ABSMC shall pay Medical Group an annual amount equal to \$144,000 as consideration for the Medical Group's Administrative Services under Article I and an annual amount equal to \$4,345,000 as consideration for Medical Group's Coverage Services under Article II. The aggregate annual compensation of \$4,489,000 shall be payable at the rate of \$374,083.33 per month, except as may be adjusted pursuant to Section 1.4. ABSMC shall make payments to the Medical Group on the 15th day of the month in the month in which the services are being provided, subject to

ABSMC's right to withhold payment if Time Reports are not submitted in a timely manner to the Program Director.

The dollar amounts in the preceding paragraph of this Section 4.1 shall be adjusted to reflect inflation or deflation on the first day of the first calendar month falling at least 12 months after the Effective Date, and again on the first day of the first calendar month falling at least 24 months after the Effective Date. The adjustment shall be made by multiplying each dollar amount in effect for the preceding period—the amounts in the preceding paragraph for the first adjustment and the amounts in the preceding paragraph as adjusted in the first adjustment for the second adjustment—by a fraction whose numerator is the Consumer Price Index for All Urban Consumers, San Francisco Bay Area, for the month of May, 2008 (for the first adjustment) or May, 2009 (for the second adjustment), and whose denominator is that index for May, 2007 (for the first adjustment) or May, 2008 (for the second adjustment).

4.2 IRS Forms 1099. All compensation shall be reported by ABSMC as income to Medical Group on IRS Forms 1099.

4.3 Compensation for Professional Services to Patients.

(a) No Hospital Responsibility. ABSMC's only compensation responsibilities under this Agreement are as stated in Section 4.1. Accordingly, ABSMC is not responsible for paying Medical Group for professional services rendered by Covering Providers while fulfilling Medical Group's responsibilities under this Agreement. Therefore, Medical Group and Covering Providers shall look solely to the responsible patients and third-party payors (and not to ABSMC or Hospital) for compensation for professional services to patients;

(b) Fee Schedule. Medical Group agrees to cause Covering Providers to charge professional service fees not in excess of usual, customary and reasonable fees for comparable services;

(c) Billing and Collection. Medical Group shall use commercially reasonable efforts to bill patients and third-party payors promptly (meaning that all bills for services shall be sent within 30 days of the date that a physician performed the services) for all professional services rendered by Medical Group's physicians and collect all bills as soon as practicable; and

(d) Hospital Records. Hospital shall provide to Medical Group, or its designee, information and records that Hospital maintains for its billing purposes, to the extent that such information and records are relevant to Medical Group's billing for services, and in a format reasonably acceptable to Medical Group. Such records and data may include legible copies of the following: (i) the patient registration form; (ii) the patient's insurance card; (iii) the patient's assignment of insurance benefits; (iv) the patient's consent to release information to third-party payors; (v) the charge ticket which includes a description of the procedure, CPT code, and diagnosis code; (vi) the transcribed Time Report; and (vii) the daily department logs. All information shall be provided in a timely manner.

4.4 Third Party-Payor Agreements. Medical Group shall itself, and shall cause each Covering Provider to, participate in all third-party payment or managed care programs in which Hospital participates, render services to patients covered by such programs, and accept the

payment amounts provided for under these programs as payment in full for services of Covering Providers to Program Patients, less any patient co-payment or deductible obligations that may apply to particular programs.

4.5 Professional Receipt Data. Medical Group acknowledges that ABSMC expects to periodically study compensation payable under this Agreement under the guidance of independent valuation experts who will examine whether that compensation is at fair market value. Covering Provider professional service receipts generated while providing Coverage Services may be deemed relevant to a determination of the fair market value of the Coverage Services. Accordingly, Medical Group shall, no later than January 1, 2008, implement and maintain a system that will distinguish between (a) receipts derived by performing professional services outside the Hospital, and (b) professional service receipts derived by its perinatologists, OB Generalists and midwives from performing professional services in the Hospital. The system shall be able to separately identify in-Hospital service receipts by category of Medical Group provider who rendered the service (i.e., perinatologist, OB Generalist or midwife).

ARTICLE V

COMPLIANCE WITH LAWS; ACCREDITATION; OTHER STANDARDS

5.1 Laws and Regulations. In providing services under Articles I and II of this Agreement, Medical Group and Covering Providers shall comply with all applicable provisions of federal, state, and local laws, regulations, guidelines, and policies, including, but not limited to, Medicare and Medi-Cal guidelines and policies, including any additions, amendments, and modifications thereto and official interpretations thereof, to include the requirements of third-party payors and all governmental agencies having jurisdiction over the operation of Hospital and the Program, the licensing of health care practitioners, and the delivery of services to patients of governmentally-regulated third-party payors whose members/beneficiaries receive services at the Hospital. Such compliance shall specifically include, but is not limited to: (i) compliance with applicable provisions of Title 22 of the California Code of Regulations; and (ii) compliance with Medicare billing, time allocation, record keeping, and record access requirements, as follows:

(a) Access to Books and Records. In compliance with United States Code Section 1395x(v)(1)(I) and its implementing regulations:

(1) If Medical Group provides services to ABSMC or its related organizations (as defined at Title 42 Code of Federal Regulations ("CFR") Section 413.17) valued at, or costing, \$10,000 or more over a 12-month period, Medical Group agrees to allow the Secretary of Health and Human Services, the Comptroller General, and their duly authorized representatives access to the written contracts between ABSMC and Medical Group, and to such of Medical Group's books, documents, and records as are necessary to verify the costs of services provided. Such access shall be granted until the expiration of four years after the services are furnished, and shall be subject to the provisions of 42 CFR Part 420; and

(2) Medical Group agrees to ensure that organizations related to it that are described as "Subcontractors" at 42 CFR Section 420.301 provide services for ABSMC (or its

related organizations) valued at or costing \$10,000 or more over a 12-month period shall agree, in writing, to allow like access to the Subcontractor's books, documents, and records.

If Medical Group is requested to disclose any books, documents, or records relevant to this Agreement for the purposes of an audit or investigation, Medical Group shall notify ABSMC of the nature and scope of such request, and shall make available to ABSMC, upon request of ABSMC, all such books, documents, or records. In the event of any breach of this Agreement to provide access to Medical Group's or any Subcontractor's records, ABSMC shall have the right to terminate this Agreement upon 10 days' written notice. Medical Group shall indemnify and hold harmless ABSMC in the event that any amount of reimbursement is denied or disallowed by the reimbursement program because of the failure of Medical Group or any of its Subcontractors to comply with the obligation of this section. Such indemnity shall include, but not by way of limitation, the amount of reimbursement denied or disallowed, plus any interest, penalties, and legal costs (including reasonable attorneys' fees);

(b) Documentation. Medical Group and Medical Director shall cooperate with ABSMC and Hospital, and shall require Covering Providers to cooperate with ABSMC and Hospital in completing such physician time studies that may reasonably be required by ABSMC and Hospital from time to time to satisfy Medicare cost reporting requirements for such documentation, and shall maintain appropriate documentation supporting the allocation of his or her time between professional and administrative duties as required by 42 CFR Section 415.60;

(c) Services Provided to Hospital. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.55, and shall not bill patients (or responsible third-party payors) for services provided to ABSMC or Hospital;

(d) Services Provided to Patients. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.100, et seq. in all billings for professional services provided to patients; and

(e) Anti-Referral and Anti-Kickback Laws. In addition to the obligations of the parties to comply with applicable federal, state and local laws as provided herein above, the parties acknowledge that they are subject to certain federal and state laws governing the referral of patients and payment of remuneration amongst providers which are in effect as of the execution of this Agreement including:

(1) Prohibition on payments for referrals or to induce the referral of patients;

(2) Prohibition on the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship; and

(3) Prohibition on ABSMC entering into an excess benefit transaction with a disqualified person or persons.

Each party acknowledges that it has had the opportunity to engage independent counsel to advise it as to the requirements of such laws and each further acknowledges and agrees that

the consideration to be paid to Medical Group by ABSMC for the Administrative Services and Coverage Services to be provided by Medical Group pursuant to this Agreement and the compensation to be paid by Medical Group to ABSMC under the professional services agreement related to the Perinatal Clinic are intended to be consistent with the fair market value thereof determined in an arms length transaction. The parties acknowledge and agree that no payment made under this Agreement is in return for the referral of patients or in return for the purchasing, leasing or ordering of any products or services or the recommending of the purchasing, leasing or ordering of any products or services. Nothing in this Agreement is intended or shall be construed to require either party to violate the California or federal laws described herein, and this Agreement shall not be interpreted to: (i) require Medical Group to make referrals to any health care facility operated by ABSMC; or (ii) restrict Medical Group or any Covering Provider from establishing staff privileges at, referring any patient to, or from otherwise generating any business for, any other entity of such party's choosing.

5.2 Compliance Program. Medical Group shall comply with ABSMC'S corporate compliance program. Medical Group shall cooperate with any corporate compliance audits, reviews and investigations which relate to Medical Group and/or any of the services provided by Medical Group under this Agreement. Subject to request by ABSMC, such cooperation shall include without limitation the provision of any and all documents and/or information related to Medical Group, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by ABSMC, Medical Group shall participate in corporate compliance-related seminars and educational programs sponsored by ABSMC.

5.3 Corporate Practice of Medicine. Neither ABSMC nor shall Hospital involve itself in those aspects of Medical Group's or any Covering Provider's practice of medicine for which a license to practice medicine is required.

5.4 Accreditation and Other Standards. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with all applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, performing such duties under the direction of the Medical Director. Services provided to patients being treated at the Hospital facilities are to be rendered in accordance with Hospital's standards of quality and efficiency, and in accordance with all applicable medical staff bylaws, rules and regulations, and policies and procedures, and in accordance with applicable Comprehensive Perinatal Service Program standards, American College of Obstetrics and Gynecology ("ACOG") Standards for Obstetric-Gynecological Service, American College of Nurse Midwives ("ACNM"), and the Joint Statement of ACOG and ACNM. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with the Bylaws, rules and regulations, and policies and procedures of Hospital and its medical staff, and the current community standards of quality medical practice as they relate to the Program.

5.5 Nondiscrimination. Medical Group, the Medical Director, and Covering Providers shall provide professional services to patients of Hospital regardless of a patient's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, handicap, reimbursement source or financial status.

5.6 Confidentiality of Patient Medical Information. Neither Medical Group nor Medical Director nor any Covering Provider shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by ABSMC in writing, any patient or medical record information regarding ABSMC or any patient, and Medical Group, Medical Director and each Covering Provider shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the Hospital and its medical staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

5.7 Expert Witness Conflict of Interest. Neither Medical Group nor any of its partners or employees shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of ABSMC or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of ABSMC or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Medical Group and /or any of its partner or employees from testifying as a factual witness in an action in which such physician and ABSMC or Medical Group and ABSMC (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of ABSMC or such other hospital or health care facility) are defendants.

ARTICLE VI

RELATIONSHIP OF THE PARTIES.

6.1 Independent Contractors. In performing the services and duties under this Agreement, the parties acknowledge and agree that Medical Group, Medical Director, the Chief OB Generalist and any Covering Provider providing services under this Agreement are at all times acting and performing as independent contractors with respect to ABSMC; that neither Medical Group, Medical Director, the Chief OB Generalist Medical Director nor any Covering Provider shall hold themselves out or act as agents of, or have any power to obligate, ABSMC or the Hospital; and that neither Medical Group, Medical Director nor any Covering Provider shall have any right to make any claim against ABSMC or Hospital for any social security benefits, payroll taxes, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave or any other employee benefits of any kind. ABSMC shall not exercise control over the methods by which Medical Group, Medical Director, the Chief OB Generalist nor any Covering Provider performs services under this Agreement, the sole interests of ABSMC being to ensure that such services are performed in a competent, efficient and satisfactory manner and in accordance with the standards set forth in this Agreement. Medical Group shall be solely responsible for all compensation, benefits, tax withholding and other payroll taxes, workers' compensation insurance disability insurance and unemployment insurance with respect to its employed and contracted physicians and other personnel.

6.2 Nonexclusive. The parties acknowledge and agree that this Agreement does not create an exclusive relationship between the parties for any purpose.

ARTICLE VII INSURANCE

7.1 Medical Group Insurance. Medical Group shall obtain and maintain professional liability insurance policies covering Medical Group and all Covering Providers employed by Medical Group, and shall ensure that all Covering Providers not employed by Medical Group obtain and maintain professional liability insurance policies. All such policies shall provide for professional liability coverage in the minimum amounts of \$2 million per occurrence, \$4 million annual aggregate for perinatologists, and \$1 million per occurrence, \$3 million annual aggregate for other Covering Providers. If such insurance is on a "claims made" basis, and such coverage is later terminated or converted to "occurrence" coverage (or vice versa), Medical Group shall require Covering Providers to acquire "prior acts" or "tail" coverage in the above amounts covering all periods during which this Agreement is or has been in force. Medical Group shall annually certify to ABSMC that all required coverage is in force. Medical Group shall regularly provide to ABSMC updated copies of certificates evidencing all required coverage and shall give ABSMC 30 days' advance written notice of any proposed changes or termination of coverage under such policies.

7.2 ABSMC's Obligation to Pay for Tail Coverage for Certain Named OB Generalists. Notwithstanding Section 7.1, upon termination of this Agreement without renewal for any reason, ABSMC shall fund the cost of "prior acts" or "tail" coverage required under Section 7.1 for the following physicians for services provided while performing Coverage Services under this Agreement (or a predecessor agreement): Coletta Hargis, M.D., Jill McGill, M.D., Albertine Omani, M.D., Eve Yalom, M.D., and Michele Chen, M.D; provided, however, that this Section 7.2 shall not apply to any of these physicians if the physician is or has been (1) a shareholder or partner of Medical Group, or (2) a shareholder or employee of any professional corporation which is a shareholder or partner of Medical Group.

7.3 Insurance for Administrative Services. With respect to Administrative Services pursuant to this Agreement, ABSMC shall maintain liability insurance or self-insurance covering Medical Director and other physicians providing such services with limits of not less than \$1 million per occurrence, \$3 million annual aggregate. This insurance or self-insurance shall be applicable only to Administrative Services and is not applicable to any professional services provided by Medical Group, Medical Director, Chief OB Generalist or Covering Providers.

7.4 Acknowledgment.

(a) By Medical Group. Medical Group is responsible for (i) any untrue representation, breach, or nonfulfillment by Medical Group of any covenants contained in this Agreement; and (ii) any negligent or intentional act or omission of Medical Group or its employees or agents (including Covering Providers providing services on behalf of Medical Group under this Agreement), officers, or directors while such person is performing duties in connection with the operation of the Program;

(b) By ABSMC. ABSMC is responsible for: (i) any untrue representation, breach, or nonfulfillment by ABSMC of any covenant contained in this Agreement; and (ii) any negligent or intentional act or omission of ABSMC, or its employees or agents, officers or directors while such person is performing duties in connection with the operation of the Program; and

(c) No Liability. By virtue of this Agreement, neither party assumes responsibility for the acts or omissions of the other.

ARTICLE VIII

TERM AND TERMINATION

8.1 Term. This Agreement shall become effective as of 12:01 am on the Effective Date, and shall remain in effect for a term of three years thereafter, unless terminated sooner in accordance with Section 8.2.

8.2 Termination. This Agreement may be terminated pursuant to any of the following applicable provisions:

(a) Mutual Agreement. This Agreement may be terminated at any time upon the written consent of the parties;

(b) Without Cause. Either party may terminate this Agreement at any time upon 90 days' written notice during the term of this Agreement;

(c) With Cause. This Agreement may be terminated immediately or on shortened notice for cause in the following cases:

(1) A material breach of this Agreement by any party, where the defaulting party has been given written notice of such breach and has failed to correct such breach within 30 days after receipt of such notice. Termination pursuant to this subsection shall be effective at the expiration of the 30 day notice period;

(2) Loss or restriction of Medical Group's authority to operate as a professional medical partnership or corporation, unless such loss or restriction does not restrict or impair Medical Group's ability to provide services under this Agreement. Termination pursuant to this subsection shall be effective immediately;

(3) Loss or restriction of Medical Group's qualification as a Medicare or Medi-Cal provider. Termination pursuant to this subsection shall be effective immediately;

(4) Loss or restriction of Hospital's license or accreditation, or destruction of Hospital or the portion(s) thereof dedicated to the operation of the Program, such that Hospital is not able to continue the uninterrupted operation of the Program. Termination pursuant to this subsection shall be effective immediately upon receipt of written notice from any party; or

(5) Loss, cancellation or reduction of the insurance coverage required under Section 7.1.

(d) Covering Providers. In addition, it is specifically understood that ABSMC may require Medical Group to immediately remove from the coverage schedule any Covering Provider who:

(1) Loses his/her license to practice medicine or midwifery, as the case may be, or has such license substantially restricted;

(2) Loses his/her medical staff membership, clinical privileges, prerogatives, or has such membership, privileges, or prerogatives substantially restricted;

(3) Loses his/her eligibility to provide professional services to Medicare or Medi-Cal patients, or has such eligibility substantially restricted;

(4) Becomes legally incompetent, or disabled to an extent that he/she can no longer perform the services; is convicted of or pleads no contest to a felony or a crime of moral turpitude; or uses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription (although the excuse of a physician's prescription shall not apply to the use of a controlled substance at the work place and while on duty if a reasonable person could anticipate that its use would impair job performance);

(5) Loses, cancels or reduces, or causes the loss, cancellation or reduction of, the insurance coverage required under Section 7.1;

(6) Fails to satisfy any of the standards or qualifications set forth in this Agreement for Covering Providers; or

(7) Fails to maintain a professional standard of conduct, which includes compliance with Hospital medical staff bylaws, rules and regulations.

ABSMC may immediately terminate this Agreement or withhold an appropriate portion of the compensation due Medical Group under this Agreement should Medical Group fail to so remove any such Covering Provider; and

(e) Remedies. It is understood that ABSMC's remedies under subsection (d) above do not preclude termination under subsection (c) above, in the event ABSMC reasonably determines that the acts or omissions of an individual Covering Provider also causes Medical Group to fail to meet one or more of the termination criteria set forth in subsection (c) above.

8.3 Rights on Expiration or Termination.

(a) Hospital Records. Custody of all Hospital records including Hospital patient medical records shall be turned over to Hospital. Medical Group may retain duplicate copies of patient medical records, at its own expense;

(b) Transfer of Responsibilities. Medical Group shall cooperate with Hospital toward an orderly transfer of responsibilities under Articles I and II to Medical Group's successor, if any;

(c) Vacating Hospital Premises. Within 30 days after termination, Medical Group and Medical Director shall vacate Hospital premises and remove any and all of the personal property of Medical Group and Medical Director. Any personal property not so removed may be removed by that Hospital at Medical Group's expense; and

(d) Survival of Obligations. Section 1.5 (Monthly Time Reports), Article V (Compliance with Laws and Regulations), Article VII (Insurance), Section 9.1 (Indemnification), Section 9.2 (Dispute Resolution), Section 9.5 (Confidentiality), and Section 9.7 (Attorneys' Fees), of this Agreement shall survive termination of this Agreement.

8.4 No Procedural Rights. Continuation of this Agreement is not a condition of medical staff membership for any Covering Provider. Therefore, this Agreement may be terminated and any Covering Provider may be removed from the group of physicians providing Coverage Services in accordance with Section 8.2 without necessitating a hearing before either Hospital's medical staff, ABSMC's Board of Directors or any other body, except if the termination is for a medical disciplinary cause or reason. Termination of this Agreement and removal of a Covering Provider shall be governed by the terms of this Agreement and not by the terms of any medical staff bylaws or procedures, including any procedure relating to the termination of medical staff membership of any physician or nurse midwife employee or subcontractor of Medical Group or to any other change in the nature or status of such membership, unless the termination is for a medical disciplinary cause or reason.

8.5 Renewal or Extension. On or before the date which is 90 days prior to expiration of the two-year term of this Agreement, the parties agree to begin meeting to discuss in good faith the possible renewal or extension of this Agreement with such modifications in the compensation and other terms of this Agreement as mutually agreed by the parties; provided, however, that neither party shall have any binding obligation to renew or extend this Agreement unless they are able to reach mutual agreement on the terms of any such renewal or extension, which shall be in each party's sole and absolute discretion. If this Agreement is terminated prior to the first anniversary of the Effective Date for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services prior to such first anniversary.

8.6 Legal Events.

(a) Legal Event: Consequences. This section applies on the occurrence of a Legal Event. If a Legal Event occurs, the Noticing Party may give the other party notice of intent to amend or terminate this Agreement under this section. A Legal Event means:

- (1) a statute, law, rule, order, regulation, standard, arbitration award, judgment, decision or official interpretation, by
- (2) the United States or the State of California, a governmental agency (including an agency that administers a federal health care program) or the representative or agent

of a governmental agency (including a Medicare carrier or fiscal intermediary), any court, administrative tribunal, accreditation agency or duly constituted arbitration panel with jurisdiction over the parties hereto, that

(3) in the good faith judgment of one party ("Noticing Party"), materially and adversely either

(i) jeopardizes ABSMC's tax-exempt status, jeopardizes the tax-exempt character of interest payable on public agency bonds issued to finance improvements to Hospital, or jeopardizes either party's licensure, accreditation, certification, ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor, or that

(ii) subjects the Noticing Party to a risk of prosecution, civil monetary penalty or federal health care program exclusion, or that, in the good faith judgment of the Noticing Party, jeopardizes a party's compliance with any law, rule or regulation with which the Noticing Party desires further compliance.

(b) Notice Requirements. A Noticing Party shall give written notice to the other party together with an Opinion of counsel setting forth the following information:

- (1) The Legal Event(s) giving rise to the notice;
- (2) The consequences of the Legal Event(s) as to the Noticing Party;
- (3) The Noticing Party's intention to either:

(i) Terminate this Agreement due to an unacceptable risk of harm described in Section 8.6(a)(3), which the Noticing Party reasonably believes cannot be immediately redressed through an amendment to this Agreement; or

(ii) Offer to amend this Agreement to remove the threat described in Section 8.6(a)(3);

- (4) The Noticing Party's proposed amendment(s), where applicable;

and

(5) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

(c) Renegotiation Period; Termination. Unless the other party acquiesces in a proposal from the Noticing Party to terminate the Agreement under Section 8.6(b)(3)(i), the parties shall negotiate in good faith during the 30 days from the giving of the notice described in Section 8.6(b) (the "Renegotiation Period") to amend this Agreement in accordance with the

Noticing Party's proposal or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 30th day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligations hereunder that are to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed as to waive privileges otherwise applicable to these opinions.

ARTICLE IX GENERAL/MISCELLANEOUS PROVISIONS

9.1 Indemnification.

(a) ABSMC. Subject to the provisions of Sections 9.1(c) and (d), ABSMC shall defend, indemnify and hold Medical Group and Medical Group's officers, partners, employees, agents, successors, and assigns ("Medical Group Affiliates") harmless from and against all claims, losses, liabilities, damages, costs, judgments and expenses, including reasonable attorneys' fees (collectively, "Losses"), incurred by Medical Group or any Medical Group Affiliate as a result of (i) a breach of any representation, warranty, or covenant made in this Agreement by ABSMC; or (ii) any negligent or intentional act or omission of ABSMC, or its employees or agents, officers or directors while such person is performing duties in connection with the operation of the Program.

(b) Medical Group. Subject to the provisions of Sections 9.1(c) and (d), Medical Group shall defend, indemnify and hold harmless ABSMC, and ABSMC and each of their respective affiliates, officers, directors, employees, agents, successors, and assigns ("ABSMC Affiliates") harmless from and against all Losses incurred by ABSMC, ABSMC or any ABSMC Affiliate as a result of (i) a breach of any representation, warranty, or covenant made in this Agreement by Medical Group or any Covering Provider; or (ii) any negligent or intentional act or omission of Medical Group or its employees or agents (including Covering Providers providing services on behalf of Medical Group under this Agreement), officers, or directors while such person is performing duties in connection with the operation of the Program.

(c) Notification and Settlement of Claims. A party seeking indemnification (the "Indemnatee") shall, within 30 days from the date the Indemnatee receives actual knowledge of a claim from a third party that could result in any Losses (or by such earlier date after the Indemnatee has received actual knowledge of a claim as may be necessary to avoid material prejudice to the other party), notify the other party (the "Indemnitor"), in writing, of such claim (the "Indemnification Notice"), shall provide the Indemnitor with a copy of such claim or other documents received, and shall upon request otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnatee's possession. (If the Indemnatee fails to give a timely Indemnification Notice, then the indemnification obligation of the Indemnitor shall be reduced and modified to take into account the impact, if any, of Indemnatee's failure on Indemnitor's ability to adequately defend such claim.) If the Indemnitor notifies the Indemnatee in writing within 10 days after an

Indemnification Notice is given to the Indemnitor that the Indemnatee is entitled to indemnification hereunder or defense with respect to such claim, then Indemnitor shall have the right by notice given to the Indemnatee within 15 days after the date of the Indemnification Notice to assume and control the defense thereof, including the employment of counsel, selected by the Indemnitor, and the Indemnitor shall pay all reasonable expenses of such defense. The Indemnatee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnatee unless the employment thereof has been specifically authorized by the Indemnitor in writing; provided, however, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnatee and Indemnitor, and if the Indemnitor requires that the same counsel represent both the Indemnatee and the Indemnitor and if representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, as set forth in an opinion of counsel addressed to such parties, then the Indemnatee shall have the right to retain its own counsel at the reasonable cost and expense of the Indemnitor. If the Indemnitor shall have failed to assume the defense of any claim in accordance with the provisions of this subsection (c), then the Indemnatee shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnatee is entitled to indemnification from the Indemnitor hereunder, the reasonable fees and expenses of the Indemnatee's counsel shall be borne by the Indemnitor and paid by Indemnitor to Indemnatee within 15 business days of written demand therefor, but the Indemnitor shall be entitled, at its own expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such claim in its sole and absolute discretion and without consultation with the Indemnatee so long as the Indemnitor agrees to pay the entire cost of such settlement or compromise and such settlement or compromise does not impose any obligations (including without limitation, any notice or reporting obligation) on the Indemnatee (except with respect to providing releases of the third party). The Indemnatee shall not settle or compromise the claim without satisfying one of the following conditions (otherwise the Indemnitor shall be released from all indemnification obligations hereunder to the Indemnatee with respect to such claim): (a) the Indemnatee shall first obtain the written consent of the Indemnitor or (b) the Indemnitor shall have failed, after written notice to it of such claim, to take action to defend the same within the 15-day period described above.

(d) Limitations on Losses. The indemnifications under Sections 9.1(a) and (b) shall cover only out-of-pocket Losses actually suffered by an Indemnatee, and shall not cover Losses in the nature of consequential damages, lost profits, diminution in value, damage to reputation or goodwill, or the like. The amount of Losses shall also be computed net of any related recoveries to which the Indemnatee is entitled under insurance policies or other related payments received or receivable from any other person or entity and net of any tax benefits actually received by the Indemnatee, taking into account the income tax treatment of the receipt of indemnification payments.

9.2 Dispute Resolution. In the event that any dispute arises between Medical Group (or Medical Director) and ABSMC arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, any party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties shall

attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore, or otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. Subject to Section 9.7, the cost of such arbitration shall be shared equally by ABSMC and Medical Group.

9.3 Assignment; Successors. Neither party may assign its rights or delegate its duties hereunder without the express written approval of the other parties. The rights and obligations of any party under this Agreement shall inure to the benefit of and be binding upon that party's permitted assigns and legal successors.

9.4 Notice. All notices required or allowed in this Agreement shall be in writing and shall be sent to the addresses shown below. A party may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

If to ABSMC: Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attn: Warren J. Kirk, President & Chief Executive Officer

Copy to: Sutter Health Legal Counsel Department
345 California Street, Suite 2000
San Francisco, CA 94104
Attn: Larry Dempsey, Esq.

If to Medical Group: East Bay Perinatal Medical Associates
350 – 30th Street, Suite 205
Oakland, CA 94609
Attn: Stuart M. Lovett, M.D.

Copy to: Buchalter Nemer, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457
Attn: Carol Lucas

9.5 Confidentiality.

(a) This Agreement. This Agreement is confidential. The parties agree not to release information concerning this Agreement to any third party without consent of the other party. This prohibition against release of information shall not apply to fiscal intermediaries, public agencies, or commissions with governmental powers and duties related to disclosure of information or having the right to compel disclosure of such information; nor shall it apply to the disclosure of information compelled to be released by process of law.

(b) Other Confidential Information. During the term of this Agreement, each party and its employees and contractors will have access to and become acquainted with confidential information and trade secrets of the other party, consisting of, but not limited to, accounts, clients, patients, patient groups, billing practices and procedures, business techniques and methods, strategic plans, operations, and related data ("Confidential Information"), all of which Confidential Information is the property of each respective party and is used in the course of each party's business. Neither party (nor their respective employees or contractors) shall disclose, or permit or suffer to be disclosed, to anyone, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Confidential Information of the other party, or use them other than in the course of performing services under this Agreement. All documents containing Confidential Information of a party are the exclusive property of such party, even if given to the other party during the term of this Agreement. Under no circumstances shall any documents containing Confidential Information or Trade Secrets of a party be duplicated or copied, or divulged to anyone other than employees or agents of the other party without the owning party's written consent first being obtained, and all such Confidential Information shall be returned to the other party upon request.

9.6 No Third Party Beneficiary. Except for the indemnification of Medical Group Affiliates and ABSMC Affiliates under Section 9.1, nothing contained in this Agreement is intended, nor shall it be construed, to create rights running to the benefit of third parties.

9.7 Attorneys' Fees. In the event of arbitration or litigation between the parties relating to or arising from this Agreement, the prevailing party shall be entitled to receive reasonable attorneys' fees, costs, and other expenses, in addition to whatever other relief may be awarded. In addition, any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

9.8 Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the parties, or would place either party in violation of its articles of incorporation or bylaws or partnership agreement or create a legal jeopardy event under Section 8.2(e), as the case may be, in which case the Agreement may be immediately terminated.

9.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.10 Headings. The headings of sections in this Agreement are for reference only and not to be construed in any way as part of this Agreement.

9.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

9.12 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disasters, strikes, or any cause beyond the control of the nonperforming party.

9.13 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective a waiver must be in writing, signed and dated by the parties.

9.14 Entire Agreement; Modification. This Agreement contains the entire agreement of the parties relating to this subject matter. The Agreement may only be modified in writing signed by all parties, effective on the date set forth therein.

9.15 Execution. By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

~ Signature Page Follows ~

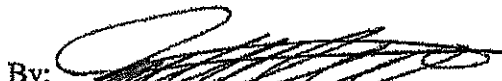
~ Signature Page for Perinatal Services Agreement ~

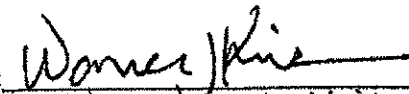
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date specified below.

EAST BAY PERINATAL MEDICAL
ASSOCIATES

ALTA BATES SUMMIT MEDICAL
CENTER

By: Stuart M. Lovett, M.D., a Professional
Corporation

By: 
Name: Stuart M. Lovett, M.D., President

By: 
Name: Warren J. Kirk
Title: President & CEO

JONATHAN D. WEISS, MD, President
Jonathan Weiss, MD, A PROFESSIONAL CORPORATION

ACKNOWLEDGMENT AND AGREEMENT

The undersigned Medical Director acknowledges that he has read this Agreement and agrees to the terms and conditions thereof.

MEDICAL DIRECTOR:

Stuart M. Lovett, M.D.

EXHIBIT 1.2(h)

OB GENERALIST JOB DESCRIPTION

Job Description

OB Generalist

Alta Bates Summit Medical Center

Accountability: Responsible to the Medical Director, Maternal-Fetal Medicine and to the Chief OB Generalist to ensure safe, quality medical care to Program Patients at Alta Bates Summit Medical Center (ABSMC).

Overview: The OB Generalist is responsible for providing obstetrical care to Program Patients as described in the Perinatal Services and OB Coverage Agreement, Article II, Clinical Coverage Services, for collaborating with Hospital management in the identification of safe, quality care for perinatal patients, and for participating in the implementation and maintenance of the TLC initiative in Labor and Delivery.

Principal Duties and Responsibilities:

1. Provide perinatal diagnostic, consulting, and delivery services to Program Patients as defined in the Perinatal Services and OB Coverage Agreement, Article II, Clinical Coverage Services.
2. Provide emergency obstetrical care to patients when their regular attending has not arrived at the Alta Bates campus.
3. Prioritize early morning rounding on postpartum patients in the Family Care Center (FCC) to affect efficient discharge of Program Patients.
4. Provide continuous availability, 24/7, to the Labor and Delivery Unit (L&D) such that patients are effectively and efficiently managed and delivered.
5. Coordinate effective communication among the OB Generalists, Certified Nurse Midwives (CNM's), and L&D Charge Nurses so that the plan of care on all Program Patients is known and appropriately addressed.
6. Coordinate the acceptance, assessment, and admission of all maternal transports with the perinatologist and the L&D Charge Nurse. This requires direct communication between the perinatologist and the OB Generalist prior to the acceptance of any maternal transport.
7. Participate in team briefings and debriefings prior to surgeries, VBACs, and other appropriate procedures as defined by the TLC initiative.
8. Regularly participate in core team meetings on all shifts.
9. Assume the role of Coordinating Team Leader as requested, in rotation with other physicians.
10. In support of the TLC initiative, prioritize staff knowledge of availability at all times.

- a) Inform L&D Charge Nurse when leaving the unit and expected time of return.
 - b) Facilitate availability through use of Vocera badge.
11. Communicate and consult with on-call perinatologist when patient volume and acuity in L&D supports the need for additional providers.

Other:

- o All OB Generalists are expected to be equally available to provide active coverage of the L&D unit at all times during their scheduled shifts including those hours between 7 p.m. to 7 a.m.
- o Effective division of duties among the two OB Generalists and the CNM is the responsibility of the medical group (EBPMA). Such division of duties must be continually evaluated in collaboration with OB Department physician leadership and perinatal management, and revised as needed to affect the safe and effective care of patients. The present division of daily tasks is attached.
- o The OB Generalists may assist private practitioners with non-emergent procedures provided these tasks do not delay or interfere with their performance of the duties listed above for Program Patients. The OB Generalist will notify the second Generalist and the L&D Charge Nurse when performing such services.
- o Due to the high activity of the role, all OB Generalists are expected to not have engaged in other professional work commitments, including being on-call for another medical group, physician, or clinic, for a minimum of 12 hours preceding the scheduled shift. Shifts are limited to 12 hours. No 24 hours shifts will be scheduled.

Summary of Division of Duties

Physician A (day shift) will be primarily responsible for the following:

- L&D – manage labor patients and provide general oversight of the unit
- Triage – assess and admit patients
- Provide coverage for telephone calls
- Attend to all emergency (including private physician patients) calls – e.g., fetal distress, postpartum hemorrhage, etc.
- Perform missed deliveries for private physician and C/S's for Family Practice physicians or private CNM
- Consult with private CNM regarding labor patients
- Assist Physician B and CNM with overflow
- Assist private physician with C/S as time allows

Physician B (day shift) will be primarily responsible for the following:

- Make postpartum rounds on all C/S patients and on those patients above the scope of CNM responsibilities
- Perform tubal ligations and D&C's
- Perform a.m. scheduled C/S's
- Complete antepartum admissions

- Complete antepartum procedures (FFN, sterile specs, etc.)
- Consult with CNM regarding postpartum patients
- Assist Physician A in all work, specifically in triage to complete assessments and admissions
- If time permits, assist private physician with C/S when Physician A is too busy

Physician A and B (evening shift) will be readily available to attend to all required L&D activities. It is understood that patients will be actively managed in labor during the night shift to facilitate the best utilization of resources in L&D.

EXHIBIT 1.5**PHYSICIAN TIME REPORT**

Physicians: _____

Month: ____ Year: ____

A. ADMINISTRATIVE SERVICES Please identify the relevant physician for each recorded service.	Week One	Week Two	Week Three	Week Four	Week Five	Weekly Total
Management/Staff Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Committee Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Utilization Management:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Quality Review:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
AMI Initiatives (list dates)						
Sutter Health System-wide Meetings						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Supervision/Education of Interns, Residents (list dates)						
Supervision/Education of Nurses, Technicians, Staff (list dates)						

A. ADMINISTRATIVE SERVICES Please identify the relevant physician for each recorded service.	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Total
Physician Education/Consultation (list dates)						
Community Presentation (list dates)						
Protocol/Policy Development (list dates)						
Program Development (list dates)						
Other, describe: (list dates)						
Other Meetings, describe:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Total Hours						

Certification By Physician: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature

Title

Date

Printed Name

Telephone No.

Fax No.

Administrator Signature

Title

Date

Printed Name

Telephone No.

Fax No.

EXHIBIT 2.2(a)(4)

COMMUNITY CLINICS WHOSE PATIENTS ARE PROGRAM PATIENTS

EXHIBIT 16-3
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

PERINATAL SERVICES AND OB COVERAGE AGREEMENT

THIS PERINATAL SERVICES AGREEMENT ("Agreement") is made and entered into as of December 4, 2009 ("Effective Date") by and between Sutter East Bay Hospitals, a California nonprofit public benefit corporation, dba ALTA BATES SUMMIT MEDICAL CENTER ("ABSMC") and EAST BAY PERINATAL MEDICAL ASSOCIATES, a California professional medical partnership ("Medical Group").

RECITALS

A. ABSMC owns and operates two licensed general acute care hospitals, one located at 2450 Ashby Avenue, Berkeley, California, (referred to as "Alta Bates Campus" or "Hospital") and the other located at 350 Hawthorne Avenue, Oakland, California ("Summit Campus") with a clinical program of maternal-fetal medicine (providing high-risk obstetrical services) as part of ABSMC's comprehensive Women and Infants Service Program operated at the Alta Bates Campus (the "Program").

B. Medical Group is a professional medical partnership organized under the laws of the State of California whose partners are professional corporations whose sole shareholders are licensed physicians duly qualified in the subspecialty of perinatology.

C. The East Bay service area served by ABSMC contains a large population of indigent and other underprivileged patients who experience a disproportionately large number of "high risk" pregnancies requiring greater medical expertise and greater coordination among health professionals. An important part of the charitable health care mission of ABSMC is to improve access of East Bay residents to high quality women/infant medicine, reduce the morbidity and mortality rates, and improve the quality of care provided to pregnant women and their fetuses and newborns.

D. Pursuant to a separate Professional Services Agreement, Medical Group contracts to provide professional services at the ABSMC's community clinic known as Alta Bates Perinatal Center.

E. ABSMC has had the arrangement described in this Agreement reviewed by an experienced independent health care financial consultant which has determined that the terms of this Agreement are commercially reasonable and the compensation to be provided herein to Medical Group represents fair market value compensation for the services to be provided by Medical Group.

F. Effective as of the Effective Date, this Agreement shall replace, supersede and terminate the Perinatal Services Agreement between ABSMC and Medical Group entered into as of August 28, 2007.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 1
MEDICAL DIRECTOR SERVICES

1.1 Perinatal Services Medical Director. Medical Group shall provide Stuart M. Lovett, M.D. to serve as "Medical Director of Maternal-Fetal Medicine" ("Medical Director"). Medical Director shall be responsible for carrying out the administrative responsibilities described in **Exhibit 1.1**, attached hereto, shall provide overall management services for the Program in accordance with this Agreement, shall be responsible for overseeing community outreach, education, and support of community clinics, shall be responsible for overseeing Medical Group's performance under this Agreement, and shall have such other responsibilities as are set forth in this Agreement ("Administrative Services"). Medical Director shall be accountable to the Vice President of Medical Affairs of ABSMC (the "VPMA") or his or her designee and shall coordinate his activities with ABSMC's Director of Women and Infants Services (the "Program Director"). Medical Director may delegate the performance of certain of his administrative duties and services to other obstetricians and perinatologists employed by Medical Group, provided that Medical Director shall retain ultimate responsibility and accountability for such administrative duties and services.

1.2 Chief OB Generalist Duties. Medical Director, with the consent of the Program Director, shall appoint a Chief OB Generalist. The Chief OB Generalist shall oversee the daily operations of the OB Generalists and the OB Generalists' performance under this Agreement. The Chief OB Generalist shall be responsible for carrying out the responsibilities described in **Exhibit 1.2** attached hereto and be qualified pursuant to the job description defined in **Exhibit 1.2.7** attached hereto.

1.3 Time Requirements. Medical Director (together with the Chief OB Generalist and other Medical Group physicians performing Administrative Services responsibilities to the extent permitted under this Agreement) shall collectively devote **not more than 125 hours** per month to the performance of the Administrative Services required in this Article I to be paid hourly pursuant to the submission of Time Reports as defined and described in Section 1.4, below.

1.4 Monthly Time Reports. Medical Director, the Chief OB Generalist, and other Medical Group physicians performing Administrative Services (collectively, "Administrators") shall record contemporaneous to performance the actual number of hours and a description of the actual Administrative Services provided under this Article I on a time report ("Time Report") in the form attached hereto as **Exhibit 1.4**, as modified from time to time by ABSMC. A separate Time Report shall be submitted to record the time devoted to Administrative Services by each Medical Group physician pursuant to this Agreement. The Time Reports shall be delivered to the Program Director completed and signed for each month within 10 days after the end of each calendar month during the term of this Agreement. Upon request of ABSMC, Medical Director, the Chief OB Generalist, and other Medical Group physicians performing Administrative Services shall from time to time complete and execute such other Time Reports or allocation statements on forms provided by ABSMC as may be required to comply with applicable Medicare, Medi-Cal or other legal requirements.

Article 2
CLINICAL COVERAGE SERVICES

2.1 Clinical Coverage. Medical Group agrees to ensure the on-site and on-call availability of Covering Providers to provide professional consultations and to render professional services to patients at the Alta Bates Campus as provided in Section 2.2.1. Subject to ABSMC approval (which approval shall not be unreasonably withheld or delayed), Medical Group shall develop a system for assuring the availability of appropriate on-site and on-call Covering Providers for the Program 24 hours per day, 7 days per week, 365 days per year. The Chief OB Generalist shall submit schedules to the L&D Unit in a timely manner and provide prompt updates or notice of any changes in such schedules to the L&D Unit.

2.2 Coverage Requirements. Without limiting the generality of Section 2.1, Medical Group shall ensure the availability of Covering Providers to provide clinical coverage services to the Program ("Coverage Services"), as follows:

2.2.1 Patient Services. Medical Group shall ensure the on-site availability of Covering Providers 24 hours per day, 7 days per week, 52 weeks per year at the Alta Bates Campus, to provide the following:

- (a) perinatal diagnostic and consulting services and delivery services to Program patients;
- (b) emergency obstetrical care to patients when their regular attending physician has not arrived at the Alta Bates Campus, such care to be rendered only until the attending physician becomes available and assumes responsibility for care;
- (c) back-up system to cover emergencies if all OB Generalists required to be on site under 2.2.4(a) are unavailable due to high activity;
- (d) obstetrical care to patients who arrive at the Hospital (including presentation in the Emergency Department) with no prior patient/professional relationship with an obstetrician, if Emergency Department personnel make a reasoned determination that (i) the patient is pregnant, and that the fetus has a gestational age equal to or greater than twenty weeks; or (ii) the patient is pregnant but is undergoing a spontaneous abortion, and that the fetus has a gestational age of twelve weeks or less; and
- (e) obstetrical care to patients who arrive at the Alta Bates Campus (including patients presenting in the Emergency Department at the Alta Bates Campus) if the presenting patient has a pre-existing Physician-Patient relationship with Alta Bates Summit Perinatal Center, or with any community clinic identified from time to time to Medical Group by the Program Director in writing. The first such notice is attached to this Agreement as **Exhibit 2.2.1(e)**. Notwithstanding the foregoing, ABSMC shall not enter into arrangements with new community clinics that would substantially increase Medical Group's responsibilities under this Agreement without first meeting and conferring with Medical Group to determine if

additional Covering Providers will be needed due to the substantial increase, with a corresponding increase in Medical Group Compensation.

In this Agreement, "obstetrical care" includes the care of spontaneous abortion patients.

2.2.2 Perinatal Transport. Medical Group shall ensure the availability of qualified Covering Providers to accept and coordinate perinatal transport. Such coordination shall include at a minimum the following:

(a) a physician who is board certified or board eligible in the specialty of obstetrics and gynecology, and who is duly qualified in the subspecialty of maternal-fetal medicine who is present at the Alta Bates Campus or on-call 24 hours per day, seven days a week, 52 weeks per year; and

(b) prior to acceptance of any maternal transport by the covering perinatologist, the covering perinatologist must:

(i) consult with both an OB Generalist who is currently at the Alta Bates Campus and the L&D Charge Nurse, to ensure there is sufficient capacity in the L&D unit and the Newborn Intensive Care Unit; and

(ii) confirm the OB Generalist has the skill and availability necessary to care for the maternal transport patient, unless the perinatologist travels to the Alta Bates Campus to care for the maternal transport patient.

2.2.3 Antenatal Testing. Medical Group shall ensure the availability of perinatologists and other providers to provide ultrasonography, genetic screening and other antenatal testing services for outpatient referrals.

2.2.4 Anticipated Staffing Level. The parties expect that the Coverage Services under this Agreement will require Medical Group to employ or otherwise contract with the total full time equivalent ("FTE") amounts as described in this Section 2.2.4 and as defined in **Exhibit 2.2.4**, attached hereto. The appropriate level of obstetrical and gynecological coverage under this Agreement shall be determined by mutual agreement of the parties from time to time; provided the following minimum staffing levels and scheduling requirements will be met:

(a) Medical Group will provide a minimum staffing level of 2 OB Generalists and 1 midwife 24 hours per day, 365 days per year at the Alta Bates Campus L&D unit. In addition, Medical Group will provide 1 OB Generalist for 8 hours per day Monday through Friday and for 6 hours per day Saturday and Sunday. The priority for this OB Generalist is to provide timely rounding on the postpartum patients which should begin, in most circumstances, no later than 8:00 a.m.;

(b) Medical Group will provide 1 perinatologist in the hospital at the Alta Bates Campus 10 hours per day Monday through Friday and 6 hours per day Saturday and Sunday and during additional hours when clinical circumstances warrant. Medical Group will

provide a perinatologist on-call the other 14 hours per day Monday through Friday and the other 18 hours per day on Saturday and Sunday;

(c) Those OB Generalists and midwives covering 24 hours in-house will work 12-hour shifts (7 a.m.-7 p.m. and 7 p.m.-7 a.m.). Each of the two OB Generalists and the midwife will be equally available to provide active coverage of the L&D unit during both shifts, but expressly including the 7 p.m.-7 a.m. shift; and

(d) Covering Providers may not have been scheduled for call coverage, provided professional services or otherwise worked for compensation from any source during the 12 hours prior to commencement of their shift.

(e) No provider shall engage in any Administrative Service as defined in Article 1 at the same time as providing services, being on call, or being on shift under this Article 2.

(f) ABSMC and Medical Group agree to re-examine the staffing levels contemplated in this Section 2.2 (and the corresponding Medical Group compensation) if monthly delivery volume substantially increases or substantially decreases at the Alta Bates Campus L&D unit, and either party reasonably expects the increase or decrease to be sustained. Substantial increases or decreases shall be measured from a baseline average of **300 deliveries per month**.

2.2.5 Antepartum Unit—Coordination of Care. Medical Group shall ensure that for each Program Patient in the Antepartum Unit, a perinatologist who is a Covering Provider shall coordinate a 24-hour plan of care, including but not limited to (i) daily review and updating of the plan of care for each Program Patient, and (ii) daily communication with the OB Generalists who are that patient's Covering Providers and with the Antepartum Unit's Charge Nurse regarding the plan of care for that patient. ABSMC may require the perinatologist Covering Provider to be in the Antepartum Unit for this OB Generalist shift change if, in the reasonable opinion of the Program Director, coordination of care between OB Generalist shifts requires the physical presence of the perinatologist Covering Provider. A perinatologist Covering Provider shall also attend weekly antepartum interdisciplinary rounds.

2.2.6 Specific Communication Responsibilities. The Covering Provider perinatologist, before the end of his or her shift on call, will speak with at least one of the Covering Provider OB Generalists for a hand-off communication to include a discussion of current patient care needs and clinical conditions in the antepartum unit and the L&D unit. After having this conversation, that Covering Provider perinatologist will have a hand-off communication with the incoming Covering Provider perinatologist. A 'hand-off communication,' per Joint Commission standards, means a real-time process of passing patient-specific information from one caregiver to another or from one team of caregivers to another for the purpose of ensuring patient safety and the continuity of patient care.

2.3 Right to Subcontract. Subject to this Section 2.3 and any other limitations expressly set forth in this Agreement, Medical Group shall have the right, subject to the prior

written approval of ABSMC, which shall not be unreasonably withheld, to subcontract with physicians who are not Medical Group employees for the Coverage Services required to be provided by Medical Group under this Agreement so long as such subcontracted physicians are qualified to perform services required under this Agreement, and the services provided by the subcontracted physicians comply with all provisions of this Agreement. Medical Group shall be solely responsible for compensating such subcontracted physicians, including any and all payments to Covering Providers for their Coverage Services.

2.4 Requirements for Covering Providers. Medical Group shall ensure that Covering Providers meet all requirements for active and unrestricted medical staff privileges, have current licenses to practice medicine, comply with the Hospital's nondiscrimination policies, be eligible to and agree to treat Medicare and Medi-Cal patients, and provide services in accordance with all applicable medical staff bylaws, rules, regulations and policies and this Agreement. Without limiting the generality of the foregoing, all perinatologists who are Covering Providers must be board certified or board eligible in the specialty of obstetrics and gynecology, and duly qualified in the subspecialty of maternal-fetal medicine, and all OB Generalists must be board certified or board eligible in obstetrics and gynecology. Medical Group shall also cause Covering Providers to provide such Administrative Services as are required from them for the efficient operation of the Program and maintenance of high quality patient care, as reasonably requested by the Hospital.

2.5 Medical Group – Covering Provider Agreements. Medical Group shall enter into a written agreement with each physician and with each certified nurse midwife providing Administrative Services or Coverage Services under this Agreement satisfying the following conditions:

2.5.1 The agreement shall obligate the Covering Provider to abide by all applicable terms of this Agreement;

2.5.2 The agreement shall specify the services to be performed by the Covering Provider;

2.5.3 The agreement shall provide compensation for the Covering Provider that is fair market value for the services actually provided, not taking into account the value or volume of referrals or other business generated by the Covering Provider for the Hospital (within the meaning of the Stark law); and

2.5.4 The agreement shall not contain any term that would violate any anti-kickback statute or any laws or regulations governing billing or claims submission.

2.6 Notice of Loss or Limitation on Qualifications. Medical Group shall immediately notify ABSMC of any loss, suspension, or material limitations imposed upon any Covering Provider's license, Medicare or Medi-Cal participation, medical staff membership privileges, prerogatives, or professional liability insurance coverage, and shall also promptly notify Hospital when any malpractice claim or professional disciplinary action is initiated or asserted against any Covering Provider.

2.7 Outreach Clinics. ABSMC may desire to establish outreach clinics at other affiliated hospitals. If requested by ABSMC, and upon terms mutually agreeable to the parties, Medical Group shall provide a perinatologist (and/or other appropriate medical personnel) on site at such outreach clinics as appropriate to ensure the development and support of such outreach clinics.

2.8 Back-Up. Medical Group shall provide the following back-up services:

2.8.1 Nurse Midwife Back-Up. Medical Group shall reasonably cooperate with nurse midwives who are neither Medical Group employees nor Medical Group contractors to facilitate the availability of appropriate supervision and back-up for these nurse midwives, including their private practice patients in accordance with all Hospital medical staff requirements;

2.8.2 Family Practice Back-Up. Medical Group shall reasonably cooperate with those family practice physicians who maintain medical staff privileges at either the Alta Bates or Summit Campuses, but who are not permitted to perform deliveries for their patients without the supervision and back-up of an obstetrician, to facilitate the availability of a covering obstetrician to provide back-up for the family practice physicians in accordance with all Hospital medical staff requirements.

2.9 Expenses. Except as provided in Article III, Medical Group shall be responsible for all of the expenditures of Medical Group, its employees and subcontractors, including but not limited to all expenses attributable to the conduct of Medical Group's private practice and all expenses incurred in connection with the performance of all Administrative Services and Coverage Services provided under this Agreement, including all expenses related to furnishing the services of all Covering Providers.

Article 3 RESPONSIBILITIES OF HOSPITAL

3.1 Space, Equipment, Supplies and Personnel. During the term of this Agreement, ABSMC shall provide and maintain all customary and necessary space, equipment, supplies, utilities and non-professional personnel reasonably required for operation of the Program within the Hospital (but not at any private practice location of Medical Group). The addition or removal of space, equipment, supplies and personnel at the Hospital shall be the exclusive prerogative of ABSMC, after consultation with Medical Group. Medical Group, the Medical Director and the Covering Providers may use such Hospital space, equipment, supplies and personnel only for the performance of services under this Agreement, and in no event may Medical Group or any individual physician use any part thereof for any other purpose.

3.2 Responsibility for Service. To the extent required by applicable laws and regulations (including Title 22, Section 70713 of the California Code of Regulations), the Hospital shall retain professional and administrative responsibility for the services rendered to Program patients.

Article 4 COMPENSATION

4.1 Compensation for Medical Group's Administrative Services. Provided that Medical Group is not in material breach of its obligations under this Agreement (including, but not limited to, the timely completion and delivery of the Time Reports required under Section 1.4), ABSMC shall pay Medical Group **\$156.61 per hour** not to exceed **\$234,915.00** annually as consideration for the Medical Group's Administrative Services under Article I as documented by completed and signed Time Reports. Payment shall be made on the 15th day of the month immediately succeeding services provided.

4.2 Compensation for Medical Group's Coverage Services. Provided that Medical Group is not in material breach of its obligations under this Agreement ABSMC shall pay Medical Group an annual amount equal to **\$5,165,085.00** as consideration for Medical Group's Coverage Services under Article II. Compensation for Coverage Services shall be payable at the rate of **\$430,423.75** per month on the 15th day of the month for in the month in which the services are being provided, subject to ABSMC's right to withhold payment if Time Reports are not submitted in a timely manner to the Program Director.

4.3 Inflation Adjustment. The dollar amounts in the Section 4.2 shall be adjusted to reflect inflation or deflation on the first day of the first calendar month falling at least 12 months after the Effective Date. The adjustment shall be made by multiplying each dollar amount in effect for the preceding period—the amounts in the preceding paragraph for the first adjustment and the amounts in the preceding paragraph as adjusted in the first adjustment for the second adjustment—by a fraction whose numerator is the Consumer Price Index for All Urban Consumers, San Francisco Bay Area for the month of December 2010 and whose denominator is that index for December 2009.

4.4 Fair Market Value Compensation. The compensation provided under this Article 4 represents the parties' good faith determination of the reasonable fair market value compensation for the Administrative and Clinical Coverage Services to be provided by Group under this Agreement, taking into account the number of hours of service required and an estimate of the professional fees that Group will be able to collect for patient services.

4.5 IRS Forms 1099. All compensation shall be reported by ABSMC as income to Medical Group on IRS Forms 1099.

4.6 No Compensation for Professional Services to Patients.

4.6.1 No Hospital Responsibility. ABSMC's only compensation responsibilities under this Agreement are as stated in this Article 4. Accordingly, ABSMC is not responsible for paying Medical Group for professional services rendered by Covering Providers while fulfilling Medical Group's responsibilities under this Agreement. Therefore, Medical Group and Covering Providers shall look solely to the responsible patients and third-party payors (and not to ABSMC or Hospital) for compensation for professional services to patients;

4.6.2 Fee Schedule. Medical Group agrees to cause Covering Providers to charge professional service fees not in excess of usual, customary and reasonable fees for comparable services;

4.6.3 Billing and Collection. Medical Group shall use commercially reasonable efforts to bill patients and third-party payors promptly (meaning that all bills for services shall be sent within 30 days of the date that a physician performed the services) for all professional services rendered by Medical Group's physicians and collect all bills as soon as practicable; and

4.6.4 Hospital Records. Hospital shall provide to Medical Group, or its designee, information and records that Hospital maintains for its billing purposes, to the extent that such information and records are relevant to Medical Group's billing for services, and in a format reasonably acceptable to Medical Group. Such records and data may include legible copies of the following: (i) the patient registration form; (ii) the patient's insurance card; (iii) the patient's assignment of insurance benefits; (iv) the patient's consent to release information to third-party payors; (v) the charge ticket which includes a description of the procedure, CPT code, and diagnosis code; (vi) the transcribed Time Report; and (vii) the daily department logs. All information shall be provided in a timely manner.

4.7 Third Party-Payor Agreements. Medical Group shall itself, and shall cause each Covering Provider to, participate in all third-party payment or managed care programs in which Hospital participates, render services to patients covered by such programs, and accept the payment amounts provided for under these programs as payment in full for services of Covering Providers to Program Patients, less any patient co-payment or deductible obligations that may apply to particular programs.

4.8 Professional Receipt Data. Medical Group acknowledges that ABSMC has the right to periodically study compensation payable under this Agreement under the guidance of independent valuation experts who will examine whether that compensation is at fair market value. Covering Provider professional service receipts generated while providing Coverage Services may be deemed relevant to a determination of the fair market value of the Coverage Services. Accordingly, Medical Group shall maintain a system that will distinguish between (a) receipts derived by performing professional services outside the Hospital, and (b) professional service receipts derived by its perinatologists, OB Generalists and midwives from performing professional services in the Hospital. The system shall be able to separately identify in-Hospital service receipts by category of Medical Group provider who rendered the service (i.e., perinatologist, OB Generalist or midwife).

Article 5

COMPLIANCE WITH LAWS; ACCREDITATION; OTHER STANDARDS

5.1 Laws and Regulations. In providing services under Articles I and II of this Agreement, Medical Group and Covering Providers shall comply with all applicable provisions of federal, state, and local laws, regulations, guidelines, and policies, including, but not limited to, Medicare and Medi-Cal guidelines and policies, including any additions, amendments, and

modifications thereto and official interpretations thereof, to include the requirements of third-party payors and all governmental agencies having jurisdiction over the operation of Hospital and the Program, the licensing of health care practitioners, and the delivery of services to patients of governmentally-regulated third-party payors whose members/beneficiaries receive services at the Hospital. Such compliance shall specifically include, but is not limited to: (i) compliance with applicable provisions of Title 22 of the California Code of Regulations; and (ii) compliance with Medicare billing, time allocation, record keeping, and record access requirements, as follows:

5.1.1 Access to Books and Records. In compliance with United States Code Section 1395x(v)(1)(I) and its implementing regulations:

(a) If Medical Group provides services to ABSMC or its related organizations (as defined at Title 42 Code of Federal Regulations ("CFR") Section 413.17) valued at, or costing, \$10,000 or more over a 12-month period, Medical Group agrees to allow the Secretary of Health and Human Services, the Comptroller General, and their duly authorized representatives access to the written contracts between ABSMC and Medical Group, and to such of Medical Group's books, documents, and records as are necessary to verify the costs of services provided. Such access shall be granted until the expiration of four years after the services are furnished, and shall be subject to the provisions of 42 CFR Part 420; and

(b) Medical Group agrees to ensure that organizations related to it that are described as "Subcontractors" at 42 CFR Section 420.301 provide services for ABSMC (or its related organizations) valued at or costing \$10,000 or more over a 12-month period shall agree, in writing, to allow like access to the Subcontractor's books, documents, and records.

If Medical Group is requested to disclose any books, documents, or records relevant to this Agreement for the purposes of an audit or investigation, Medical Group shall notify ABSMC of the nature and scope of such request, and shall make available to ABSMC, upon request of ABSMC, all such books, documents, or records. In the event of any breach of this Agreement to provide access to Medical Group's or any Subcontractor's records, ABSMC shall have the right to terminate this Agreement upon 10 days' written notice. Medical Group shall indemnify and hold harmless ABSMC in the event that any amount of reimbursement is denied or disallowed by the reimbursement program because of the failure of Medical Group or any of its Subcontractors to comply with the obligation of this Section. Such indemnity shall include, but not by way of limitation, the amount of reimbursement denied or disallowed, plus any interest, penalties, and legal costs (including reasonable attorneys' fees);

5.1.2 Documentation. Medical Group and Medical Director shall cooperate with ABSMC and Hospital, and shall require Covering Providers to cooperate with ABSMC and Hospital in completing such physician time studies that may reasonably be required by ABSMC and Hospital from time to time to satisfy Medicare cost reporting requirements for such documentation, and shall maintain appropriate documentation supporting the allocation of his or her time between professional and administrative duties as required by 42 CFR Section 415.60;

5.1.3 Services Provided to Hospital. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.55, and shall not bill patients (or responsible third-party payors) for services provided to ABSMC or Hospital;

5.1.4 Services Provided to Patients. Medical Group and its Covering Providers shall comply with 42 CFR Section 415.100, et seq. in all billings for professional services provided to patients; and

5.1.5 Anti-Referral and Anti-Kickback Laws. In addition to the obligations of the parties to comply with applicable federal, state and local laws as provided herein above, the parties acknowledge that they are subject to certain federal and state laws governing the referral of patients and payment of remuneration amongst providers which are in effect as of the execution of this Agreement including:

- (a) Prohibition on payments for referrals or to induce the referral of patients;
- (b) Prohibition on the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship; and
- (c) Prohibition on ABSMC entering into an excess benefit transaction with a disqualified person or persons.

Each party acknowledges that it has had the opportunity to engage independent counsel to advise it as to the requirements of such laws and each further acknowledges and agrees that the consideration to be paid to Medical Group by ABSMC for the Administrative Services and Coverage Services to be provided by Medical Group pursuant to this Agreement and the compensation to be paid by Medical Group to ABSMC under the professional services agreement related to the Perinatal Clinic are intended to be consistent with the fair market value thereof determined in an arms length transaction. The parties acknowledge and agree that no payment made under this Agreement is in return for the referral of patients or in return for the purchasing, leasing or ordering of any products or services or the recommending of the purchasing, leasing or ordering of any products or services. Nothing in this Agreement is intended or shall be construed to require either party to violate the California or federal laws described herein, and this Agreement shall not be interpreted to: (i) require Medical Group to make referrals to any health care facility operated by ABSMC; or (ii) restrict Medical Group or any Covering Provider from establishing staff privileges at, referring any patient to, or from otherwise generating any business for, any other entity of such party's choosing.

5.2 Compliance Program. Medical Group shall comply with ABSMC'S corporate compliance program. Medical Group shall cooperate with any corporate compliance audits, reviews and investigations which relate to Medical Group and/or any of the services provided by Medical Group under this Agreement. Subject to request by ABSMC, such cooperation shall include without limitation the provision of any and all documents and/or information related to Medical Group, their personnel, and their activities including the provision of services under this

Agreement. In addition, as requested by ABSMC, Medical Group shall participate in corporate compliance-related seminars and educational programs sponsored by ABSMC.

5.3 Corporate Practice of Medicine. Neither ABSMC nor shall Hospital involve itself in those aspects of Medical Group's or any Covering Provider's practice of medicine for which a license to practice medicine is required.

5.4 Accreditation and Other Standards. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with all applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, performing such duties under the direction of the Medical Director. Services provided to patients being treated at the Hospital facilities are to be rendered in accordance with Hospital's standards of quality and efficiency, and in accordance with all applicable medical staff bylaws, rules and regulations, and policies and procedures, and in accordance with applicable Comprehensive Perinatal Service Program standards, American College of Obstetrics and Gynecology ("ACOG") Standards for Obstetric-Gynecological Service, American College of Nurse Midwives ("ACNM"), and the Joint Statement of ACOG and ACNM. Medical Group and its Covering Providers shall be knowledgeable about and shall comply with the Bylaws, rules and regulations, and policies and procedures of Hospital and its medical staff, and the current community standards of quality medical practice as they relate to the Program.

5.5 Nondiscrimination. Medical Group, the Medical Director, and Covering Providers shall provide professional services to patients of Hospital regardless of a patient's race, color, age, creed, sex, national origin, ancestry, marital status, sexual orientation, handicap, reimbursement source or financial status.

5.6 Confidentiality of Patient Medical Information. Neither Medical Group nor Medical Director nor any Covering Provider shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by ABSMC in writing, any patient or medical record information regarding ABSMC or any patient, and Medical Group, Medical Director and each Covering Provider shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the Hospital and its medical staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

5.7 Expert Witness Conflict of Interest. Neither Medical Group nor any of its partners or employees shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of ABSMC or any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or any employee of ABSMC or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Medical Group and /or any of its partner or employees from testifying as a factual witness in an

action in which such physician and ABSMC or Medical Group and ABSMC (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of ABSMC or such other hospital or health care facility) are defendants.

Article 6 RELATIONSHIP OF THE PARTIES.

6.1 Independent Contractors. In performing the services and duties under this Agreement, the parties acknowledge and agree that Medical Group, Medical Director, the Chief OB Generalist and any Covering Provider providing services under this Agreement are at all times acting and performing as independent contractors with respect to ABSMC; that neither Medical Group, Medical Director, the Chief OB Generalist Medical Director nor any Covering Provider shall hold themselves out or act as agents of, or have any power to obligate, ABSMC or the Hospital; and that neither Medical Group, Medical Director nor any Covering Provider shall have any right to make any claim against ABSMC or Hospital for any social security benefits, payroll taxes, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave or any other employee benefits of any kind. ABSMC shall not exercise control over the methods by which Medical Group, Medical Director, the Chief OB Generalist nor any Covering Provider performs services under this Agreement, the sole interests of ABSMC being to ensure that such services are performed in a competent, efficient and satisfactory manner and in accordance with the standards set forth in this Agreement. Medical Group shall be solely responsible for all compensation, benefits, tax withholding and other payroll taxes, workers' compensation insurance disability insurance and unemployment insurance with respect to its employed and contracted physicians and other personnel.

6.2 Nonexclusive. The parties acknowledge and agree that this Agreement does not create an exclusive relationship between the parties for any purpose.

Article 7 INSURANCE

7.1 Medical Group Insurance. Medical Group shall obtain and maintain professional liability insurance policies covering Medical Group and all Covering Providers employed by Medical Group, and shall ensure that all Covering Providers not employed by Medical Group obtain and maintain professional liability insurance policies. All such policies shall provide for professional liability coverage in the minimum amounts of \$2 million per occurrence, \$4 million annual aggregate for perinatologists, and \$1 million per occurrence, \$3 million annual aggregate for other Covering Providers. If such insurance is on a "claims made" basis, and such coverage is later terminated or converted to "occurrence" coverage (or vice versa), Medical Group shall require Covering Providers to acquire "prior acts" or "tail" coverage in the above amounts covering all periods during which this Agreement is or has been in force. Medical Group shall annually certify to ABSMC that all required coverage is in force. Medical Group shall regularly provide to ABSMC updated copies of certificates evidencing all required coverage and shall give ABSMC 30 days' advance written notice of any proposed changes or termination of coverage under such policies.

7.2 ABSMC's Obligation to Pay for Tail Coverage for Certain Named OB Generalists. Notwithstanding Section 7.1, upon termination of this Agreement without renewal for any reason, ABSMC shall fund the cost of "prior acts" or "tail" coverage required under Section 7.1 for the following physicians for services provided while performing Coverage Services under this Agreement (or a predecessor agreement): Coletta Hargis, M.D., Jill McGill, M.D., Albertine Omani, M.D., Eve Yalom, M.D., and Michele Chen, M.D; provided, however, that this Section 7.2 shall not apply to any of these physicians if the physician is or has been (1) a shareholder or partner of Medical Group, or (2) a shareholder or employee of any professional corporation which is a shareholder or partner of Medical Group.

7.3 Insurance for Administrative Services. With respect to Administrative Services pursuant to this Agreement, ABSMC shall maintain liability insurance or self-insurance covering Medical Director and other physicians providing such services with limits of not less than \$1 million per occurrence, \$3 million annual aggregate. This insurance or self-insurance shall be applicable only to Administrative Services and is not applicable to any professional services provided by Medical Group, Medical Director, Chief OB Generalist or Covering Providers.

7.4 Acknowledgment.

7.4.1 By Medical Group. Medical Group is responsible for (i) any untrue representation, breach, or nonfulfillment by Medical Group of any covenants contained in this Agreement; and (ii) any negligent or intentional act or omission of Medical Group or its employees or agents (including Covering Providers providing services on behalf of Medical Group under this Agreement), officers, or directors while such person is performing duties in connection with the operation of the Program;

7.4.2 By ABSMC. ABSMC is responsible for: (i) any untrue representation, breach, or nonfulfillment by ABSMC of any covenant contained in this Agreement; and (ii) any negligent or intentional act or omission of ABSMC, or its employees or agents, officers or directors while such person is performing duties in connection with the operation of the Program; and

7.4.3 No Liability. By virtue of this Agreement, neither party assumes responsibility for the acts or omissions of the other.

Article 8

TERM AND TERMINATION

8.1 Term. This Agreement shall become effective on the Effective Date, and shall remain in effect for a term of 2 years, unless terminated sooner in accordance with Section 8.2.

8.2 Termination. This Agreement may be terminated pursuant to any of the following applicable provisions:

8.2.1 Mutual Agreement. This Agreement may be terminated at any time upon the written consent of the parties;

8.2.2 Without Cause. Either party may terminate this Agreement at any time upon 90 days' written notice during the term of this Agreement;

8.2.3 With Cause. This Agreement may be terminated immediately or on shortened notice for cause in the following cases:

(a) A material breach of this Agreement by any party, where the defaulting party has been given written notice of such breach and has failed to correct such breach within 30 days after receipt of such notice. Termination pursuant to this subsection shall be effective at the expiration of the 30 day notice period;

(b) Loss or restriction of Medical Group's authority to operate as a professional medical partnership or corporation, unless such loss or restriction does not restrict or impair Medical Group's ability to provide services under this Agreement. Termination pursuant to this subsection shall be effective immediately;

(c) Loss or restriction of Medical Group's qualification as a Medicare or Medi-Cal provider. Termination pursuant to this subsection shall be effective immediately;

(d) Loss or restriction of Hospital's license or accreditation, or destruction of Hospital or the portion(s) thereof dedicated to the operation of the Program, such that Hospital is not able to continue the uninterrupted operation of the Program. Termination pursuant to this subsection shall be effective immediately upon receipt of written notice from any party; or

(e) Loss, cancellation or reduction of the insurance coverage required under Section 7.1.

8.2.4 Covering Providers. In addition, it is specifically understood that ABSMC may require Medical Group to immediately remove from the coverage schedule any Covering Provider who:

(a) Loses his/her license to practice medicine or midwifery, as the case may be, or has such license substantially restricted;

(b) Loses his/her medical staff membership, clinical privileges, prerogatives, or has such membership, privileges, or prerogatives substantially restricted;

(c) Loses his/her eligibility to provide professional services to Medicare or Medi-Cal patients, or has such eligibility substantially restricted;

(d) Becomes legally incompetent, or disabled to an extent that he/she can no longer perform the services; is convicted of or pleads no contest to a felony or a crime of moral turpitude; or uses, or is found under the influence of alcohol, drugs or other controlled substances

at the work place and while on duty, unless in accordance with a physician's prescription (although the excuse of a physician's prescription shall not apply to the use of a controlled substance at the work place and while on duty if a reasonable person could anticipate that its use would impair job performance);

(e) Loses, cancels or reduces, or causes the loss, cancellation or reduction of, the insurance coverage required under Section 7.1;

(f) Fails to satisfy any of the standards or qualifications set forth in this Agreement for Covering Providers; or

(g) Fails to maintain a professional standard of conduct, which includes compliance with Hospital medical staff bylaws, rules and regulations.

ABSMC may immediately terminate this Agreement or withhold an appropriate portion of the compensation due Medical Group under this Agreement should Medical Group fail to so remove any such Covering Provider; and

8.2.5 Remedies. It is understood that ABSMC's remedies under subsection (d) above do not preclude termination under subsection (c) above, in the event ABSMC reasonably determines that the acts or omissions of an individual Covering Provider also causes Medical Group to fail to meet one or more of the termination criteria set forth in subsection (c) above.

8.3 Rights on Expiration or Termination.

8.3.1 Hospital Records. Custody of all Hospital records including Hospital patient medical records shall be turned over to Hospital. Medical Group may retain duplicate copies of patient medical records, at its own expense;

8.3.2 Transfer of Responsibilities. Medical Group shall cooperate with Hospital toward an orderly transfer of responsibilities under Articles I and II to Medical Group's successor, if any;

8.3.3 Vacating Hospital Premises. Within 30 days after termination, Medical Group and Medical Director shall vacate Hospital premises and remove any and all of the personal property of Medical Group and Medical Director. Any personal property not so removed may be removed by that Hospital at Medical Group's expense; and

8.3.4 Survival of Obligations. Section 1.4 (Monthly Time Reports), Article V (Compliance with Laws and Regulations), Article VII (Insurance), Section 9.1 (Indemnification), Section 9.2 (Dispute Resolution), Section 9.5 (Confidentiality), and Section 9.7 (Attorneys' Fees), of this Agreement shall survive termination of this Agreement.

8.4 No Procedural Rights. Continuation of this Agreement is not a condition of medical staff membership for any Covering Provider. Therefore, this Agreement may be terminated and any Covering Provider may be removed from the group of physicians providing

Coverage Services in accordance with Section 8.2 without necessitating a hearing before either Hospital's medical staff, ABSMC's Board of Directors or any other body, except if the termination is for a medical disciplinary cause or reason. Termination of this Agreement and removal of a Covering Provider shall be governed by the terms of this Agreement and not by the terms of any medical staff bylaws or procedures, including any procedure relating to the termination of medical staff membership of any physician or nurse midwife employee or subcontractor of Medical Group or to any other change in the nature or status of such membership, unless the termination is for a medical disciplinary cause or reason.

8.5 Renewal or Extension. On or before the date which is 90 days prior to expiration of the 2-year term of this Agreement, the parties agree to begin meeting to discuss in good faith the possible renewal or extension of this Agreement with such modifications in the compensation and other terms of this Agreement as mutually agreed by the parties; provided, however, that neither party shall have any binding obligation to renew or extend this Agreement unless they are able to reach mutual agreement on the terms of any such renewal or extension, which shall be in each party's sole and absolute discretion. If this Agreement is terminated prior to the first anniversary of the Effective Date for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services prior to such first anniversary.

8.6 Legal Events.

8.6.1 Legal Event; Consequences. This Section applies on the occurrence of a Legal Event. If a Legal Event occurs, the Noticing Party may give the other party notice of intent to amend or terminate this Agreement under this Section. A Legal Event means:

- (a) a statute, law, rule, order, regulation, standard, arbitration award, judgment, decision or official interpretation, by
- (b) the United States or the State of California, a governmental agency (including an agency that administers a federal health care program) or the representative or agent of a governmental agency (including a Medicare carrier or fiscal intermediary), any court, administrative tribunal, accreditation agency or duly constituted arbitration panel with jurisdiction over the parties hereto, that
- (c) in the good faith judgment of one party ("Noticing Party"), materially and adversely either
 - (i) jeopardizes Hospital's tax-exempt status, jeopardizes the tax-exempt character of interest payable on public agency bonds issued to finance improvements to Hospital, or jeopardizes either party's licensure, accreditation, certification, ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor, or that
 - (ii) subjects the Noticing Party to a risk of prosecution, civil monetary penalty or federal health care program exclusion, or that, in the good faith judgment of the

Noticing Party, jeopardizes a party's compliance with any law, rule or regulation with which the Noticing Party desires further compliance.

8.6.2 Notice Requirements. A Noticing Party shall give written notice to the other party together with an Opinion of counsel setting forth the following information:

- (a) The Legal Event(s) giving rise to the notice;
- (b) The consequences of the Legal Event(s) as to the Noticing Party;
- (c) The Noticing Party's intention to either:
 - (i) Terminate this Agreement due to an unacceptable risk of harm described in Section 8.6.1(c), which the Noticing Party reasonably believes cannot be immediately redressed through an amendment to this Agreement; or
 - (ii) Offer to amend this Agreement to remove the threat described in Section 8.6.1(c);
- (d) The Noticing Party's proposed amendment(s), where applicable; and
- (e) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

8.6.3 Renegotiation Period; Termination. Unless the other party acquiesces in a proposal from the Noticing Party to terminate the Agreement under Section 8.6.2(c)(i), the parties shall negotiate in good faith during the 30 days from the giving of the notice described in Section 8.6.2 (the "Renegotiation Period") to amend this Agreement in accordance with the Noticing Party's proposal or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 30th day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligations hereunder that are to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed as to waive privileges otherwise applicable to these opinions.

Article 9 GENERAL/MISCELLANEOUS PROVISIONS

9.1 Indemnification.

9.1.1 ABSMC. Subject to the provisions of Sections 9.1.3 and 9.1.4, ABSMC shall defend, indemnify and hold Medical Group and Medical Group's officers, partners, employees, agents, successors, and assigns ("Medical Group Affiliates") harmless from and

against all claims, losses, liabilities, damages, costs, judgments and expenses, including reasonable attorneys' fees (collectively, "Losses"), incurred by Medical Group or any Medical Group Affiliate as a result of (i) a breach of any representation, warranty, or covenant made in this Agreement by ABSMC; or (ii) any negligent or intentional act or omission of ABSMC, or its employees or agents, officers or directors while such person is performing duties in connection with the operation of the Program.

9.1.2 Medical Group. Subject to the provisions of Sections 9.1(c) and (d), Medical Group shall defend, indemnify and hold harmless ABSMC, and ABSMC and each of their respective affiliates, officers, directors, employees, agents, successors, and assigns ("ABSMC Affiliates") harmless from and against all Losses incurred by ABSMC, ABSMC or any ABSMC Affiliate as a result of (i) a breach of any representation, warranty, or covenant made in this Agreement by Medical Group or any Covering Provider; or (ii) any negligent or intentional act or omission of Medical Group or its employees or agents (including Covering Providers providing services on behalf of Medical Group under this Agreement), officers, or directors while such person is performing duties in connection with the operation of the Program.

9.1.3 Notification and Settlement of Claims. A party seeking indemnification (the "Indemnatee") shall, within 30 days from the date the Indemnatee receives actual knowledge of a claim from a third party that could result in any Losses (or by such earlier date after the Indemnatee has received actual knowledge of a claim as may be necessary to avoid material prejudice to the other party), notify the other party (the "Indemnitor"), in writing, of such claim (the "Indemnification Notice"), shall provide the Indemnitor with a copy of such claim or other documents received, and shall upon request otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnatee's possession. (If the Indemnatee fails to give a timely Indemnification Notice, then the indemnification obligation of the Indemnitor shall be reduced and modified to take into account the impact, if any, of Indemnatee's failure on Indemnitor's ability to adequately defend such claim.) If the Indemnitor notifies the Indemnatee in writing within 10 days after an Indemnification Notice is given to the Indemnitor that the Indemnatee is entitled to indemnification hereunder or defense with respect to such claim, then Indemnitor shall have the right by notice given to the Indemnatee within 15 days after the date of the Indemnification Notice to assume and control the defense thereof, including the employment of counsel, selected by the Indemnitor, and the Indemnitor shall pay all reasonable expenses of such defense. The Indemnatee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnatee unless the employment thereof has been specifically authorized by the Indemnitor in writing; provided, however, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnatee and Indemnitor, and if the Indemnitor requires that the same counsel represent both the Indemnatee and the Indemnitor and if representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, as set forth in an opinion of counsel addressed to such parties, then the Indemnatee shall have the right to retain its own counsel at the reasonable cost and expense of the Indemnitor. If the Indemnitor shall have failed to assume the defense of any claim in accordance with the provisions of this subsection (c), then the Indemnatee shall have the absolute right to control the defense of such claim and, if and when it is finally determined that

the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the reasonable fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor and paid by Indemnitor to Indemnitee within 15 business days of written demand therefor, but the Indemnitor shall be entitled, at its own expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such claim in its sole and absolute discretion and without consultation with the Indemnitee so long as the Indemnitor agrees to pay the entire cost of such settlement or compromise and such settlement or compromise does not impose any obligations (including without limitation, any notice or reporting obligation) on the Indemnitee (except with respect to providing releases of the third party). The Indemnitee shall not settle or compromise the claim without satisfying one of the following conditions (otherwise the Indemnitor shall be released from all indemnification obligations hereunder to the Indemnitee with respect to such claim): (a) the Indemnitee shall first obtain the written consent of the Indemnitor or (b) the Indemnitor shall have failed, after written notice to it of such claim, to take action to defend the same within the 15-day period described above.

9.1.4 Limitations on Losses. The indemnifications under Sections 9.1.1 and 9.1.2 shall cover only out-of-pocket Losses actually suffered by an Indemnitee, and shall not cover Losses in the nature of consequential damages, lost profits, diminution in value, damage to reputation or goodwill, or the like. The amount of Losses shall also be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies or other related payments received or receivable from any other person or entity and net of any tax benefits actually received by the Indemnitee, taking into account the income tax treatment of the receipt of indemnification payments.

9.2 Dispute Resolution. In the event that any dispute arises between Medical Group (or Medical Director) and ABSMC arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, any party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore, or otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. Subject to Section 9.7, the cost of such arbitration shall be shared equally by ABSMC and Medical Group.

9.3 Assignment; Successors. Neither party may assign its rights or delegate its duties hereunder without the express written approval of the other parties. The rights and obligations of any party under this Agreement shall inure to the benefit of and be binding upon that party's permitted assigns and legal successors.

9.4 Notice. All notices required or allowed in this Agreement shall be in writing and shall be sent to the addresses shown below. A party may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

If to ABSMC: Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attn: Warren J. Kirk, President & Chief Executive Officer

Copy to: Sutter Health Legal Counsel Department
345 California Street, Suite 2000
San Francisco, CA 94104
Attn: Amy E. Cella

If to Medical Group: East Bay Perinatal Medical Associates
350 – 30th Street, Suite 208
Oakland, CA 94609
Attn: Stuart M. Lovett, M.D.

Copy to: Buchalter Nemer, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017-2457
Attn: Carol Lucas

9.5 Confidentiality.

9.5.1 This Agreement. This Agreement is confidential. The parties agree not to release information concerning this Agreement to any third party without consent of the other party. This prohibition against release of information shall not apply to fiscal intermediaries, public agencies, or commissions with governmental powers and duties related to disclosure of information or having the right to compel disclosure of such information; nor shall it apply to the disclosure of information compelled to be released by process of law.

9.5.2 Other Confidential Information. During the term of this Agreement, each party and its employees and contractors will have access to and become acquainted with confidential information and trade secrets of the other party, consisting of, but not limited to, accounts, clients, patients, patient groups, billing practices and procedures, business techniques and methods, strategic plans, operations, and related data ("Confidential Information"), all of which Confidential Information is the property of each respective party and is used in the course of each party's business. Neither party (nor their respective employees or contractors) shall disclose, or permit or suffer to be disclosed, to anyone, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Confidential Information of the other party,

or use them other than in the course of performing services under this Agreement. All documents containing Confidential Information of a party are the exclusive property of such party, even if given to the other party during the term of this Agreement. Under no circumstances shall any documents containing Confidential Information or Trade Secrets of a party be duplicated or copied, or divulged to anyone other than employees or agents of the other party without the owning party's written consent first being obtained, and all such Confidential Information shall be returned to the other party upon request.

9.6 No Third Party Beneficiary. Except for the indemnification of Medical Group Affiliates and ABSMC Affiliates under Section 9.1, nothing contained in this Agreement is intended, nor shall it be construed, to create rights running to the benefit of third parties.

9.7 Attorneys' Fees. In the event of arbitration or litigation between the parties relating to or arising from this Agreement, the prevailing party shall be entitled to receive reasonable attorneys' fees, costs, and other expenses, in addition to whatever other relief may be awarded. In addition, any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

9.8 Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the parties, or would place either party in violation of its articles of incorporation or bylaws or partnership agreement or create a legal jeopardy event under Section 8.2.5, as the case may be, in which case the Agreement may be immediately terminated.

9.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.10 Headings. The headings of sections in this Agreement are for reference only and not to be construed in any way as part of this Agreement.

9.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

9.12 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disasters, strikes, or any cause beyond the control of the nonperforming party.

9.13 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective a waiver must be in writing, signed and dated by the parties.

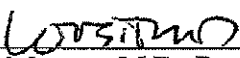
9.14 Entire Agreement; Modification. This Agreement contains the entire agreement of the parties relating to this subject matter. The Agreement may only be modified in writing signed by all parties, effective on the date set forth therein.

9.15 Execution. By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date specified below.

EAST BAY PERINATAL MEDICAL
ASSOCIATES

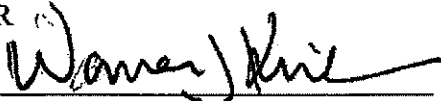
By: Stuart M. Lovett, M.D., a professional
corporation, Shareholder

By:  Date: 12/4/09
Stuart M. Lovett, M.D., President

By: Jonathan D. Weiss, M.D. a professional
corporation, Shareholder

By:  Date: 12/4/09
Jonathan D. Weiss, M.D., President

ALTA BATES SUMMIT MEDICAL
CENTER

By:  Date: 12/2/09
Warren J. Kirk, President & CEO

ACKNOWLEDGMENT AND AGREEMENT

The undersigned Medical Director acknowledges that he has read this Agreement and agrees to the terms and conditions thereof.

MEDICAL DIRECTOR:



Stuart M. Lovett, M.D.

EXHIBIT 1.2

MEDICAL DIRECTOR DUTIES

Medical Director's Administrative Services shall include the following:

1. Provide overall medical oversight for the Program, and consult with ABSMC management in the development, maintenance, and implementation of policies and procedures for the effective operation of the Program and participation in ABSMC's strategic planning process for the Program;
2. Be routinely available to consult with ABSMC management at mutually scheduled times, participate on ABSMC or Hospital medical staff committees pertaining to perinatology, and attend meetings, as reasonably requested, of the following groups and conferences: Labor and Delivery ("L&D") Collaborative Practice, Department of Obstetrics and Gynecology ("OB/GYN Department"), OB/GYN Department Executive Committee, Sutter Obstetrics and Gynecology conference planning and conferences, and ABSMC perinatology conferences;
3. Oversee quality management of the Program, including participation in OB/Peds Quality Management meetings and in monthly Perinatal/Neonatal case conferences and weekly Perinatal rounds, overseeing the quality of care delivered by covering nurse midwives and obstetricians, and with ABSMC, jointly develop and implement appropriate performance improvement, quality and risk management activities for the Program;
4. Monitor utilization of Program services and recommend all reasonable steps necessary to remedy deficiencies in the quality or efficiency of the operation of the Program;
5. Participate with Hospital administrative staff in managing the effective operation of the Program in accordance with approved budgets, including managing the costs related to the Program, developing and administering applicable operating and capital expenditure budgets and cost controls for the proper and efficient operation of the Program;
6. Provide guidance and supervision as necessary to maintain the Program's accreditation and Medicare/Medi-Cal certification and assist in securing and maintaining necessary licenses and certifications for the Program, including cooperation with ABSMC to maintain California Children's Services status in the Newborn Intensive Care Unit;
7. Oversee the quality of clinical care provided by the covering perinatologists, covering obstetricians ("OB Generalists") and covering nurse midwives providing services to Program patients (collectively, "Covering Providers", a term that encompasses providers who are subcontractors to Medical Group pursuant to Section 2.3);
8. Monitor OB Generalist conformance to the requirements of the OB Generalist job description, attached as **Exhibit 1.2.7**;
9. Ensure representation by an OB Generalist in committees as requested by the Chair, Department of OB/GYN or the Program Director;

10. Provide strong leadership in the implementation and ongoing maintenance of the Team Leadership Communication Initiative ("TLC") including: (1) attending TLC meetings, (2) participating in the development of a team model that supports the activity in L&D unit, and (3) taking an active role in coaching and mentoring physicians in the role of Team Coordinator;
11. Manage the relationships and assist in the resolution of issues and disputes that may arise among Covering Providers and/or other members of ABSMC staff or the Hospital medical staff related to the Program;
12. Work with the Program Director to recommend methods to coordinate the provision of perinatology services with designated community clinics, including but not limited to Alta Bates Summit Perinatal Center;
13. Participate in and oversee community outreach programs, and participate in education and support of community clinics;
14. Advise ABSMC on the selection, replacement, maintenance and repair of all equipment related to the Program;
15. Develop and implement continuing education and training for physicians and nurses related to the Program;
16. Evaluate and address all complaints and inquiries of patients concerning the Program and furnish ABSMC with an analysis of all complaints and recommendations for improving any deficiencies, as appropriate;
17. Advise in the recruiting, evaluation and retention of non-physician personnel for the Program;
18. Comply with ABSMC's and Sutter Health's corporate compliance programs, and cooperate with any corporate compliance audits, reviews or investigations which relate to the Program;
19. At ABSMC's request, prepare and submit an annual report of activities and accomplishments with respect to the Program and such other reports as reasonably requested;
20. At all times observe Hospital's rules and regulations, as made known to Medical Director, and use reasonable best efforts to maintain harmonious professional relationships with members of Hospital staff in order to assure that Hospital's patients receive quality medical care to avoid disruption to Hospital's operations;
21. Attend and participate at weekly OB Leadership Group meetings;
22. Develop and manage back-up system if Covering Providers are unavailable due to high activity;

23. Ensure Covering Providers provide timely patient intervention 24 hours per day to facilitate efficient flow of patients in L&D unit to postpartum; and
24. Appoint, with the consent of the Program Director, a Chief OB Generalist.

EXHIBIT 1.2

OB GENERALIST JOB DUTIES

1. Completion of the monthly schedule that complies with the coverage requirements in Section 2.2;
2. Represents OB Generalists on Hospital medical staff committees and other committees as requested by the Chair, Department of OB/GYN or by the Medical Director of Womens' Services;
3. Meets with the Program Director and the Manager of Perinatal Services on operational clinical issues as requested and follows up as needed;
4. Ensures that the Medical Director, Program Director and Manager of Perinatal Services are informed of operational issues affecting quality and efficiency of practice;
5. Meets with L&D staff as requested by management to address and solve problems in operational units affecting patient safety;
6. Coordinates participation of OB Generalists in TLC activities/strategies; and
7. The Chief OB Generalist shall be accountable to the Medical Director and the VPMA.
8. The Chief OB Generalist shall meet the job description as defined in **Exhibit 1.2.7**.

EXHIBIT 1.2.7

CHIEF OB GENERALIST JOB DESCRIPTION

Job Description

OB Generalist

Alta Bates Summit Medical Center

Accountability: Responsible to the Medical Director, Maternal-Fetal Medicine and to the Chief OB Generalist to ensure safe, quality medical care to Program Patients at Alta Bates Summit Medical Center (ABSMC).

Overview: The OB Generalist is responsible for providing obstetrical care to Program Patients as described in the Perinatal Services and OB Coverage Agreement, Article II, Clinical Coverage Services, for collaborating with Hospital management in the identification of safe, quality care for perinatal patients, and for participating in the implementation and maintenance of the TLC initiative in Labor and Delivery.

Principal Duties and Responsibilities:

1. Provide perinatal diagnostic, consulting, and delivery services to Program Patients as defined in the Perinatal Services and OB Coverage Agreement, Article II, Clinical Coverage Services.
2. Provide emergency obstetrical care to patients when their regular attending has not arrived at the Alta Bates campus.
3. Prioritize early morning rounding on postpartum patients in the Family Care Center (FCC) to affect efficient discharge of Program Patients.
4. Provide continuous availability, 24/7, to the Labor and Delivery Unit (L&D) such that patients are effectively and efficiently managed and delivered.
5. Coordinate effective communication among the OB Generalists, Certified Nurse Midwives (CNM's), and L&D Charge Nurses so that the plan of care on all Program Patients is known and appropriately addressed.
6. Coordinate the acceptance, assessment, and admission of all maternal transports with the perinatologist and the L&D Charge Nurse. This requires direct communication between the perinatologist and the OB Generalist prior to the acceptance of any maternal transport.
7. Participate in team briefings and debriefings prior to surgeries, VBACs, and other appropriate procedures as defined by the TLC initiative.
8. Regularly participate in core team meetings on all shifts.
9. Assume the role of Coordinating Team Leader as requested, in rotation with other physicians.
10. In support of the TLC initiative, prioritize staff knowledge of availability at all times.

- a) Inform L&D Charge Nurse when leaving the unit and expected time of return.
 - b) Facilitate availability through use of Vocera badge.
11. Communicate and consult with on-call perinatologist when patient volume and acuity in L&D supports the need for additional providers.

Other:

- o All OB Generalists are expected to be equally available to provide active coverage of the L&D unit at all times during their scheduled shifts including those hours between 7 p.m. to 7 a.m.
- o Effective division of duties among the two OB Generalists and the CNM is the responsibility of the medical group (EBPMA). Such division of duties must be continually evaluated in collaboration with OB Department physician leadership and perinatal management, and revised as needed to affect the safe and effective care of patients. The present division of daily tasks is attached.
- o The OB Generalists may assist private practitioners with non-emergent procedures provided these tasks do not delay or interfere with their performance of the duties listed above for Program Patients. The OB Generalist will notify the second Generalist and the L&D Charge Nurse when performing such services.
- o Due to the high activity of the role, all OB Generalists are expected to not have engaged in other professional work commitments, including being on-call for another medical group, physician, or clinic, for a minimum of 12 hours preceding the scheduled shift. Shifts are limited to 12 hours. No 24 hours shifts will be scheduled.

Summary of Division of Duties

Physician A (day shift) will be primarily responsible for the following:

- L&D – manage labor patients and provide general oversight of the unit
- Triage – assess and admit patients
- Provide coverage for telephone calls
- Attend to all emergency (including private physician patients) calls – e.g., fetal distress, postpartum hemorrhage, etc.
- Perform missed deliveries for private physician and C/S's for Family Practice physicians or private CNM
- Consult with private CNM regarding labor patients
- Assist Physician B and CNM with overflow
- Assist private physician with C/S as time allows

Physician B (day shift) will be primarily responsible for the following:

- Make postpartum rounds on all C/S patients and on those patients above the scope of CNM responsibilities
- Perform tubal ligations and D&C's
- Perform a.m. scheduled C/S's
- Complete antepartum admissions

- Complete antepartum procedures (FFN, sterile specs, etc.)
- Consult with CNM regarding postpartum patients
- Assist Physician A in all work, specifically in triage to complete assessments and admissions
- If time permits, assist private physician with C/S when Physician A is too busy

Physician A and B (evening shift) will be readily available to attend to all required L&D activities. It is understood that patients will be actively managed in labor during the night shift to facilitate the best utilization of resources in L&D.

EXHIBIT 1.4**PHYSICIAN TIME REPORT**

Physician: _____

Month: ____ Year: ____

A. ADMINISTRATIVE SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
Management/Staff Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Committee Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Utilization Management:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Quality Review:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
AMI Initiatives (list dates)						
Sutter Health System-wide Meetings						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Supervision/Education of Interns, Residents (list dates)						
Supervision/Education of Nurses, Technicians, Staff (list dates)						

A. ADMINISTRATIVE SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Month Total
Physician Education/Consultation (list dates)						
Community Presentation (list dates)						
Protocol/Policy Development (list dates)						
Program Development (list dates)						
Other, describe: (list dates)						
Other Meetings, describe:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Total Hours						

Certification By Physician: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature

Title

Date

Printed Name

Telephone No.

Fax No.

Administrator Signature

Title

Date

Printed Name

Telephone No.

Fax No.

EXHIBIT 2.2.1(e)

COMMUNITY CLINICS WHOSE PATIENTS ARE PROGRAM PATIENTS

EXHIBIT 2.2.4

STAFFING LEVELS

Medical Group shall provide the following minimum staffing levels as stated herein for clinical services for the term of this Agreement. Medical Group acknowledges and understands that no administrative time may be recorded or compensated by ABSMC while any physician is staffing pursuant to Section 2.2.4 of the Agreement. FTE is calculated at 2080 hours plus additional 12% FTE for replacement time calculated pursuant to a quasi-staffing model.

Minimum of 10.86 FTE OB Generalists;

Minimum of 1.74 FTE perinatologists;

Minimum of 4.7 FTE midwives.

EXHIBIT 39/3
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

PROFESSIONAL SERVICES AGREEMENT

between

Alta Bates Summit Perinatal Center

and

East Bay Perinatal Medical Associates

This Agreement is between **EAST BAY PERINATAL CENTER dba ALTA BATES SUMMIT PERINATAL CENTER ("ABSPC")**, a California nonprofit public benefit corporation, and **EAST BAY PERINATAL MEDICAL ASSOCIATES**, a California general partnership ("**MEDICAL GROUP**"); and is dated for reference purposes only August 28, 2007.

Background

A. ABSPC is in the process of becoming a licensed community clinic pursuant to California Health & Safety Code Section 1204(a), and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, to be located at 350 – 30th Street, Suites 205 and 230, Oakland, California (the "**Clinic**").

B. Alta Bates Summit Medical Center (sometimes referred to as "**ABSMC**") is ABSPC's sole nonprofit general member. Sutter Health is the parent corporation of a regional health care system, comprising a wide range of inpatient and outpatient health care providers (collectively "**Sutter Health Affiliates**") and services, including, but not limited to ABSMC and other acute care hospitals located throughout Northern California ("**Hospitals**").

C. **MEDICAL GROUP** is a general partnership comprised of physicians and surgeons licensed to practice medicine in the State of California, providing obstetrics and perinatology medical services; as well as nonphysician providers (e.g., certified nurse midwives, nurse practitioners, and other mid-level professionals). Physicians and non-physician providers employed by **MEDICAL GROUP** are collectively referred to herein as "**Practitioners**."

D. By the terms of this Agreement, ABSPC engages **MEDICAL GROUP** to provide professional services to ABSPC's patients and in furtherance of the following objectives:

1. The ABSPC clinic's program will provide outpatient gynecological, obstetrics and perinatal services that are an integral part of a comprehensive health care delivery system involving ABSPC, **MEDICAL GROUP**, **Hospitals** and other health care facilities so they can collectively become a better quality, more efficient system of delivery of health care services; and

2. ABSPC and **MEDICAL GROUP** will provide services to patients; any charges to the patients shall be based upon the patient's ability to pay, utilizing a sliding fee scale.

Agreements

I RESPONSIBILITIES OF ABSPC

1.1 Overview.

a. ABSPC shall have overall responsibility for the operation of the Clinic, including but not limited to providing policy guidance, facilities, equipment, furnishings, personnel, administrative and management services and supplies, as more specifically described in this Article I; and as an integral part thereof, ABSPC shall arrange for MEDICAL GROUP's delivery of professional services to Clinic, as more specifically described in Article II.

b. References in this Agreement to duties or responsibilities to be discharged or performed by ABSPC shall be performed by and under the authority and supervision of the ABSPC Board of Trustees.

1.2 Budget and Business Plan. ABSPC shall develop, in consultation with MEDICAL GROUP, and adopt an annual budget ("Budget") and a Business Plan ("Business Plan") (which shall be reviewed annually and updated as needed). The Budget and Business Plan shall include consideration of at least the following:

- a. Expected levels of patient care activity, including but not limited to anticipated managed care services, Medicare and Medi-Cal services, and services provided on a partially or fully uncompensated basis.
- b. Expected levels of nonpatient care activities.
- c. The capital and operational requirements of the Clinic.
- d. Projected professional and nonprofessional staffing requirements.
- e. Ancillary services requirements.
- f. Sources and uses of capital.
- g. Operating and capital budgets.

1.3 Clinic Premises. ABSPC shall provide that the Clinic is fully equipped, staffed, and furnished.

a. ABSPC shall provide or arrange for all utilities, building services, and supplies necessary for the efficient conduct of the Clinic, including but not limited to water, power, gas, heat, air conditioning, security, janitorial and maintenance, laundry, linen, uniforms, printed stationery, forms, telephones, telephone answering service, facsimile, paging devices, postage, duplication services, office supplies, medical supplies, and medical waste disposal services.

b. ABSPC shall provide or arrange for all equipment necessary for the operation of the Clinic (the "Equipment").

c. ABSPC shall maintain or cause to be maintained the Clinic premises and Equipment in good condition and working order, including arranging for timely inspection, maintenance, and repair of all Equipment as necessary for the proper operation of the Clinic.

d. The parties intend that the Clinic's physician staff will be exclusively provided by MEDICAL GROUP.

1.4 Personnel. ABSPC shall provide or arrange for all non-Practitioner personnel required for the proper operation of the Clinic in accordance with the Budget, including but not limited to the following:

a. ABSPC shall designate a Chief Executive Officer, who shall be located in an office on the campus of ABSMC.

b. Non-Practitioner health care professionals who are licensed or otherwise authorized under state law to provide direct patient care services exercising independent professional judgment within the scope of their licensure or authorization including but not limited to medical assistants, health educators, licensed clinical social workers and dietitians. Such personnel shall be subject to ABSPC's credentialing and professional review standards. ABSPC shall consult with MEDICAL GROUP with respect to the hiring, evaluation, and retention of any non-Practitioner health care professionals rendering services at the Clinic. Such personnel shall be subject to MEDICAL GROUP supervision with respect to the performance of patient care services, as further described at Section 2.7 below. ABSPC shall meet and confer with MEDICAL GROUP in the event that MEDICAL GROUP expresses a good faith concern about the technical skill, technical competence, or job performance of any ABSPC personnel, and thereafter ABSPC shall take whatever action ABSPC deems appropriate.

c. Other support personnel, including but not limited to reception and secretarial personnel, and an ABSPC corporate compliance officer. ABSPC shall use reasonable efforts to consult with MEDICAL GROUP with respect to the hiring, evaluation, and retention of support personnel working in the Clinic.

d. ABSPC personnel shall be well qualified, appropriately trained, competent and cooperative.

1.5 Ancillary Services. Except as set forth in Section 2.8, ABSPC shall arrange for ancillary services that ABSPC determines, in accordance with the Business Plan and Budget, to be necessary or appropriate for the efficient and proper operation of the Clinic. Such ancillary services shall be provided directly by ABSPC or through arrangements with third parties except as set forth herein.

1.6 Administrative Services. ABSPC shall provide directly or arrange for all bookkeeping, accounting, transcription and answering services necessary or appropriate for the efficient operation of the Clinic.

1.7 Review and Audit.

a. MEDICAL GROUP shall have the right, at its sole cost and expense, to audit ABSPC's financial books and records solely to the extent necessary to determine the accuracy of ABSPC's calculation of MEDICAL GROUP's compensation hereunder, in accordance with procedures that will assure confidentiality and following at least 10 days' notice to ABSPC. Any such review or audit shall be conducted during ABSPC's regular business hours. Notwithstanding the foregoing, in no event shall ABSPC share its specific rate information with MEDICAL GROUP.

b. ABSPC shall have the right, at its sole cost and expense, to audit MEDICAL GROUP's financial books and records relating to MEDICAL GROUP's performance of its obligations under this Agreement, in accordance with procedures that will assure confidentiality and following at least 10 days' notice to MEDICAL GROUP. Any such review or audit shall be conducted during MEDICAL GROUP's regular business hours. Notwithstanding the foregoing, in no event shall MEDICAL GROUP share its rate information with ABSPC.

1.8 Marketing and Public Relations Services. ABSPC shall be responsible for all marketing and public relations relating to the operation of ABSPC and the Clinic. ABSPC shall consult with MEDICAL GROUP in the development and implementation of ABSPC's marketing activities, and all such activities shall comply with prevailing standards of medical ethics. The names, photos, and/or likeness of MEDICAL GROUP physicians shall not be used in any marketing materials, unless such materials are approved in advance by the President of MEDICAL GROUP, which approval shall not be unreasonably withheld.

1.9 Management Information System. ABSPC shall develop or procure, in consultation with MEDICAL GROUP, a Management Information System ("MIS") to meet the needs of the Clinic. ABSPC shall be responsible for supervision and management of the use of all MIS software and/or hardware. ABSPC shall consult with MEDICAL GROUP in tailoring the MIS as may be necessary to meet specific needs for the Clinic.

II RESPONSIBILITIES OF MEDICAL GROUP

2.1 Overview. MEDICAL GROUP shall be responsible to provide professional services to patients at the Clinic during normal business hours (currently Monday – Friday 8:30 a.m. – 5:00 p.m.). It is specifically understood and agreed that (except as otherwise agreed by the parties in writing) all patients seen by MEDICAL GROUP Practitioners are deemed to be Clinic patients if treated at the Clinic. The parties acknowledge that MEDICAL GROUP's obligation to deliver babies of Clinic patients that present to the Alta Bates campus of ABSMC's hospital is in that certain Perinatal Services Agreement dated August 28, 2007 by and between MEDICAL GROUP and ABSMC (the "Perinatal Services Agreement"). In the event that ABSPC

determines (in its sole discretion) that it may properly bill the Medi-Cal program on a global basis under a provider number assigned to the Clinic for prenatal physician (or nurse midwife) services and the physician (or midwife) services portion of the hospital delivery charges, all patients seen by MEDICAL GROUP Practitioners in any hospital for obstetrics or perinatology services shall be deemed Clinic patients if the patients received prenatal care at the Clinic for which global billing is appropriate (such patients shall be referred to herein as the "Global Patients;" such a determination shall be referred to herein as the "Global Billing Determination", professional/clinic services provided by ABSPC to Global Patients after a Global Billing Determination, including the physician/midwife services portion of hospital deliveries, shall be referred to herein as the "Global Services").

2.2 Medical Director.

a. MEDICAL GROUP shall provide the services of a Physician who will serve as medical director of the Clinic, and shall designate one or more back-up physicians to assume the responsibility for such services during the absence of the Medical Director. The physician who serves as Medical Director shall be jointly selected by MEDICAL GROUP and ABSPC. The Medical Director will be responsible for overseeing and supporting the quality of care provided to ABSPC patients by MEDICAL GROUP Practitioners and the clinical operations of ABSPC. ABSPC and MEDICAL GROUP shall mutually agree from time to time upon the specific duties and responsibilities of the Medical Director but shall in all cases include the duties set forth on Exhibit 2.2(a). Initially, the Medical Director shall be Dr. Stuart Lovett, M.D.

b. Collectively, the physician appointed as the Clinic's Medical Director and his or her back-ups shall devote a minimum average of twenty (20) hours per month to performing the duties described in Exhibit 2.2(a) attached hereto. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that the Medical Director shall in no event devote less than three (3) times the minimum average monthly hours during any quarter during the term of this Agreement. Physician shall contemporaneously record the actual number of hours and a description of the actual services provided on a weekly time report in the form attached to this Agreement as Exhibit 2.2(b). Four (4) signed forms (comprising one month's services) shall be delivered to the Alta Bates Summit Medical Center Director of Women and Infant Services or designee within seven (7) days after the end of each calendar month during the term of this Agreement. Continued payment to MEDICAL GROUP for Medical Director services is expressly conditioned on timely receipt by ABSPC of the appropriate time reports. Medical Director will ensure MEDICAL GROUP participates in those meetings appropriate to the peer review policy and those meetings that address clinical and operational issues of the Clinic as requested by the ABSMC Director of Women and Infants Services.

2.3 **Practitioners.** MEDICAL GROUP shall retain a sufficient complement of Practitioners as necessary to meet the needs of Clinic patients on an efficient and timely basis and the approved Business Plan for ABSPC and to perform other services as set forth in this Agreement. Practitioners shall be employed by or under contract with MEDICAL GROUP, pursuant to

agreements complying, in all material respects, with the terms and provisions of this Agreement, and extending MEDICAL GROUP's performance obligations hereunder to its individual Practitioners, as applicable. Such agreements shall, at a minimum, include specific accommodation of those provisions of this Agreement listed in Exhibit 2.3. The parties understand the importance of employing Practitioners who will maintain sufficient productivity to enable MEDICAL GROUP and ABSPC to effectively and efficiently achieve their Business Plan, which shall, at a minimum, comport with community standards with respect to productivity and patient access to care.

2.4 Practitioner Qualifications. All physicians (and to the extent applicable, all Practitioners) providing services to Clinic patients must at all times meet the following minimum qualifications and requirements:

- a. Physicians must maintain an unrestricted license to practice medicine in the State of California, and at all times remain in good standing with the Medical Board of California or the California Board of Osteopathic Examiners. Other Practitioners must maintain, in good standing, such license or certification as may be required for the practice of their profession under California law.
- b. Physicians must maintain an unrestricted federal DEA number.
- c. Physicians and certified nurse midwives must maintain in good standing membership on the active medical staff and clinical privileges in obstetrics and gynecology (and perinatology if appropriate) at ABSMC. Nothing in this Agreement shall be deemed to require any physician or certified nurse midwives affiliated with MEDICAL GROUP to admit or refer any patients to a Sutter Health Affiliate Hospital. ABSPC nor MEDICAL GROUP shall prohibit any physician or certified nurse midwives from also maintaining medical staff membership and clinical privileges at other facilities of his/her choice, so long as such membership does not interfere with the obligations set forth in this Agreement. Physicians who are required to maintain hospital privileges in accordance with the above standards shall also be required to participate in ABSMC's emergency room call panels to the extent required by the rules established by such hospital(s).
- d. All Practitioners are expected to practice good quality medicine, and to remain in good standing in the community.
- e. All Practitioners are expected to be board certified in obstetrics and gynecology, except that if the physician is within the first two (2) years of medical practice, the physician may be merely board eligible.
- f. All Practitioners must comply with all credentialing, quality, and efficiency criteria as may be jointly adopted from time to time by ABSPC and MEDICAL GROUP.
- g. All Practitioners shall participate in such continuing education and training programs, appropriate to their particular specialties, as are required to maintain skills

compatible with prevailing standards of medical (or other applicable health care professional) care in the community.

h. All Practitioners shall satisfy conditions for insurability under the professional liability policy or policies described in Article V below.

i. All Practitioners shall maintain eligibility to provide services to Medicare and Medi-Cal patients, and agree to provide services to their patients who are participating in such programs in a nondiscriminatory manner.

j. All Practitioners must be approved in advance by ABSPC to provide services to Clinic patients. A list of the Practitioners to initially provide services hereunder, together with such Practitioners' Medi-Cal numbers and National Provider Identifiers, are attached hereto as Exhibit 2.4 and ABSPC hereby approves the delivery of services by such Practitioners hereunder. MEDICAL GROUP shall remove from its roster of Practitioners staffing the ABSPC Clinic any Practitioner requested by ABSPC in its sole discretion and such a request shall not trigger any procedural right on the part of the Practitioner to be removed.

2.5 Professional Services and Performance.

a. MEDICAL GROUP shall assure that its Practitioners provide professional services to Clinic patients in accordance with the following: the then-current standards of care in the medical community; MEDICAL GROUP's and ABSPC's reasonable standards of quality and efficiency; the provisions of this Agreement and ABSPC's applicable contracts with third-party payors and/or Sutter Health Affiliates program and conditions of government enrollment certification of the Clinic.

b. MEDICAL GROUP Practitioners shall comply with ABSPC's standard sexual harassment and nondiscrimination policies, as such policies are made known to MEDICAL GROUP.

c. No MEDICAL GROUP Practitioner shall direct or encourage any Clinic patient to cease being a Clinic patient or to alternatively seek services from MEDICAL GROUP at a location other than Clinic.

2.6 Duties and Availability. The duties of Practitioners shall be determined by MEDICAL GROUP in a manner that will enable ABSPC:

a. To provide full medical and other licensed professional coverage for Clinic patients during its hours for Clinic consultations, and telephone consultation coverage on a prompt, continuing basis 24 hours per day, seven days per week, including holidays in accordance with generally accepted community standards. MEDICAL GROUP also provides on-site and on-call services to ABSMC patients, including Clinic patients, under separate compensation under the Perinatal Services Agreement.

b. To comply with ABSPC's charity care policies, as further described in Section 2.9 including but not limited to MEDICAL GROUP's commitment:

(1) To treat anyone present at the Clinic and in need of emergent or urgent care, without regard to their ability to pay (it being understood that patients in need of care that cannot be safely provided at the Clinic will be given such emergency care as reasonably possible under the circumstances, until transport to a hospital can be effected).

(2) To participate in (or negotiate in good faith to participate in) Medi-Cal contracts and to deliver services to ABSPC's Medi-Cal patients, in a nondiscriminatory manner.

2.7 Supervision and Training. MEDICAL GROUP shall assist in the supervision of ABSPC's clinical employees in the performance of patient care services. Further, MEDICAL GROUP shall assist or advise ABSPC in training such clinical employees, and shall promptly advise ABSPC in the event any MEDICAL GROUP physician becomes aware of any problems with such employees.

2.8 Ultrasound Services. MEDICAL GROUP shall provide ultrasound services to Clinic patients at its existing office located at 5730 Telegraph Avenue, Oakland. MEDICAL GROUP shall provide both the professional and technical components of such services for ABSPC's patients. MEDICAL GROUP will ensure that Clinic patients have adequate access to ultrasound studies consistent with community standards as to quality, gestational age when the study is performed, and degree of physician involvement and interaction with the patient in connection with the study. ABSPC may cease requesting ultrasound services from MEDICAL GROUP at anytime, or may provide ultrasound itself, or contract with a third party for ultrasound services for Clinic patients.

2.9 Medi-Cal and Charity Care. MEDICAL GROUP shall provide care to Medi-Cal and charity patients, in keeping with ABSPC's policies and ABSPC's status as a charitable organization, and with approved Budgets. These policies, criteria, and guidelines shall assure that ABSPC is able to participate in, or make good faith efforts to participate in, Medi-Cal in a nondiscriminatory manner; and that charity care is determined in a manner consistent with principles described in Statement No. 15 of the Principles and Practices Board of the Healthcare Financial Management Association, "Valuation and Financial Statement Presentation of Charity Service and Bad Debts by Institutional Healthcare Providers" (a copy of which is attached hereto as **Exhibit 2.10**). MEDICAL GROUP may not provide free professional care as a professional courtesy that is extended because a patient is a friend, associate, or relative of a professional employee of MEDICAL GROUP; however, nothing in the foregoing shall preclude providing free professional care to any such patient who qualifies for free care pursuant to ABSPC's charity care policies.

2.10 Cooperation in Billing.

- a. MEDICAL GROUP shall provide timely and complete information as necessary to enable billing and collection of charges for services. This shall include, but is not limited to, all assignments, treatment certifications, and other approvals, consents, or documents necessary or appropriate to assist ABSPC to expeditiously obtain appropriate payment for patient and nonpatient services.
- b. MEDICAL GROUP shall assure that its Practitioners promptly and fully complete medical records and related back-up documentation, and respond and provide such assistance and information as ABSPC may reasonably request to facilitate billing and collection of charges for patient and nonpatient services.
- c. Receipts and disbursements shall be handled as set forth on Exhibit 2.11.

2.11 Compliance Program. MEDICAL GROUP shall comply with ABSPC's corporate compliance program, to the extent that the details and provisions of ABSPC's corporate compliance program are made known to MEDICAL GROUP. ABSPC shall designate one of its employees (or an employee of its management company contractor) as its Corporate Compliance officer. MEDICAL GROUP shall cooperate with any corporate compliance audits, reviews, investigations and remedial actions that relate to MEDICAL GROUP and its Practitioners and/or any of the services provided by MEDICAL GROUP and its Practitioners under this Agreement. Subject to request by ABSPC, such cooperation shall include without limitation the provision of any and all documents and/or information related to MEDICAL GROUP, its Practitioners, and their activities including the provision of services under this Agreement. (MEDICAL GROUP does not waive any California Evidence Code Section 1157 protections that may apply to its peer review records, and any disclosure of such to ABSPC shall be conditioned upon ABSPC's agreement not to commingle such documents with MEDICAL GROUP records, and to take such measures as necessary to maintain the confidentiality of MEDICAL GROUP's peer review records.) In addition, as requested by ABSPC, MEDICAL GROUP and its Practitioners shall participate in corporate compliance-related seminars and educational programs sponsored by ABSPC and/or Sutter Health, and in the development and implementation of compliance policies acceptable to ABSPC and specifically applicable to MEDICAL GROUP operations.

2.12 Referral Discretion. MEDICAL GROUP and its Practitioners shall be free to use and refer patients to any hospital, health care facility, or practitioner, subject to the best interests of patient care, obligations under managed care contracts, and applicable law.

2.13 Internal Affairs of MEDICAL GROUP. MEDICAL GROUP (or its Practitioners, as applicable) shall be solely responsible for payment of its employment and other obligations, including but not limited to:

- a. Determining or establishing MEDICAL GROUP's internal Practitioner compensation system.

b. Compensating its employees in accordance with its employment arrangements, including, but not limited to, payment of all employee taxes, required insurance, and other agreed-upon benefits.

c. Payment of taxes, business permit and license fees, and any other fees, fines, or penalties assessable against MEDICAL GROUP or its Practitioners.

2.14 General Cooperation. MEDICAL GROUP and its Practitioners shall cooperate with ABSPC to serve the East Bay community. Such cooperation shall include:

- a. Observance of all Clinic policies and procedures; and
- b. Reasonable efforts to assist ABSPC in achieving budgetary goals for the Clinic.

III ESTABLISHING FEES, BILLING, COLLECTIONS

3.1 Establishing Fees. The professional fee component of standard fee-for-service, preferred provider, managed care and other non-fee-for-service charges for services to Clinic patients shall be established by Clinic.

3.2 Billing and Collection.

a. ABSPC shall be responsible for all billing and collections, including but not limited to billing for fee-for-service patients, discounted fee-for-service patients, capitated patients, or any other payment method established by ABSPC and the responsible payor. These functions may be performed directly by ABSPC, or by contract with a third-party billing or management services organization, including but not limited to, a Sutter Health Affiliate.

b. Billings will reflect a Clinic provider number identifiable to Clinic. All accounts receivable for services provided on-site at the Clinic, Global Services provided after a Global Billing Determination, and ultrasound services for Clinic patients that have been reimbursed by ABSPC to MEDICAL GROUP pursuant this Agreement shall be the property of ABSPC. By the terms of **Exhibit 3.2b**, MEDICAL GROUP specifically authorizes ABSPC to bill and collect fees for services rendered by MEDICAL GROUP Practitioners to the extent identified in the preceding sentence.

IV EXCLUSIVITY AND COMPETITION

4.1 Exclusivity in Physician Staffing of the Clinic. So long as the Clinic's physician staffing needs are met in compliance with this Agreement, MEDICAL GROUP shall be the sole provider of physician services at the Clinic. ABSPC may participate, and may require MEDICAL GROUP to participate (solely with respect to services delivered at the Clinic), in shared risk contracting arrangements with one or more Independent Practice Associations, as deemed necessary to effectively and efficiently participate in Sutter Health's system-wide or regional managed care contracting arrangements with third-party payors.

4.2 Expert Witness Consultations. Neither MEDICAL GROUP nor any Practitioner shall accept consulting assignments or otherwise contract, agree or enter into an engagement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of ABSPC, ABSMC or any other Sutter Health Affiliate.

4.3 Legal Events.

a. **Legal Event; Consequences.** This section applies on the occurrence of a Legal Event. If a Legal Event occurs, the Noticing Party may give the other party notice of intent to amend or terminate this Agreement under this section. A Legal Event means:

- (1) a statute, law, rule, order, regulation, standard, arbitration award, judgment, decision or official interpretation, by
- (2) the United States or the State of California, a governmental agency (including an agency that administers a federal health care program) or the representative or agent of a governmental agency (including a Medicare carrier or fiscal intermediary), any court, administrative tribunal, accreditation agency or duly constituted arbitration panel with jurisdiction over the parties hereto, that
- (3) in the good faith judgment of one party ("Noticing Party"), materially and adversely either:
 - (a) jeopardizes either party's tax-exempt status, licensure, accreditation, certification, ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor, or that
 - (b) subjects the Noticing Party to a risk of prosecution, civil monetary penalty or federal health care program exclusion, or that, in the good faith judgment of the Noticing Party, jeopardizes a party's compliance with any law, rule or regulation with which the Noticing Party desires further compliance.

b. **Notice Requirements.** A Noticing Party shall give written notice to the other party together with an opinion of counsel setting forth the following information:

- (1) The Legal Event(s) giving rise to the notice;
- (2) The consequences of the Legal Event(s) as to the Noticing Party;
- (3) The Noticing Party's intention to either:
 - (a) Terminate this Agreement due to an unacceptable risk of harm described in Section 4.3(a)(3), which the Noticing Party reasonably

believes cannot be immediately redressed through an amendment to this Agreement; or

(b) Offer to amend this Agreement to remove the threat described in Section 4.3(a)(3);

(4) The Noticing Party's proposed amendment(s), where applicable; and

(5) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

c. **Renegotiation Period; Termination.** Unless the other party acquiesces in a proposal from the Noticing Party to terminate the Agreement under Section 4.3(b)(3)(a), the parties shall negotiate in good faith during the thirty (30) days from the giving of the notice described in Section 4.3(b) (the "Renegotiation Period") to amend this Agreement in accordance with the Noticing Party's proposal or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the thirtieth (30th) day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a *pro rata* basis, up to the date of such termination, and any obligations hereunder that are to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed as to waive privileges otherwise applicable to these opinions.

4.4 Non-Solicitation. During the term of this Agreement and for a period of twelve (12) months after its termination, neither party shall solicit the employees of the other. This Section 4.4 shall not apply to hiring of staff who respond to generally circulated and advertised job listings.

V INSURANCE, INDEMNIFICATION, SETTLEMENT, AND DEFENSE OF CLAIMS

5.1 Insurance. Each party shall be responsible to maintain its own insurance in accordance with the provisions of Exhibit 5.1.

5.2 Allocation of Liability.

a. In the event any claims or legal actions of any kind or nature are asserted against MEDICAL GROUP and ABSPC, and such claims or legal actions are not covered by insurance, responsibility for the claim shall be allocated as follows:

(1) If such claim or action is settled by written consent of all parties, including MEDICAL GROUP and ABSPC, or by a final court judgment or arbitration

award that includes an allocation of responsibility among the parties, then such allocation shall be binding on the parties.

(2) If there has been no such allocation pursuant to Section 5.2a(1), and if MEDICAL GROUP and ABSPC are not able to reach agreement on an allocation or settlement within thirty (30) days of the date of entry of a final court judgment, arbitration award, or settlement, then the allocation shall be determined by an arbitrator selected by the parties, or if they are unable to agree on such selection, by an arbitrator selected by the Presiding Judge of the Alameda County Superior Court. The determination of the arbitrator shall be final and binding on the parties. The costs of such arbitration shall be shared equally between MEDICAL GROUP and ABSPC.

b. Notwithstanding the foregoing, if the parties are unable to reach a final allocation pursuant to either Section 5.2a(1) or (2) above, in sufficient time to meet state or federal professional liability reporting requirements pursuant to the California Business and Professions Code and/or the federal Health Care Quality Improvement Act, then either party, after notice to the other, may report its best estimate as to the allocation that may result between the parties. If the final allocation differs, an amended report shall be timely filed.

5.3 Indemnification.

a. Nothing contained in this Agreement is intended, nor shall it be construed, to create any responsibility on the part of ABSPC for any liability, including but not limited to claims for damages, loss, cost, or expense arising out of:

(1) The negligent or intentional acts or omissions of MEDICAL GROUP, its partners, employees, independent contractors, or agents.

(2) The negligent or intentional acts or omissions of directors, officers, employees, independent contractors, or agents of ABSPC, in circumstances where the act or omission giving rise to a potential claim occurred at the specific direction of MEDICAL GROUP.

(3) Negligent, intentional, or other acts or omissions of MEDICAL GROUP or its partners, employees, or agents occurring prior to the Effective Date of this Agreement.

Subject to the provisions of Section 5.3c below, MEDICAL GROUP shall defend, indemnify, and hold harmless ABSPC, its directors, officers, agents, and employees from and against any and all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, resulting in any manner, directly or indirectly, from any of the foregoing circumstances.

b. Except as otherwise provided at Section 5.3a above, nothing contained in this Agreement is intended, nor shall it be construed to create any responsibility on the part of

MEDICAL GROUP for any liability, including but not limited to claims for damages, loss, cost, or expense arising out of:

- (1) The negligent or intentional acts or omissions of ABSPC, its directors, officers, employees (except in circumstances where the act or omission giving rise to a potential claim occurred while such ABSPC employee was acting at the specific direction of MEDICAL GROUP), independent contractors, or agents.
- (2) The negligent, intentional, or other acts or omissions of ABSPC or its directors, officers, employees, independent contractors (other than MEDICAL GROUP), or agents occurring prior to the Effective Date of this Agreement.

Subject to the provisions of Section 5.3c below, ABSPC shall defend, indemnify and hold harmless MEDICAL GROUP, its partners, agents, and employees from and against any and all claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, resulting in any manner, directly or indirectly, from any of the foregoing circumstances.

c. The provisions of Sections 5.3a and 5.3b are intended to apply only to claims and liabilities that are not covered by or that exceed the policy limits of applicable insurance coverage and for which liability has not been otherwise allocated by agreement of the parties or in accordance with Section 5.2 above. This Section 5.3 does not apply if the effect of such provision would be to negate insurance coverage that would otherwise be available but for these contractual indemnity provisions. Nothing contained in this Section 5.3 is intended or should be construed to (i) create any liability to or right of recovery or subrogation on the part of any insurance carrier or any other third party against either of the parties; or (ii) affect the allocation of responsibilities among insurance carriers or other persons who may have responsibility for satisfaction of all or any part of any claim made against either party.

5.4 Settlement and Defense.

a. Except as otherwise required by the terms of an applicable insurance policy under which defense is provided, the selection of legal counsel to defend any claim or legal action jointly filed against both ABSPC and MEDICAL GROUP (or any person or party for whom either or both are required to provide a defense), shall be determined by ABSPC. If only one party (i.e., only the MEDICAL GROUP or only the ABSPC) is named in such legal action, then the party named shall select the legal counsel to defend the claim or legal action, except as otherwise required by the terms of any applicable insurance policy.

b. Except as otherwise provided in the applicable insurance policy(ies), prejudgment settlement proposals involving both ABSPC and MEDICAL GROUP, relating to services under this Agreement, shall require the written agreement of both ABSPC and MEDICAL GROUP. Notwithstanding the foregoing, either party may unilaterally accept that portion of the proposal that relates to its liability in circumstances where the refusal

to accept such proposal presents, in such party's reasonable business judgment, a material risk that it will be exposed to liability in excess of applicable insurance coverage, and it has retained independent counsel to review the claim and settlement offer and advise it regarding the issues and risks relating thereto.

VI COMPENSATION

6.1 Principles. Compensation for MEDICAL GROUP has been set in a manner that fairly compensates MEDICAL GROUP for the reasonable fair market value of its services that is consistent with MEDICAL GROUP's affiliation with a tax-exempt, nonprofit public benefit corporation that predominantly intends to serve the Medi-Cal population.

6.2 Amount. MEDICAL GROUP shall be compensated as set forth in Exhibit 6.2.

VII REPRESENTATIONS AND WARRANTIES

7.1 OF MEDICAL GROUP. MEDICAL GROUP represents and warrants to ABSPC the following:

a. **Due Authorization.** This execution and delivery of this Agreement has been duly approved by MEDICAL GROUP's partners. MEDICAL GROUP has full power and authority (including full partnership power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of MEDICAL GROUP enforceable in accordance with its terms and conditions, except that such enforcement may be subject to (A) bankruptcy, insolvency, reorganization or other similar laws now or thereafter in effect affecting the enforcement of creditors' rights generally and (B) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

b. **Noncontravention.** Neither the execution and the delivery of this Agreement, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling or other restriction of any government, governmental agency or court to which MEDICAL GROUP is subject or any provision of the partnership agreement of MEDICAL GROUP, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which MEDICAL GROUP is a party or by which it is bound. MEDICAL GROUP does not need to give any notice to, make any filing with or obtain any authorization, consent or approval of any government or governmental agency for MEDICAL GROUP to fully perform its obligations under this Agreement.

c. **Exclusion.** MEDICAL GROUP does not currently employ or contract with a person or an entity (directly or indirectly) that has been excluded from a federal health care program pursuant to 42 Code of Federal Regulations 1001, *et seq.*

7.2 OF ABSPC. ABSPC represents and warrants to MEDICAL GROUP the following:

- a. **Due Authorization.** This execution and delivery of Agreement has been duly approved by the Board of Trustees of ABSPC. ABSPC has full power and authority (including full partnership power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of ABSPC enforceable in accordance with its terms and conditions, except that such enforcement may be subject to (A) bankruptcy, insolvency, reorganization or other similar laws now or thereafter in effect affecting the enforcement of creditors' rights generally and (B) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).
- b. **Noncontravention.** Neither the execution nor the delivery of this Agreement, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling or other restriction of any government, governmental agency or court to which ABSPC is subject or any provision of the articles of incorporation or bylaws of ABSPC, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which ABSPC is a party or by which it is bound. ABSPC does not need to give any notice to, make any filing with or obtain any authorization, consent or approval of any government or governmental agency for ABSPC to fully perform its obligations under this Agreement.

VIII TERM AND TERMINATION

8.1 Term.

- a. This Agreement shall commence on the effective date of the Clinic's community clinic license issued by the California Department of Health Services (the "Effective Date"), and shall continue for a one-year term, unless sooner terminated as provided below. If the Effective Date does not occur on or before December 1, 2007, this Agreement shall be null and void for failure of condition.
- b. Thereafter, this Agreement may be renewed for such term and upon such terms as the parties may mutually agree in writing.

8.2 For Cause Termination. Either party may terminate this Agreement at any time for cause, which for purposes of this Section 8.2, shall be limited to the following:

- a. Default, which is defined as any of the following:
 - (1) If the defaulting party materially fails to perform any material obligation required hereunder, if such default shall continue for thirty (30) calendar days following giving of written notice, if reasonably curable within such time; or, if not curable within this thirty (30) day period, the period shall be extended as long as the defaulting party is diligently pursuing to cure the default; provided,

however, except as otherwise agreed by the parties, no such extended period shall extend beyond forty-five (45) days after the giving of written notice specified above. This Agreement shall terminate automatically and immediately upon the expiration of such thirty (30) day or longer applicable period.

(2) IF MEDICAL GROUP or ABSPC loses its eligibility to provide Medicare or Medi-Cal services, termination under this Section 8.2a(2) may be effective immediately upon the effective date of loss of eligibility.

(3) If the defaulting party applies for or consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets; files a voluntary petition in bankruptcy; makes a general assignment for the benefit of creditors; files a petition or answer seeking reorganization or arrangement with creditors; or if any order, judgment, or decree shall be entered by any court of competent jurisdiction on the application of a creditor or otherwise adjudicating such party bankrupt or approving a petition seeking reorganization of such party or appointment of a receiver, trustee, or liquidator of such party, or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for sixty (60) calendar days after its entry. Termination under this Section 8.2a(3) shall be effective automatically and immediately upon the giving of written notice of termination by the non-defaulting party.

b. As otherwise provided in this Agreement.

8.3 Without Cause Termination. Either party may terminate this Agreement without cause by giving ninety (90) days' written notice to the other. If this Agreement terminates for any reason prior to the first anniversary of the Effective Date, the parties shall not enter into a new contract for the same or similar services with a term commencing prior to such first anniversary.

8.4 Automatic Termination. As the effectiveness of the Perinatal Services Agreement is essential to ensure that Clinic patients have Practitioners available and willing to provide needed inpatient care, termination of the Perinatal Services Agreement shall automatically terminate this Agreement as of such date.

8.5 Effect of Termination (or Expiration).

a. Upon termination or expiration of this Agreement, ABSPC shall continue to collect all compensation, reimbursement, and payments due for services provided to Clinic patients prior to the effective date of termination.

b. Subject to MEDICAL GROUP's reasonable ability to do so in light of the circumstances at that time, MEDICAL GROUP shall continue to perform services as required under the terms and conditions of any applicable managed care contracts, the Comprehensive Perinatal Services Program, Family PACT program, or Medi-Cal Presumptive Eligibility Program until such time as such agreement(s) or programs may be

terminated, or services may be discontinued in accordance with the terms of such agreement(s) or programs.

c. Subject to MEDICAL GROUP's reasonable ability to do so in light of the circumstances at that time, MEDICAL GROUP shall continue to perform such services as may be required to assure adequate care to all patients who are undergoing an active regimen or course of medical treatment or services.

d. All such transitions shall be effected in accordance with all applicable professional standards.

e. The parties shall continue to cooperate in pursuing the billing and collection of any payments to which either or both may be entitled for services rendered pursuant to this Agreement (including services rendered pursuant to this Section 8.5).

f. ABSPC shall pay MEDICAL GROUP for pre- and post-termination services pursuant to the compensation methodologies set forth in Exhibit 6.2.

8.6 Post Termination (or Expiration). Subject to the provisions of Section 8.5 above, and such other transitional provisions as may be mutually agreed by the parties, upon such termination or expiration of this Agreement:

a. MEDICAL GROUP shall promptly surrender to ABSPC all property, equipment, furnishings, and appurtenances thereto that is the property of ABSPC, excepting reasonable use and wear thereof.

b. MEDICAL GROUP and its Practitioners shall discontinue use of, and shall promptly return to ABSPC, all proprietary property or information, manuals, and other materials associated with or regarding ABSPC and the Clinic, together with all copies thereof.

c. MEDICAL GROUP and its Practitioners shall cease to use all software arranged for or provided by ABSPC, and within thirty (30) days after termination shall return to ABSPC all software, related documentation and computer programs, and any copies thereof; provided, however, MEDICAL GROUP shall have ninety (90) days to return software, documentation, computer programs, and copies related to patient billing.

d. MEDICAL GROUP shall promptly return to ABSPC all records, including patient medical records. For a period of at least seven (7) years after the expiration or termination of this Agreement, ABSPC shall retain and store the original medical records, and records of pediatric patients shall be retained until the later of seven (7) years after the delivery of services or the time that the patient reaches the age of twenty-five (25) years. Following termination of this Agreement, MEDICAL GROUP Practitioners shall continue to enjoy reasonable access to patient records as necessary to complete patient care or associated recordkeeping, defend claims or actions, or cooperate with any governmental or payor investigation relating to the provision of services pursuant to this Agreement; and further provided that ABSPC shall promptly honor any patient requests

to transfer records to MEDICAL GROUP. Notwithstanding anything in this section to the contrary, if at the time of termination of this Agreement, patient medical records are maintained in an electronic medical record ("EMR") format, then medical records to be transferred under this Section 8.6(d) shall be transferred electronically to MEDICAL GROUP, upon appropriate patient authorization, if MEDICAL GROUP has a compatible EMR system at that time, or otherwise by means of a proper printout of such medical records, with the costs thereof shared equitably by the Parties.

e. Any necessary tail or other continued insurance coverage shall be procured, as set forth in **Exhibit 5.1**.

IX PROPERTY RIGHTS AND USE

9.1 Ownership of Clinic Assets.

a. ABSPC shall be the sole owner and holder of all title and interest in the assets of the Clinic, including, but not limited to:

- (1) Except for personal property of MEDICAL GROUP employees, all equipment, furnishings, improvements, appurtenances, and moveable assets located in the Clinic.
- (2) All leasehold interests of the Clinic.
- (3) All business records, including but not limited to all books of account, general administrative records, and all information generated under or contained in the MIS pertaining to ABSPC and its operations, and contracts of any kind or nature.
- (4) All ABSPC Proprietary Property, as further described at Section 9.3 below.

b. Patient records of the Clinic shall be the exclusive property of ABSPC. Upon departure of an individual Practitioner from MEDICAL GROUP or termination of this Agreement, the patient records shall remain ABSPC records, except as otherwise directed by an individual patient whose records are at issue.

c. MEDICAL GROUP shall be the sole owner of its internal business and financial records (*i.e.*, those financial, corporate, and personnel records and information relating exclusively to the business and activities of MEDICAL GROUP, as distinguished from the business and activities of ABSPC and the Clinic).

9.2 Access and Use.

a. Custody of all records generated pursuant to this Agreement shall be held by ABSPC and maintained in accordance with all applicable legal requirements for record retention, confidentiality, and access.

b. MEDICAL GROUP shall use the Equipment, supplies, services, Clinic and ABSPC Proprietary Property solely for the provision of services to Clinic patients and other matters related to the conduct of MEDICAL GROUP's responsibilities hereunder.

c. MEDICAL GROUP accepts the Clinic in the condition existing as of the Effective Date, and acknowledges that, to the best of its knowledge, the Clinic premises is in good order, condition, and repair. Use of the Clinic by MEDICAL GROUP shall be in compliance with all applicable zoning, municipal, county, and state laws, ordinances and regulations governing and regulating the use of such premises, leases of real property for the premises of the Clinic and all covenants, conditions, and restrictions of record. MEDICAL GROUP further acknowledges that the Equipment is, to the best of its knowledge, in good condition and repair as of the Effective Date, and accepts the Equipment in the condition existing as of the Effective Date.

d. Each party shall be entitled, upon request and with reasonable advance notice, to obtain access to and copies of (at its expense) all records of the other party, including patient medical records, and such other records as are directly related to the performance of such party's obligations pursuant to this Agreement. However, the foregoing shall not allow for access to records that must necessarily be kept confidential as part of the conduct of either party's relationship with the other party (e.g., records concerning matters such as interactions with counsel and other confidential consultants, or with respect to negotiations between the parties, strategic planning, and subjects of a similar nature, or with respect to managed care or other third-party payor rates).

e. Records shall be maintained for a period of not less than the longest potentially applicable statute of limitations for the particular record at issue. Both parties' access to records shall survive termination of this Agreement, as necessary to perform any responsibilities arising hereunder, or as may be necessary for the defense of any legal or administrative action or claim respecting such records, or relating to patient care or malpractice claims, or other similar matters to which such records may pertain. At the end of this retention period, and subject to compliance with applicable laws and such special requirements respecting medical records as may be established by the parties, ABSPC shall be entitled to dispose of such records in such manner as it deems necessary or appropriate.

9.3 Proprietary Property.

a. ABSPC shall be the sole owner and holder of all title and interest, including all copyright, patent, service mark, and trademark rights, and interests in the logo, systems, forms, form contracts, policy manuals, marketing, and public relations materials relating to ABSPC and its Clinic, all of which are collectively referred to as "ABSPC Proprietary Property." MEDICAL GROUP agrees that it shall not at any time knowingly harm, misuse, or bring into disrepute ABSPC Proprietary Property.

b. ABSPC shall have full and absolute discretion with respect to any decision regarding the continued use, sale, disposal, gift, or other disposition of any and all

ABSPC Proprietary Property. If so requested by ABSPC in connection with any post-termination disposition of ABSPC Proprietary Property, MEDICAL GROUP shall execute any release, waiver, or similar documents as necessary to evidence MEDICAL GROUP's abandonment of any further right or claim thereto.

c. MEDICAL GROUP shall use the MIS and any other software and hardware provided or arranged for by ABSPC in accordance with and subject to the terms and conditions of any license or sublicense agreements, leases, or other agreements applicable thereto, and shall not allow or permit any person to use the software or hardware in violation thereof.

d. Interests in corporate and business names:

(1) MEDICAL GROUP shall be the sole owner and holder of all title and interest, including all copyright, service mark, and trademark rights, and other intellectual property interests in its name "East Bay Perinatology Medical Associates."

(2) ABSPC shall be the sole owner and holder of all title and interest, including all copyright, service mark, and trademark rights, and other intellectual property interests in its names "East Bay Perinatal Center" and "Alta Bates Summit Perinatal Center."

(3) Upon the expiration or termination of this Agreement, both parties shall immediately take all action that is necessary and appropriate to cease using the names of the other party.

9.4 Facility Lease. Neither party shall engage in any conduct or activities that shall constitute a default under any facility lease or any other lease or contract relating to the operations of ABSPC and the Clinic.

9.5 Special Provisions Respecting Medicare and Medi-Cal Patients.

a. ABSPC and MEDICAL GROUP agree to generate such records and make such disclosures as may be required, from time to time, by the Medicare, Medi-Cal, and other third-party payment programs with respect to ABSPC's and MEDICAL GROUP's participation in this Agreement.

b. This shall include, but is not limited to compliance with 42 U.S.C. § 1395x(v)(1)(I) as amended, and any regulations promulgated thereunder. In furtherance thereof:

(1) Until the expiration of five (5) years after the furnishing of services pursuant to this Agreement, both parties shall make available, upon written request, to the Secretary of Health and Human Services, the Comptroller General of the United States, or any of their duly authorized representatives, this

Agreement, and the books, documents, and records of such party that are necessary to verify the nature and extent of the cost of such services.

(2) If either party carries out any of the duties of this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the same effect.

(3) If either party is requested to disclose books, documents, or records pursuant to the foregoing, it shall notify the other party of the nature and scope of such request, and each party shall make available to the other, upon written request, all such books, documents, or records, during such party's regular business hours.

9.6 HIPAA. The parties acknowledge that they constitute an organized health care arrangement for purposes of HIPAA with respect to services delivered at the Clinic.

X GENERAL AND MISCELLANEOUS PROVISIONS

10.1 Relationship of the Parties. In performing all services required hereunder, each party shall act as an independent contractor to the other. While ABSPC shall be entitled to enforce this Agreement, ABSPC shall neither have nor exercise any control or direction over the methods by which MEDICAL GROUP and its employees provide medical or other licensed professional services to patients of the Clinic. The interest of ABSPC is to assure the end result that such services are rendered in a competent, efficient, and satisfactory manner in accordance with the standards set forth herein. Except as expressly provided herein, neither party shall have any authority or power to contract or in any manner incur liability, retrospectively or prospectively, of any kind or nature for or in the name of the other party, or for which the other party could or might be held liable to any person who is not a signatory to this Agreement.

10.2 Confidentiality.

a. The parties shall maintain confidentiality as to the terms of this Agreement; and, except as otherwise required by law, shall not disclose such terms to unrelated third parties (other than such attorneys, consultants, or agents as need to have access to this Agreement in order to perform services on behalf or for the benefit of MEDICAL GROUP, ABSPC or ABSMC).

b. The parties shall maintain the confidentiality of Proprietary Information and of other confidential information obtained about each others' operations and internal affairs.

c. Neither ABSPC nor MEDICAL GROUP shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by ABSPC in writing, any patient or medical record information regarding Clinic patients. The parties shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of ABSPC and Sutter Health regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and

Accountability Act (HIPAA) (45 C.F.R. Part 160, *et seq.*), the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), and the California Confidentiality of Medical Information Act (California Civil Code Section 56, *et seq.*), as amended from time to time.

10.3 Assignment; Binding Effect.

a. Except as next provided, MEDICAL GROUP may not assign rights or delegate duties hereunder without the express written approval of ABSPC, which approval shall not be unreasonably withheld. ABSPC may assign its rights and obligations in the event that it transfers its business to another party without the consent of MEDICAL GROUP.

b. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

10.4 No Third-Party Beneficiaries. Nothing contained in this Agreement is intended, nor shall it be construed to create rights running to the benefit of third parties.

10.5 No Claims Against Third Parties. Nothing in this Agreement is intended or shall be construed to create any claim or right by either party against, or any obligation on the part of, any third party. Accordingly, it is expressly understood, agreed, and acknowledged that unless such obligation or liability has been expressly assumed or agreed in writing, there shall be no obligation or liability whatsoever on the part of Sutter Health, ABSMC or any other Sutter Health Affiliate arising by reason of any provision of this Agreement.

10.6 Notice. All notices required by this Agreement shall be in writing, and shall be deemed effective when personally delivered; when mailed by certified or registered mail, return receipt requested; when deposited with a comparably reliable postal delivery service (such as Federal Express) or when confirmation of fax receipt is received; addressed to the other party as follows:

IF TO ABSPC:

Alta Bates Summit Perinatal Center
350 Hawthorne Avenue
Oakland, CA 95609-3108
Attn: Chief Executive Officer
Fax: (510) 658-8593

IF TO MEDICAL GROUP:

East Bay Perinatal Medical Associates
350 - 30th Street, Suite 205
Oakland, CA 94609
Attn: Stuart M. Lovett, M.D.
Fax: (510) 869-6225

WITH COPY TO:

Sutter Health Legal Counsel Department
1316 Celeste Drive, Suite 120
Modesto, CA 95355-2437
Fax: (209) 569-7639

WITH COPY TO:

Carol Lucas
BuchalterNemer, A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles CA 90017-2457
Fax: (213) 630-5855

The above addresses may be changed by a notice delivered as set forth in this Section 10.6.

10.7 Nonwaiver of Breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any other provision. No delay in action with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

10.8 Force Majeure. Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement, or any interruption of service or employment deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes, or other work interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. Notwithstanding the foregoing, if any such failure or interruption continues for a period in excess of sixty (60) consecutive days, either party may terminate this Agreement effective immediately upon delivery to the other party of notice of such termination.

10.9 Dispute Resolution.

a. In the event that any dispute arises between the parties arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute.

b. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of JAMS/Endispute. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore or otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law; and unless agreed upon by the parties, the arbitrator shall not be empowered to impose equitable remedies. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The arbitration shall be

conducted in Alameda County, California. The cost of arbitration shall be shared equally by ABSPC and MEDICAL GROUP, provided that each party shall pay its own legal expenses.

10.10 Attorneys' Fees. In the event of arbitration or litigation between the parties relating to or arising from this Agreement, each party shall pay its own costs and legal expenses. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

10.11 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the state of California.

10.12 Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the agreement or obligations of the parties, in which case this Agreement may be immediately terminated.

10.13 Exhibits. All exhibits referred to are deemed attached to this Agreement and incorporated herein by this reference.

10.14 Entire Agreement, Modification. This Agreement contains the entire agreement of the parties relating to this subject matter. The Agreement may only be modified in writing, signed by both parties, effective on the date set forth in such writing.

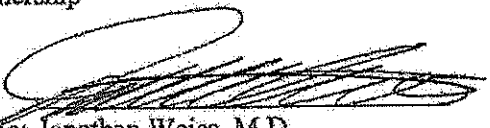
~ Signature Page Follows ~

~ Signature Page for Professional Services Agreement ~

IN WITNESS WHEREOF, this Professional Services Agreement was executed as of the Effective Date.

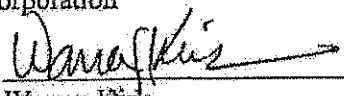
MEDICAL GROUP

EAST BAY PERINATAL MEDICAL ASSOCIATES, a California general partnership

By: 
Name: Jonathan Weiss, M.D.
Title: Its General Partner

ABSPC

EAST BAY PERINATAL CENTER dba ALTA BATES SUMMIT PERINATAL CENTER, a California nonprofit public benefit corporation

By: 
Name: Warren Kiek
Title: President

EXHIBITS

- Exhibit 2.2(a) Physician Duties to be Performed
- Exhibit 2.2(b) Time Report - Physician Time Report
- Exhibit 2.3 MEDICAL GROUP Employment Contract Requirements
- Exhibit 2.4 Practitioners' Medi-Cal Numbers and National Provider Identifiers
- Exhibit 2.10 Statement No. 15 of the Principles and Practices Board of the Healthcare Financial Management Association, "Valuation and Financial Statement Presentation of Charity Service and Bad Debts by Institutional Healthcare Providers"
- Exhibit 2.11 Receivables Management
- Exhibit 3.2b Billings and Collections
- Exhibit 5.1 Insurance and Related Matters
- Exhibit 6.2 Compensation

Exhibit 2.2(a)

Physician Duties to be Performed

ALTA BATES SUMMIT MEDICAL CENTER
POSITION DESCRIPTION
Management

Position Title:	MEDICAL DIRECTOR, ALTA BATES SUMMIT PERINATAL CENTER	Date Created:	March 27, 2007
Dept Name:	ALTA BATES SUMMIT PERINATAL CENTER	Date(s) Revised:	Date(s) job description has been revised
Reports to (Job Title):	Chief Medical Officer, ABSMC/Administrative Director, Women and Infants Services	Cost Ctr Number(s)	Use approved cost center number
Position Supervises (job title(s) of direct reports):	Perinatologists, Midwives and Nurse Practitioners		
Written by:	Katie Rose		

Approvals:

Dept Manager (print name)	Signature	Date
Katie Rose		
Dept Director/Vice President (please print name)	Signature	Date

Position Summary:

The Medical Director is responsible for the overall quality of clinical care that is provided in the ABSMC Perinatal Center:

- Ensures appropriate scheduling of providers to meet clinical needs of patients
- Oversees clinical management of perinatologists, midwives, and nurse practitioners
- Exercises authority over hiring and termination of physicians, midwives, and nurse practitioners
- Evaluates performances of physicians, midwives, and nurse practitioners in the Center and makes appropriate decisions based on performance evaluations
- Collaborates with ABSMC Administration to provide quality, cost-effective care to the specific population served by the Center
- Serves as CLIA Laboratory Director to ensure overall operation and administration of the laboratory in accordance with regulatory requirements

Minimum Job Requirements:

Education:	Completion of medical degree licensure to practice medicine in California
Experience:	Obstetric and Gynecology clinic experience preferred 2 years recent experience in clinical leadership role preferred
Knowledge:	Community clinic operations Scope of practice for midwives and nurse practitioners
License, certification, and/or registration requirements:	Board certified in OB/GYN
Special Skills and/or Equipment Used:	Ability to exercise initiative, problem-solving, decision-making; apply policies and principles to solve everyday problems and deal with a variety of situations; work effectively with patients, medical, and administrative staff, and the public; communicate clearly; identify problems and recommend solutions; establish priorities and coordinate work activities. Ability to interact effectively with people who have differing backgrounds. Excellent verbal and written communication skills. Computer literate, with minimum of Microsoft Word and Outlook.

Physical Requirements: Essential job duties include and are not limited to:
Provides health care services to patients: examines patient, performs comprehensive physician examination, and compiles patient medical data, including health history and results of physical examination. Orders diagnostic tests, such as laboratory tests and ultrasound, and interprets test results for deviation from normal. Develops and implements patient management plans, records progress notes, and provides continuity of care. Instructs and counsels patients regarding compliance with prescribed therapeutic regimens, normal growth and development, family planning, emotional problems of daily living, and health maintenance.
Cognitive requirements: Ability to comprehend and follow instructions; ability to perform simple and repetitive tasks (charting and writing); ability to maintain a work pace appropriate to a given work load; ability to perform complex and varied tasks; ability to get along with co-workers, peers, and the general public; ability to make generalizations, evaluations or decisions without immediate supervision.

Principal Duties and Accountabilities:

- Provide medical oversight for the Center. Consult with ABSMC administration in the development, maintenance and implementation of policies and procedures for the effective operation of the Center.
- Oversee quality management of the Center. In conjunction with the Hospital, jointly develop and implement appropriate performance, quality, and risk management activities for the Center.

- Monitor utilization of Center services and recommend all reasonable steps necessary to remedy deficiencies in the quality or efficiency of the operations of the Center.
- Participate with Hospital's administrative staff in managing the effective operation of the Center in accordance with approved budgets, including managing costs related to the Center, developing and administering applicable operating expenditure budgets and cost controls for the proper and efficient operation of the Center. Provide guidance and supervision as necessary to maintain Center's licensure as a Community Clinic.
- Oversee the quality of clinical care provided by the perinatologists, midwives and nurse practitioners. Develops and participates in a system of peer review that ensures the quality of clinical care and the development of appropriate protocols.
- Ensures appropriate credentialing and delineation of clinical privileges for perinatologists, midwives, and nurse practitioners.
- Manage the relationships and assist in the resolution of issues and disputes that may arise among covering providers and/or other members of Center staff.
- Advise the Hospital on the selection, replacement, maintenance and repair of all equipment related to the Center.
- Evaluate and address all complaints and inquiries of patients concerning the Center.
- Advise the Hospital in the recruitment, evaluation and retention of non-provider personnel for the Center.
- Comply with the Hospital's and Sutter Health's corporate compliance programs and cooperate with any corporate compliance audits, reviews, or investigations which relate to the Center.
- Performs all requirements as CLIA Lab Director.

Ensures that:

- Testing systems in the laboratory provide quality services in all aspects of test performance.
- Physical and environmental conditions of the laboratory are adequate and appropriate for the testing performed.
- The environment for employees is safe from physical, chemical, and biological hazards, and safety and biohazard requirements are followed.
- Sufficient numbers of appropriately educated, experienced, and/or trained personnel who provide appropriate consultation, properly supervise, and accurately perform tests and report test results in accordance with the written duties and responsibilities specified by the Director, are employed in the laboratory.

- o New test procedures are reviewed, included in the procedure manual, and followed by personnel.
- o The employee's responsibilities and duties are specified in writing.

HR Initial and
Date Received: _____

Physical/Work Conditions Checklist

Position Title: Medical Director, ABSMC Perinatal CenterDept Name: Alta Bates Summit Perinatal Center

Check the appropriate entry for each of the following items to describe the extent of the specific activities performed by this position. If necessary please describe the action in the box provided (i.e., items carried or pushed). The following terms are used to designate the frequency of activities performed during a regular work shift:

Never (N)	Not At All
Infrequently (I)	0 to 10% of work shift – less than 2 hrs/day
Occasionally (O)	11% to 24% of work shift – up to 2 hrs/day
Intermittently (T)	25% to 49% of work shift – up to 4 hrs/day – define probable duration
Frequently (F)	50% to 74% of work shift – up to 6 hrs/day
Constantly (C)	75% to 100% of work shift – up to 8 hrs/day

I. Physical Activity	N	I	O	T	F	C	DESCRIPTION
Sitting					x		Assessing/talking with patients, charting, reviewing records, performing procedures
Standing					x		During procedures, assessing patients
Walking			x				Needed between exam rooms and office
Bending			x				During medical procedure
Crawling	x						
Climbing	x						
Reaching above shoulder		x					Reaching for object/supplies
Reaching below shoulder					x		Working with patients, charting, talking on phone, data entry
Reaching at shoulder					x		Working with patients
Crouching		x					Working with patients
Kneeling		x					If CPR required on patient
Balancing	x						

2. Lifting	N	I	O	T	F	C	DESCRIPTION
01-10 LBS			x				Moving equipment or supplies
11-20 LBS		x					Moving equipment or supplies
21-50 LBS	x						
51-100 LBS	x						
100+ LBS	x						

3. Carrying	N	I	O	T	F	C	DESCRIPTION
01-10 LBS			x				Moving equipment or supplies
11-20 LBS		x					Moving equipment or supplies
21-50 LBS	x						
51-100 LBS	x						
100+ LBS	x						

4. Push/Pull	N	I	O	T	F	C	DESCRIPTION
01-20 LBS			x				Moving equipment or supplies, pushing doors
21-50 LBS		x					Helping to move patient
51-100 LBS		x					Helping to move patient
100+ LBS		x					Helping to move patient

5. Repetitive Hand Motion	N	I	O	T	F	C	DESCRIPTION
Simple RT Grasping LT					x x		Charting, data entry, patient procedures
Firm Grasping RT LT				x x			Patient procedures
Fine Manipulation RT LT					x x		Patient procedures
Repetitive Wrist/ Finger					x		Charting, data entry
Keyboard							Data entry
Writing					x		Charting

6. Repetitive Foot Motion	N	I	O	T	F	C	DESCRIPTION
Right Foot	x						
Left Foot	x						
Both	x						

7. Vision/Hearing	N	I	O	T	F	C	DESCRIPTION
Near Vision					x		Patient assessment/procedures, charting, data entry, record review
Far Vision					x		Walking in clinic
Color Discrimination				x			Reading test results
Horizontal Field			x				Patient assessment/procedures
Hearing Sensitivity					x		Patient assessment/procedures, communication with patients and staff

8. Postures/Movements	Max. Consecutive Min/Hrs	Total Hours Per Shift	Position Change Optional?	DESCRIPTION
Stationary Standing	10 minutes	1 hour	yes	Patient exam/procedures
Standing with Movement	30 minutes	3 hours	yes	Patient exam/procedures
Sitting	60 minutes	3 hours	yes	Charting, reviewing records, talking on phone, data entry
Walking	5 minutes	1 hour	yes	Walking between exam rooms and to and from office

EXPOSURE TO WORKING CONDITIONS

EXPOSURE TO:	N	I	O	T	F	C	DESCRIPTION
Wet					x		Handwashing
Humid		x					Exposure to office climate
Noise					x		Patient and co-workers talking, phone ringing
Vibrations	x						
Chemicals			x				Patient testing, handwashing solution
Blood/Body Fluids					x		Patient exams/procedures
Fumes		x					Patient procedures
Odors				x			Patient exams/procedures
Dust		x					Exposure to office areas
Poor Ventilation		x					Exposure to office climate
Radiation	x						
Moving Objects	x						
Confined Spaces	x						
High Elevations	x						
Slippery Surfaces	x						
Safety Equipment		x					Fire extinguishers within office or corridor
Special Clothing	x						
Carpeted Floor					x		Exposure to office
Linoeum Floor					x		Exposure to office
Other Hazards							

For each of the categories below, list some specific tasks that will be performed on an on-going basis.

Complete each of the following:

Reading	Patient reports, manuals, correspondence, medical records, written instructions
Writing	Charting, correspondence, memos
Math	Medication dosages
Detail Orientation	Patient procedures, reading reports, prescribing medication
Repetition	Charting, data entry
Independent Judgment	Patient assessment, patient plan of care
Interpersonal Skills	Communicating with patients and staff
Meeting Deadlines	Patient plan of care
Reporting to More Than One Supervisor	Reporting relationship with ABSMC Administration
Works Around Others	Patient plan of care
Works With Others	Patient plan of care
Works Alone	Charting

Exhibit 2.2(b)

Time Report

[Form Attached]

PHYSICIAN TIME REPORT

Physician: _____

Week Beginning: ____/____/____

ADMINISTRATIVE SERVICES	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Weekly Totals
Management/Staff Meeting								
Committee Meeting								
Utilization Management								
Quality Review								
Supervision/Education of Interns, Residents								
Supervision/Education of Nurses, Technicians, Staff								
Physician Education/Consultation								
Community Presentation								
Protocol/Policy Development								
Program Development								
Other, describe:								
Other, describe:								
TOTAL DAILY HOURS								

I certify that this Time Report is a true and accurate record of my services and hours during the week indicated.

Date: _____

 Signature

Exhibit 2.3

MEDICAL GROUP Employment Contract Requirements

I GENERAL

MEDICAL GROUP Employment Agreements shall be consistent with the terms of the Professional Services Agreement ("Agreement"), and shall extend to the individual MEDICAL GROUP employees such responsibilities and performance obligations as necessary to enable MEDICAL GROUP to meet its responsibilities under the Professional Services Agreement.

II SPECIFIC REQUIREMENTS

In keeping with the foregoing, MEDICAL GROUP Employment Agreements shall include, but not by way of limitation, specific requirements with respect to:

- a. Compliance with the requirements set forth at Article II of the Agreement.
- b. Compliance with the termination and post termination requirements set forth at Sections 8.2, 8.3, 8.4 and 8.5 of the Agreement.
- c. Acknowledgment of the property rights and use provisions set forth at Article IX of the Agreement.

* * * * *

Exhibit 2.4**Practitioners' Medi-Cal Numbers and National Provider Identifiers**

Practitioner	Position	Medi-Cal	NPI
DePalma, Ralph T.	M.D.	00G445960	1245260686
Fong, Susan	M.D.	00A96871	1487761235
Goldman, Janet M.	M.D.	00G633380	1750312021
Lovett, Stuart M.	M.D.	00A407570	1962438044
Marinoff, David N.	M.D.	00G441020	1972522480
Mitra, Subhash C.	M.D.	00C503721	1750312179
Weiss, Jonathan D.	M.D.	00G464040	1770523771
Crane, Ursula	CNM	CNM1457	1306913793
Diogo, Mary J.	CNM	CNM1359	1952493413
Faulkner, Mary E.	NP	NP11565	1912964842
Hartman, Melanie	CNM	Pending	1174679609
Haynes, Gwendolyn	CNM	CNM1736	1265524755
Hill, Sallie P.	CNM	CNM960	1043277916
Kendall, Amy L.	NP	NP8305	1710942438
Pfeffer, Andrea M.	CNM	CNM1599	1770533069
Simms, Elizabeth A.	NP	NP7184	1437117355
Yeoh, Beahwa	NP	RN554603	1588621577

Exhibit 2.10

**Statement No. 15 of the
Principles and Practices Board of the
Healthcare Financial Management Association,
“Valuation and Financial Statement
Presentation of Charity Service and Bad Debts
By Institutional Healthcare Providers”**

Exhibit 2.11

Receivables Management

I Receipts and Disbursements

A. Revenues from managed care contracts shall be deposited in ABSPC's accounts, subject to payment by ABSPC of compensation to MEDICAL GROUP for its services, in accordance with the compensation provisions of **Exhibit 6.2**.

B. MEDICAL GROUP shall pay its Practitioners' compensation, including compensation to those independent contractors who have contracted directly with MEDICAL GROUP for the provision of professional services.

C. ABSPC shall pay those independent contractors with whom it has contracted for the provision of services.

II Administrative Services

ABSPC shall provide directly, or through contract (including, without limitation, through contracts with other Sutter Health Affiliates), the administrative support services necessary to administer managed care contracts. This shall include, but not by way of limitation:

A. Claims processing.

B. Collections and disbursements (including, upon request, payments to MEDICAL GROUP's independent contracting providers).

C. Computer equipment and software.

D. Management reports.

III Managed Care Regulatory Compliance

With respect to the provision of services to managed care patients, this Agreement shall be deemed to incorporate by reference all of the applicable requirements of Title 10, California Code of Regulations, Section 1300.67.8.

IV Antitrust Compliance

The parties hereto shall institute appropriate safeguards to ensure that (a) MEDICAL GROUP is not made aware of ABSPC's charges, managed care contracting or other competitively sensitive ABSPC information and (b) ABSPC is not made aware of MEDICAL GROUP's charges, managed care contracting or other competitively sensitive MEDICAL GROUP information.

Exhibit 3.2b

Billings and Collections

1. Subject to Paragraph 4 below, ABSPC shall bill and collect for all ABSPC services. If ABSPC makes a Global Billing Determination, ABSPC shall in addition bill and collect for all Global Services.
2. Insofar as required by the responsible payor, individual physicians' UPIN numbers or National Provider Identifiers will also be used to identify the individual providing the services.
3. MEDICAL GROUP hereby assigns to ABSPC all rights to bill and collect payments for services rendered by MEDICAL GROUP physicians to Clinic patients including services provided at the Clinic, Global Services after a Global Determination, and outpatient ultrasound services delivered to Clinic patients that are uninsured or Medi-Cal fee-for-service patients.
4. Any payments received by MEDICAL GROUP and/or its employed or contracted providers for services provided within the scope of the Professional Services Agreement shall be immediately turned over to ABSPC.
5. Failure to deposit funds and/or permit a daily sweep account described in Paragraph 4 above, shall be deemed a material breach of the Agreement.

* * * * *

Exhibit 5.1

Insurance and Related Matters

- A. ABSPC Insurance. ABSPC shall at all times maintain the following minimum levels of insurance:
1. Comprehensive General Liability Insurance, covering its activities hereunder, in an amount not less than \$2,000,000 per occurrence.
 2. Professional Liability Insurance, covering ABSPC's activities hereunder, in an amount not less than \$1,000,000 per occurrence / \$3,000,000 aggregate.
 3. All employment-related insurance benefits as are required by law for ABSPC's employees (such as workers' compensation, state disability, and unemployment insurance).
 4. ABSPC may provide the above coverage through the Sutter Insurance Services Corporation (SISCO), or such other reputable carriers as may be selected by ABSPC. In addition, in the event ABSPC qualifies for inclusion in the Sutter Health self-insurance program for workers' compensation, it is agreed that ABSPC's workers' compensation coverage may be provided in that manner.
- B. MEDICAL GROUP Insurance. MEDICAL GROUP shall at all times maintain the following minimum levels of insurance:
1. Professional and General Liability Insurance, covering MEDICAL GROUP's activities hereunder, in an amount not less than \$2,000,000 per occurrence/\$5,000,000 aggregate for itself and all Practitioners providing services hereunder. ABSPC's and MEDICAL GROUP's coverages may be provided by separate carriers.
 2. Upon request by ABSPC and subject to the insurer's willingness to do so, MEDICAL GROUP shall also procure a loaned employee endorsement covering ABSPC's employees when they are acting under the direct supervision of MEDICAL GROUP. The added cost of any such endorsement shall be borne by ABSPC.
 3. Directors and Officers Insurance, in an amount to be determined by MEDICAL GROUP, in consultation with ABSPC as to the budgetary impact of such coverage.
 4. All employment-related insurance benefits as are required by law for MEDICAL GROUP's employees (such as workers' compensation, state disability, and unemployment insurance).

5. MEDICAL GROUP shall provide the above coverage through such reputable carriers admitted to do business in California as may be selected by MEDICAL GROUP, subject to the approval of ABSPC, which shall not be unreasonably withheld.

C. Insurance – Supplemental Matters.

1. In the event of termination or expiration of this Agreement, each party shall also procure tail or prior acts coverage, in the same minimum amounts as specified in Paragraphs A1 and B1 above, or otherwise assure continued insurance coverage of its liabilities arising out of this Agreement.
2. MEDICAL GROUP shall provide tail coverage (or require departing Practitioners to procure tail coverage covering services provided during the term of this Agreement) for claims made in respect of acts or omissions by Practitioners leaving MEDICAL GROUP.
3. In the event MEDICAL GROUP enters into any agreements with independent contractors to provide professional services on its behalf, such agreements shall require the independent contractors to obtain tail (or other alternative coverage) for claims made in respect of acts or omissions by such independent contractors during the term of this Agreement.
4. In lieu of maintaining tail coverage, the requirements of Paragraph C1, 2, or 3 may be satisfied by any of the following applicable provisions:
 - a. With respect to ABSPC's responsibilities, maintaining in effect its policy of self-insurance or procuring commercial insurance, as necessary to cover any of its responsibilities not covered by its self-insurance policies.
 - b. With respect to MEDICAL GROUP's responsibilities, assuring that:
 - (1) MEDICAL GROUP remains insured by the same insurer as provides coverage for MEDICAL GROUP, pursuant to a claims-made policy that remains in effect; or
 - (2) The departing Practitioners remain insured by the same insurer as provides coverage for MEDICAL GROUP, pursuant to a claims-made policy that remains in effect; or
 - (3) The independent contractor Practitioner remains insured by the same insurer as provides coverage for such independent contractor, pursuant to a claims-made policy that remains in effect.
 - c. Upon termination of any of the foregoing insurance for any reason, procurement, by the responsible party, of tail or nose coverage as

necessary to assure coverage for services rendered pursuant to this Agreement.

d. In the event the required tail (or alternative coverage) is not timely obtained by the responsible party, the other party may procure such coverage as necessary, and the costs thereof shall be allocated as an expense for which the above-described responsible party shall be charged.

5. Prior to the Effective Date of this Agreement and annually thereafter, the parties shall each deliver to the other certificates of insurance confirming all insurance required hereunder is in full force and effect. Each party shall also give prompt notice if any insurance policy required to be maintained hereunder shall be terminated or otherwise lapse.

* * * * *

Exhibit 6.2

Compensation

1. **Aggregate Compensation.** The aggregate compensation payable to MEDICAL GROUP for all professional, administrative and other services of MEDICAL GROUP and all MEDICAL GROUP Practitioners under this Agreement shall consist of the following (all as more specifically described below):

- A. Compensation for Patient Care Services,
- B. Compensation for Administrative Services, and
- C. Compensation for Ultrasound Services.

From this aggregate compensation received from ABSPC, MEDICAL GROUP shall be solely responsible to pay for the compensation and benefits of all of its Practitioners, its ultrasound technician(s), and all other expenses of MEDICAL GROUP.

2. **Compensation for Patient Care Services.**

2.1 **General Rule.** This Section 2.1 shall determine MEDICAL GROUP's reimbursement for all Patient Care Services except those reimbursable under Medi-Cal-specific billing codes (currently Z1032, Z1034, Z1036 and Z1038). (For Medi-Cal specific billing codes, the services shall be reimbursed pursuant to Section 2.2).

For purposes of this Section 2.1, all capitalized terms not otherwise defined herein shall have the meanings assigned by the Medicare program for purposes of calculating Medicare reimbursement payments by the Centers for Medicare and Medicaid Services to physicians (and NOT certified nurse midwives). The aggregate compensation to be paid by ABSPC to MEDICAL GROUP for professional Patient Care Services rendered by MEDICAL GROUP (through its Practitioners) to Clinic patients during the term of this Agreement shall be the result of the following formula:

(the Work Geographic Practice Cost Index in effect on the date the calculation is made multiplied by the total Work Relative Value Units performed by all Practitioners pursuant to the terms of this Agreement)

plus

(the Professional Liability Insurance Geographic Practice Index in effect on the date the calculation is made multiplied by the total Practice Liability Insurance Relative Value Units performed by all Practitioners pursuant to the terms of this Agreement)

Multiply the result of the foregoing calculation by the current Medicare conversion factor.

At the inception of this Agreement, the current Work Geographic Cost Index is 1.05; the current Professional Liability Insurance Cost Index is 0.64; the current Medicare conversion factor is \$37.90. No Work Relative Value Units for interpretations of ultrasounds shall be included in calculating compensation under this Section 2. Compensation for ultrasound services, including the professional interpretation thereof, shall be calculated under Section 4.

2.2 Medi-Cal Specific Billing Codes. The Clinic anticipates that it will provide services that are billed to the Medi-Cal program under the following Medi-Cal specific billing codes: Z1032 (initial comprehensive visit); Z1034 (office visit, est); Z1036 (10th office visit) and Z1038 (postpartum visit). For these codes only, the compensation shall be the total listed under the table set forth under Section 2.3 below under the heading "EBPMA Fee-PSA." The parties acknowledge that the amounts reimbursable for services delivered to Medi-Cal beneficiaries that are billable under these Medi-Cal-specific billing codes were determined by reference to comparable billing codes under the Medicare system for physician services. If additional Medi-Cal specific billing codes come into existence during the term of this Agreement, ABSPC shall reimburse such services under the formula set forth under Section 2.1, using the Work Relative Value Units and Practice Liability Insurance Relative Value Units attributable to comparable billing codes under the Medicare system.

2.3 Examples of Patient Care Services Compensation on a Per-Service Basis. The result of implementing the compensation payable to EBPMA for Patient Care Services would yield the following payments for the most common services to be provided at the Clinic:

HCRCS	DESCRIPTION	WORK RVU	GPCI Adj Work RVU	PLI RVU	GPCI Adj PLI RVU	Total	EBPMA Fee-PSA
58025	Fetal contract stress test pro fee	0.53	0.56	0.13	0.08	0.64	\$24.32
58425	Antepartum care only	6.22	6.56	1.14	0.73	7.29	\$276.10
58426	Antepartum care only	11.04	11.64	1.98	1.27	12.90	\$489.01
58430	Care after delivery	2.13	2.25	0.50	0.32	2.57	\$97.21
76815	OB US limited, pro fee	0.65	0.69	0.03	0.02	0.70	\$26.69
76818	Fetal biophys profile w/nst	1.05	1.11	0.05	0.03	1.14	\$43.15
76819	Fetal biophys profile w/o nst	0.77	0.81	0.03	0.02	0.83	\$31.48
99201	Office/outpatient visit, new	0.45	0.47	0.03	0.02	0.49	\$18.70
99202	Office/outpatient visit, new	0.88	0.93	0.05	0.03	0.96	\$36.36
99203	Office/outpatient visit, new	1.34	1.41	0.09	0.06	1.47	\$55.71
99204	Office/outpatient visit, new	2.30	2.42	0.12	0.08	2.50	\$94.78
99205	Office/outpatient visit, new	3.00	3.16	0.15	0.10	3.26	\$123.47
99211	Office/outpatient visit, est	0.17	0.18	0.01	0.01	0.19	\$7.03
99212	Office/outpatient visit, est	0.45	0.47	0.03	0.02	0.49	\$18.70

HCPCS	DESCRIPTION	WORK RVU	GPCI Adj -Work RVU	PLI RVU	GPCI Adj PLI RVU	Total	EBPMA Fee PSA
99213	Office/outpatient visit, est	0.92	0.97	0.03	0.02	0.99	\$37.48
99214	Office/outpatient visit, est	1.42	1.50	0.05	0.03	1.53	\$57.93
99215	Office/outpatient visit, est	2.00	2.11	0.08	0.05	2.16	\$81.83
99241	Office consultation	0.64	0.67	0.05	0.03	0.71	\$26.78
99242	Office consultation	1.34	1.41	0.10	0.06	1.48	\$55.95
99243	Office consultation	1.88	1.98	0.13	0.08	2.06	\$78.25
99244	Office consultation	3.02	3.18	0.16	0.10	3.29	\$124.51
99245	Office consultation	3.77	3.97	0.21	0.13	4.11	\$155.68
Z1032	Initial comprehensive	3.77	3.97	0.21	0.13	4.11	\$155.68
Z1034	Office visit	0.92	0.97	0.03	0.02	0.99	\$37.48
Z1036	10th office visit	0.92	0.97	0.03	0.02	0.99	\$37.48
Z1038	Postpartum visit	0.92	0.97	0.03	0.02	0.99	\$37.48

3. **Compensation for Administrative Services.** ABSPC shall pay MEDICAL GROUP the annual sum of Thirty-Six Thousand Dollars (\$36,000) payable in equal monthly payments of Three Thousand Dollars (\$3,000). In the event that MEDICAL GROUP does not perform the number of administrative services hours required under this Agreement, payments for Administrative Services shall be reduced by \$150 per hour for each hour not delivered.

4. **Compensation for Payment of Certain Medically Necessary Ultrasound Services.** ABSPC shall pay MEDICAL GROUP the rate payable for the service under the current Medicare Physician Fee Schedule for both the professional and technical component of screening ultrasounds delivered to Clinic patients who are Medi-Cal fee-for-service beneficiaries or any ultrasound delivered to a Clinic uninsured patient. For calendar year 2007, the global fees for services are set forth below:

HCPCS	Modifier	Short Description	Carrier/ Locality	Non- Facility Price
*76801		Ob us < 14 wks, single fetus	3114007	\$165.87
*76802		Ob us < 14 wks, add'l fetus	3114007	\$98.36
*76805		Ob us >= 14 wks, singl fetus	3114007	\$172.64
*76810		Ob us >= 14 wks, add'l fetus	3114007	\$116.38
*76811		Ob us, detailed, singl fetus	3114007	\$285.41
*76812		Ob us, detailed, add'l fetus	3114007	\$192.87
*76815		Ob us, limited, fetus(s)	3114007	\$112.73
*76816		Ob us, follow-up, per fetus	3114007	\$119.16
*76817		Transvaginal us, obstetric	3114007	\$123.65

ABSPC may, from time to time, review the medical necessity of ultrasound services delivered hereunder and may recoup against any future payments to be made under this Agreement payments made for any medically unnecessary ultrasounds. MEDICAL GROUP may bill, collect and retain all accounts receivables for the technical portion of all ultrasounds it provides to Clinic patients that are not elsewhere described in this Paragraph 4. MEDICAL

GROUP accepts all financial risk associated with the delivery of ultrasound services described in the preceding sentence.

5. **Timing of Payment.** No later than five (5) business days following the end of each calendar month, ABSPC shall procure from its billing company a detailed report of the Relative Value Units (Work Relative Value Units and Practice Liability Relative Value Units, breaking out separately any services billable under Medi-Cal-specific "Z" codes and including the work RVUs and PLI RVUs attributable to such services in Section 2.2) delivered by MEDICAL GROUP through its Practitioners on behalf of Clinic pursuant to this Agreement to the ABSMC Director of Women and Infant Services. Upon receipt of such report, ABSPC shall calculate the total compensation hereunder earned by MEDICAL GROUP for Administrative Services, Patient Care Services and Ultrasound Services during the month. ABSPC shall pay such sums to MEDICAL GROUP no later than five (5) business days following the date the calculation is made.

EXHIBIT 17-2
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**EAST BAY PERINATAL CENTER
dba ALTA BATES SUMMIT PERINATAL CENTER**

MEDICAL DIRECTOR AND PROFESSIONAL SERVICES AGREEMENT

This Medical Director and Professional Services Agreement ("Agreement") is effective as of **July 1, 2014, or the date last signed, whichever is later**, (the "Effective Date"), between **East Bay Perinatal Center**, a California nonprofit public benefit corporation, **dba Alta Bates Summit Perinatal Center** ("ABSPC") and **East Bay Perinatal Medical Associates**, a California general partnership ("Group").

RECITALS

A. ABSPC is a licensed community clinic pursuant to California Health & Safety Code Section 1204(a), is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, and is located at 350 30th Street, Suites 205 and 230, Oakland, California (the "Clinic").

B. Sutter East Bay Hospitals dba Alta Bates Summit Medical Center ("ABSMC") is ABSPC's sole nonprofit general member. Sutter Health is the parent corporation of a regional health care system, comprising a wide range of inpatient and outpatient health care providers (collectively "Sutter Health Affiliates") and services, including, but not limited to ABSMC and other acute care hospitals located throughout Northern California ("Hospitals").

C. ABSPC is in need of experienced, qualified physicians and non-physician providers to provide gynecological, obstetrics and perinatology medical services to ABSPC's patients. ABSPC is also in need of an experienced, qualified physician to serve as medical director for the Clinic, to provide customary medical direction and certain administrative services to the Clinic.

D. Group is a general partnership comprised of physicians and surgeons licensed to practice medicine in the State of California and non-physician providers (*e.g.*, certified nurse midwives, nurse practitioners, and other mid-level professionals) also licensed or otherwise authorized under state to practice in California, providing gynecological, obstetrics and perinatology medical services. Physicians and non-physician providers employed by or contracted with Group are collectively referred to herein as "Practitioners."

E. By the terms of this Agreement, ABSPC wishes to contract with Group, and Group wishes to contract with ABSPC, to provide administrative services, coverage of the clinic and professional services to ABSPC's patients and in furtherance of the following objectives:

1. The ABSPC Clinic's program will provide outpatient gynecological, obstetrics and perinatal services that are an integral part of a comprehensive health care delivery system involving ABSPC, Group, Hospitals and other health care facilities; and

2. ABSPC and Group will provide professional medical services to patients. Any charges to the patients shall be based upon the patient's ability to pay, utilizing a sliding fee scale.

NOW, THEREFORE, the parties agree as follows:

Section 1. GROUP'S SERVICES

1.1 Coverage and Professional Services.

(a) Overview. Group shall be responsible to provide Practitioner coverage of the Clinic and professional services to patients at the Clinic during normal business hours (Monday – Friday 8:30 a.m. – 5:00 p.m.). It is specifically understood and agreed that (except as otherwise agreed by the parties in writing) all patients seen by Group Practitioners are deemed to be Clinic patients if treated at the Clinic. The parties acknowledge that Group's obligation to deliver babies of Clinic patients that present to the Alta Bates campus of ABSMC's hospital is in that certain Perinatal and Obstetrical Coverage and Administrative Services Agreement by and between Group and ABSMC (the "Perinatal and OB Coverage and Administrative Services Agreement"). In the event that ABSPC determines (in its sole discretion) that it may properly bill the Medi-Cal program on a global basis under a provider number assigned to the Clinic for prenatal physician (or nurse midwife) services and the physician (or midwife) services portion of the hospital delivery charges, all patients seen by Group Practitioners in any hospital for obstetrics or perinatology services shall be deemed Clinic patients if the patients received prenatal care at the Clinic for which global billing is appropriate (such patients shall be referred to herein as the "Global Patients;" such a determination shall be referred to herein as the "Global Billing Determination", professional/clinic services provided by ABSPC to Global Patients after a Global Billing Determination, including the physician/midwife services portion of hospital deliveries, shall be referred to herein as the "Global Services").

(b) Coverage Services and Practitioners. Group shall provide a sufficient number of Practitioners to provide professional gynecological, obstetrics and perinatal medical services required for patient care and operation of the Clinic. In furtherance of this requirement, Group shall retain a sufficient complement of Practitioners as necessary: (i) to meet the needs of Clinic patients on an efficient and timely basis; and (ii) for ABSPC and to perform other services as set forth in this Agreement ("Coverage Services"). Practitioners shall be employed by or under contract with Group, pursuant to agreements complying, in all material respects, with the terms and provisions of this Agreement, and extending Group's performance obligations hereunder to its individual Practitioners, as applicable. Such agreements shall, at a minimum, include specific accommodation of those provisions of this Agreement listed in **Exhibit 1.1(b)**. The parties understand the importance of employing or contracting with Practitioners who will maintain sufficient productivity to enable Group and ABSPC to effectively and efficiently achieve their Business Plan, which shall, at a minimum, comport with community standards with respect to productivity and patient access to care. In the event of a substantial decrease in patient volume, ABSPC, through ABSMC's Administrative Director of Women and Infant Services (the "Administrator"), shall have the right, subject to prior written notice to Group, to decrease the staffing requirements described in this Section 1.1.

(c) Professional Services and Performance.

(1) Group shall assure that its Practitioners provide professional services to Clinic patients in accordance with the following: (i) the then-current standards of

care in the medical community; (ii) Group's and ABSPC's reasonable standards of quality and efficiency; (iii) the provisions of this Agreement; and (iv) ABSPC's applicable contracts with third-party payors and/or Sutter Health Affiliates program and conditions of government enrollment certification of the Clinic ("Professional Services").

(2) Group Practitioners shall comply with ABSPC's standard sexual harassment and nondiscrimination policies, as such policies are made known to Group.

(d) Duties and Availability. The duties of Practitioners shall be determined by Group in a manner that will enable ABSPC:

(1) To provide full medical and other licensed professional coverage for Clinic patients during its hours for Clinic consultations, and telephone consultation coverage on a prompt, continuing basis 24 hours per day, seven days per week, including holidays in accordance with generally accepted community standards. Group also provides on-site and on-call services to ABSMC patients, including Clinic patients, under separate compensation under the Perinatal and OB Coverage and Administrative Services Agreement.

(2) To comply with ABSPC's charity care policies, as further described in Section 1.1(f) (Medi-Cal and Charity Care) including but not limited to Group's commitment to:

(i) Treat anyone present at the Clinic and in need of emergent or urgent care, without regard to their ability to pay (it being understood that patients in need of care that cannot be safely provided at the Clinic will be given such emergency care as reasonably possible under the circumstances, until transport to a hospital can be effected); and

(ii) Participate in (or negotiate in good faith to participate in) Medi-Cal contracts, including Alameda Alliance and Medi-Cal Anthem Blue Cross, and to deliver services to ABSPC's Medi-Cal patients, in a nondiscriminatory manner.

(e) Supervision and Training. Group shall assist in the supervision of ABSPC's clinical employees in the performance of Professional Services. Further, Group shall assist or advise ABSPC in training such clinical employees, and shall promptly advise ABSPC in the event any Group physician becomes aware of any problems with such employees.

(f) Medi-Cal and Charity Care. Group shall provide care to all Clinic patients, including Medi-Cal and charity patients, in keeping with ABSPC's policies and ABSPC's status as a charitable organization, and with approved budgets. These policies, criteria, and guidelines shall assure that ABSPC is able to participate in, or make good faith efforts to participate in, Medi-Cal in a nondiscriminatory manner, and that charity care is determined in a manner consistent with principles described in ABSPC's charity care policies, as amended from time to time. Group may not provide free professional care as a professional courtesy that is extended because a patient is a friend, associate, or relative of a professional employee of Group; however, nothing in the foregoing shall preclude providing free professional care to any such patient who qualifies for free care pursuant to ABSPC's charity care policies.

1.2 Medical Director/Administrative Services.

(a) Services. Group shall provide Stuart Lovett, M.D. to serve as Medical Director of the Clinic ("Medical Director"). The Medical Director shall be responsible for carrying out the administrative responsibilities described in **Exhibit 1.2(a)**, for the overall supervision of the Clinic, for supporting the quality of care provided to ABSPC patients by Group Practitioners, for overseeing the clinic operations of the Clinic and for overseeing Group's performance of this Agreement (collectively, "Administrative Services"). The Administrative Services shall be limited to administrative and teaching services and shall not include any professional services to patients. To the extent allowed by law, the Medical Director shall be responsible to the Administrator for performance of services under the Agreement.

(b) Coordination of Services. ABSPC, through the Administrator, and Medical Director shall coordinate their activities in connection with the Service, and Medical Director shall designate one or more back-up physicians to assume the responsibility for such services during the absence of the Medical Director ("Substitute Medical Director(s)"). Group shall be solely responsible for compensating the Substitute Medical Director(s), and shall cause the Substitute Medical Director(s) to perform all duties of Medical Director under this Agreement. It is expressly understood that all rights, duties and responsibilities of Medical Director in this Agreement shall also apply to any Substitute Medical Director.

(c) Time Requirements. Collectively, Medical Director and any Substitute Medical Director(s) shall devote a **maximum of twenty (20) hours per month** performing the Administrative Services described in this Agreement. The monthly compensation paid to Group for Administrative Services shall be capped as provided in Section 3.1(b) (Compensation for Administrative Services) of this Agreement, regardless of the number of hours expended by Medical Director and any Substitute Medical Director(s) above twenty (20) hours in any given month.

(d) Time Reports. Medical Director and any Substitute Medical Director shall contemporaneously record the hours and the actual Administrative Services provided on a monthly basis using ABSPC's electronic time reporting system for administrative services ("Electronic Time Report"), or if approved in advance by ABSPC's Regional Compliance Officer, a paper time report in the format to be provided by ABSPC ("Paper Time Report"), as modified from time to time by ABSPC. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Medical Director, any Substitute Medical Director or Group shall submit electronically or otherwise deliver to the Administrator or his/her designee completed and signed copies of the applicable Time Reports within ten (10) days after the end of each month, or as otherwise requested by Accounts Payable, during the term of this Agreement to allow for ABSPC's verification of services. ABSPC shall have no obligation to pay Group for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of ABSPC, Medical Director, any Substitute Medical Director and Group shall from time to time complete and execute such other time reports or allocation statements on forms provided by ABSPC as may be required to comply with applicable Medicare and other legal requirements.

1.3 Professional Qualifications. Each physician and non-physician Practitioner providing Administrative, Coverage and/or Professional Services shall at all times:

(a) Hold an unrestricted license to practice medicine or osteopathic medicine in the State of California, and at all times remain in good standing with the Medical Board of California or the California Board of Osteopathic Examiners, or, in the case of non-physician practitioners, an unrestricted license or certificate as may be required for the practice of their profession under California law;

(b) For physicians only, be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit;

(c) Be a member in good standing of ABSMC's Alta Bates Medical Staff or, in the case of non-physician Practitioners, be credentialed as an Active Allied Health Professional by ABSMC's Medical Staff ("Allied Health Professional Staff"), and be subject to all of the attendant privileges, responsibilities and conditions of such membership;

(d) Practice good quality medicine and remain in good standing in the community;

(e) Comply with all credentialing, quality and efficiency criteria as may be jointly adopted from time to time by ABSPC and Group;

(f) Participate in such continuing education and training programs, appropriate to their particular specialties, as are required to maintain skills compatible with prevailing standards of medical (or other applicable health care professional) care in the community;

(g) Satisfy conditions for insurability under the professional liability policy or policies described in Section 6.1(a) (Professional Liability Insurance for Practitioners) of this Agreement;

(h) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating provider; and

(i) Be approved in advance by ABSPC to provide services to Clinic patients. A list of the Practitioners to initially provide services hereunder is attached hereto as **Exhibit 1.3(i)** and ABSPC hereby approves the delivery of services by such Practitioners hereunder ("Provider Roster").

1.4 Representations and Warranties. Group represents and warrants to ABSPC that:

(a) Neither Group nor any Practitioner is bound by any agreement or arrangement which would preclude Group from entering into this Agreement, or Group or any Practitioner from fully performing the Administrative, Coverage or Professional Services;

(b) No Practitioner's license or certification to practice medicine in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(c) No physician's medical staff privileges and no non-physician Practitioner's allied health professional staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(d) No Practitioner has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation; and

(e) Group has no information that would reasonably indicate that any Practitioner is not able to perform the services required under this Agreement.

1.5 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify ABSPC of any event causing or likely to cause a failure by a Practitioner to meet the requirements set forth in Section 1.3 (Professional Qualifications) and Section 1.4 (Representations and Warranties) hereof, and any of the following:

(a) Any investigation of a Practitioner or disciplinary proceeding against a Practitioner by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(b) Any malpractice action against a Practitioner or other action against a Practitioner in connection with the Practitioner's administrative or professional services;

(c) Any investigation of a Practitioner or disciplinary action against a Practitioner by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by the Practitioner; or

(d) Any other material breach of the terms of this Agreement.

1.6 Compliance with Rules and Laws. Group shall comply, and shall ensure that Practitioners comply, with all policies, bylaws, rules and regulations of ABSPC and the ABSMC's Alta Bates Medical Staff and Allied Health Professional Staff and applicable standards and recommendations of the Joint Commission. Group also shall comply, and shall ensure that Practitioners comply, with all applicable provisions of federal, state and local laws, rules and regulations, as well as rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the Clinic; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payors whose members/beneficiaries receive care from ABSPC. This shall specifically include compliance with applicable provisions of Title 22 of the California Code of Regulations. Group and Practitioners shall also comply with ABSPC's standard sexual harassment and nondiscrimination policies, as such policies are made known to Group.

1.7 Corporate Compliance Program. Group and each Practitioner shall comply with ABSPC's corporate compliance program. Group and Practitioners shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group or any Practitioner and/or any of the services provided by Group or any Practitioner under this Agreement. Subject to request by ABSPC, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Group or Practitioner, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by ABSPC, Group and Practitioners shall participate in corporate compliance-related seminars and educational programs sponsored by ABSPC and/or Sutter Health and in the development and implementation of compliance policies acceptable to ABSPC and specifically applicable to Group operations.

1.8 Quality Improvement and Risk Management. Group and Practitioners shall participate in the quality improvement, utilization review and risk management programs of ABSPC, and shall cooperate with any related audits, reviews or investigations.

1.9 System-wide Clinical Integration. Group and Practitioners shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by ABSPC.

1.10 Use of ABSPC Facilities. Any facilities, equipment, supplies, or personnel provided by ABSPC shall be used by Group and Practitioners solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. No part of ABSPC's premises shall be used at any time by Group or any Practitioner for their own purposes or as an office for the general practice of medicine.

1.11 Expenses. Neither Group nor any Practitioner shall incur any financial obligation on behalf of ABSPC without ABSPC's prior written consent, which consent shall be in ABSPC's sole and absolute discretion. Group and Practitioners shall be solely responsible for the following: (a) determining or establishing Group's internal Practitioner compensation; (b) Practitioner compensation and benefits; (c) professional license fees and professional association membership fees and dues; (d) professional conventions and meetings; (e) professional liability insurance; (f) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or a Practitioner; and (g) taxes, business permit and license fees, and any other fees, fines, or penalties assessable against Group or its Practitioners.

1.12 Expert Witness Conflict of Interest. Group shall use its best efforts to ensure that Practitioners providing services under this Agreement shall not accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (i) ABSPC, (ii) any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or (iii) any employee of ABSPC or such other Sutter Health hospital or health care facility, if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing shall prevent any Practitioner from testifying as a factual witness in an action in which both Practitioner and ABSPC or Group and ABSPC (or any other hospital or health care facility owned or operated by or affiliated with

Sutter Health, or any employee of ABSPC or such other hospital or health care facility) are defendants.

1.13 Anti-Referral Laws. Nothing in this Agreement, or any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Practitioner and ABSPC or ABSMC. This Agreement is not intended to influence Group's or any Practitioner's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Practitioner from establishing medical staff membership or clinical privileges at any other healthcare facility.

1.14 Best Efforts. Group shall devote its best efforts toward carrying out the terms of this Agreement and shall cause Practitioners to devote sufficient time to support the efficient and effective operation of the Clinic.

1.15 Service Excellence Commitment. Group, along with ABSPC, shall lead the Clinic efforts to enhance patient satisfaction and achieve ABSPC's service goals. Further, the dedication of all Practitioners toward the achievement of this goal is a key indicator of success for ABSPC and an essential element of this Agreement. Group and Practitioners shall participate fully and provide leadership in service excellence teams and other quality improvement efforts focused on obstetrics, gynecology and perinatology services.

1.16 Non-Discrimination. Group and each of its Practitioners shall provide services under this Agreement without regard to any patient's race, color, creed, ethnicity, religion, national origin, ancestry, citizenship, marital status, age, sex, sexual orientation, pre-existing medical condition, physical or mental handicap, financial status, insurance status, economic status, ability to pay for medical services, or any other basis protected by law.

1.17 Cost Control. Group shall use its best efforts to monitor and control the expenses of the Clinic in order to provide clinically appropriate, high quality, cost-effective service in the Clinic.

1.18 Failure to Provide Coverage and Professional Services. In the event Group fails to provide any of the Administrative, Coverage and/or Professional Services as required in this Agreement, ABSPC, in its discretion, shall have the right to terminate this agreement and contract with another provider to render such coverage and/or professional services.

1.19 General Cooperation. Group and its Practitioners shall cooperate with ABSPC to serve the East Bay community. Such cooperation shall include observance of all Clinic policies and procedures; and

Section 2. RESPONSIBILITIES OF ABSPC

2.1 Overview.

ABSPC shall have overall responsibility for the operation of the Clinic, including but not limited to providing policy guidance, facilities, equipment, furnishings, personnel, administrative and management services and supplies, as more specifically described in this Section 2; and as

an integral part thereof, ABSPC shall arrange for Group's delivery of Coverage and Professional Services to Clinic, as described in Section 1 above.

2.2 Equipment, Supplies, Etc. ABSPC shall operate the Clinic with all customary and necessary equipment, furniture, computers, supplies, maintenance, utilities and personnel reasonably required for operation of the Clinic. The selection, deletion and purchasing of additional or replacement equipment and the selection, removal and retention of personnel shall be the exclusive function of ABSPC, with input from Medical Director and/or Group as requested by the Administrator. Notwithstanding any other provision of this Agreement, if Group should ever allege that ABSPC has materially breached its obligations under this Section 2.2, Group's sole and exclusive remedy shall be termination of this Agreement.

2.3 Performance Assessment. ABSPC shall assess Group's performance annually, including monitoring the performance of the contracted services, communicating performance expectations in writing and working with the Group to improve performance as appropriate.

2.4 Responsibility for Clinic. To the extent required by applicable laws and regulations, ABSPC shall retain administrative responsibility for the services rendered to patients in the Clinic.

Section 3. COMPENSATION, ESTABLISHING FEES, BILLING, COLLECTIONS

3.1 Compensation.

(a) Coverage Services.

(1) As payment in full for Group's and Practitioners' Coverage Services provided pursuant to this Agreement, ABSPC shall pay to Group the compensation as set forth in **Exhibit 3.1(a)**.

(2) Group shall have the right, at its sole cost and expense, to audit ABSPC's financial books and records solely to the extent necessary to determine the accuracy of ABSPC's calculation of Group's compensation hereunder, in accordance with procedures that will assure confidentiality and following at least ten (10) days' notice to ABSPC. Any such review or audit shall be conducted during ABSPC's regular business hours. Notwithstanding the foregoing, in no event shall ABSPC share its specific rate information with Group.

(3) ABSPC shall have the right, at its sole cost and expense, to audit Group's financial books and records relating to Group's performance of its obligations under this Agreement, in accordance with procedures that will assure confidentiality and following at least ten (10) days' notice to Group. Any such review or audit shall be conducted during Group's regular business hours. Notwithstanding the foregoing, in no event shall Group share its rate information with ABSPC.

(b) Administrative Services. ABSPC shall pay to Group **One Hundred Fifty Dollars (\$150) per hour** for Medical Director's Administrative Services under Section 1.2 that are documented in completed and signed Time Reports, **up to a maximum of Three Thousand Dollars (\$3,000) per month.** Payments hereunder shall be made to Group and not to

Medical Director, it being specifically understood and agreed that Medical Director shall be and remain on Group's payroll and not on ABSPC's payroll. Neither Group nor any Practitioner shall bill or assert any claim for payment against any patient or payor for Administrative Services performed by Medical Director under this Agreement. Compensation shall be payable monthly within thirty (30) days after ABSPC receives the Time Report for the applicable month.

3.2 Establishing Fees. The professional fee component of standard fee-for-service, preferred provider, managed care and other non-fee-for-service charges for services to Clinic patients shall be established by Clinic.

3.3 Billing and Collection.

(a) **ABSPC Billing.** ABSPC shall be responsible for all billing and collections, including but not limited to billing for fee-for-service patients, discounted fee-for-service patients, capitated patients, or any other payment method established by ABSPC and the responsible payor. These functions may be performed directly by ABSPC, or by contract with a third-party billing or management services organization, including but not limited to, a Sutter Health Affiliate.

(b) **Collections.** Billings will reflect a Clinic provider number identifiable to Clinic. All accounts receivable for services provided on-site at the Clinic and Global Services provided after a Global Billing Determination shall be the property of ABSPC. By the terms of **Exhibit 3.3(b)**, Group specifically authorizes ABSPC to bill and collect fees for services rendered by Group Practitioners to the extent identified in the preceding sentence.

(c) **Billing Information.** Group shall provide timely and complete information as necessary to enable billing and collection of charges for services. This shall include, but is not limited to, all assignments, treatment certifications, and other approvals, consents, or documents necessary or appropriate to assist ABSPC to expeditiously obtain appropriate payment for patient and non-patient services. Group shall also assure that its Practitioners promptly and fully complete medical records and related back-up documentation, and respond and provide such assistance and information as ABSPC may reasonably request to facilitate billing and collection of charges for patient and non-patient services.

(d) **Receipts and Disbursements.** Receipts and disbursements shall be handled as set forth on **Exhibit 3.3(d)**.

3.4 Fair Market Value Compensation. The compensation provided under Section 3.1 represents the parties' good faith determination of the reasonable fair market value compensation for the Administrative and Coverage Services to be provided by Group under this Agreement, taking into account the number of hours of service required and an estimate of the professional fees that Group will be able to collect for patient services.

3.5 Group's Compensation of Individual Practitioners. Group shall be solely responsible for developing and implementing its own system for compensating Practitioners, whether employees or subcontractors of Group; provided, however, that Group represents, warrants and covenants that its compensation system shall at all times be structured in a manner that complies with all federal and state physician self-referral laws (including section 1877 of the

Social Security Act known as the Stark Law), anti-kickback and other applicable laws as they may apply to the direct and indirect relationships created under this Agreement among ABSPC, Group and individual Practitioners. Without limiting the generality of the foregoing, Group represents, warrants, and covenants that compensation paid to each Practitioner shall be fair market value compensation for the service provided by that Practitioner and shall not take into account the value or volume of referrals of "designated health services" (as defined under the Stark Law) or other business generated by the Practitioner for ABSPC.

3.6 No Billing of Patients. Because all billing and collections for professional services provided under this Agreement is performed by ABSPC, neither Group nor Practitioner shall bill or assert any claim for payment against any patient or payor for services performed by Practitioners under this Agreement.

Section 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall commence on the Effective Date and continue for a period of **two (2) years**, unless terminated earlier pursuant to this Section.

4.2 Early Termination. This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by ABSPC.** ABSPC may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(1) The inaccuracy of any representation of Group in Section 1.4 (Representations and Warranties); or

(2) Failure of Group to remove a Practitioner after requested by ABSPC pursuant to Section 5 (Removal of a Practitioner);

(3) Loss or restriction of ABSPC's license or accreditation, or destruction of the Clinic or the portion(s) thereof such that ABSPC is not able to continue the uninterrupted operation of the Clinic;

(4) Either party becomes insolvent or declares bankruptcy;

(5) Either party loses its eligibility to provide Medicare or Medi-Cal services;

(6) Group's failure to obtain or maintain professional liability insurance for Medical Director or ABSPC's inability to maintain insurance for the Medical Director's Administrative Services as specified in Section 6 (Insurance); or

(7) The dissolution or discontinuance of the operations of Group.

(b) **Material Breach.** Subject to the immediate termination rights of the parties set forth in Section 4.2(a), either party shall have the right to terminate this Agreement

upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: failure to provide the Coverage and Professional Services described in Section 1.1 or failure to address any act or omission by a Practitioner that jeopardizes the quality of care provided to ABSPC's patients.

(c) Legal Jeopardy. If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of ABSPC, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(d) Without Cause Termination. Either party may elect to terminate this Agreement, without cause, upon ninety (90) days' advance written notice to the other party.

(e) Termination by Mutual Agreement. This Agreement may be terminated at any time upon the written concurrence of the parties.

4.3 Effect of Expiration or Termination.

(a) Termination of Obligations/No Procedural Rights. Except as otherwise provided in this Section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Continuation of this Agreement is not a condition of ABSMC Alta Bates Medical Staff and Allied Health Professionals Staff membership. This Agreement may be terminated in accordance with Section 4 without the necessity of a hearing with respect to any individual Practitioner before the ABSPC's Board of Directors, a committee of the ABSMC Alta Bates Medical Staff and Allied Health Professionals Staff, or any other body.

(b) Continuation of Patient Services. Except for termination due to legal jeopardy, illegality or risk to patient welfare, Group shall continue to be obligated under this Agreement, until the effective date of its termination, to continue to provide professional services to ABSPC's patients, in full cooperation with ABSPC. In addition, if circumstances applicable to particular patients require the continuation of such services after the effective date of this Agreement's termination, Group shall continue to provide for a reasonable period services to any patient for whom Group had professional responsibility and as required under the terms and conditions of any applicable managed care contracts, the Comprehensive Perinatal Services Program, the Family PACT Program, or Medi-Cal Presumptive Eligibility Program until such time as such agreement(s) or programs may be terminated, or services may be discontinued in

accordance with the terms of such agreement(s) or programs. All such transaction shall be effected in accordance with all applicable professional standards.

(c) Continuation of Billing/Collections Cooperation. Upon termination or expiration of this Agreement, the parties shall continue to cooperate in pursuing the billing and collection of any payments to which either or both may be entitled for services rendered pursuant to this Agreement (including services rendered pursuant to this Section 4.3).

(d) Liability for Breach. With the exception of Section 2.2 (Equipment Supplies, Etc.), a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 14 (Dispute Resolution) of this Agreement.

(e) Vacating Premises and Removing Property. Upon expiration or termination of this Agreement and upon the request of ABSPC, Group shall cause all Practitioners to immediately vacate ABSPC premises and remove all of their personal property. Any personal property that is not removed shall be removed by ABSPC at Group's expense. Group shall promptly surrender to ABSPC all property, equipment, furnishings, appurtenances thereto that is the property of ABSPC, excepting reasonable use and wear thereof.

(f) Proprietary Information and Software. Upon expiration or termination of this Agreement, Group and its Practitioners shall discontinue use of, and shall promptly return to ABSPC, all proprietary property or information, manuals, and other materials associated with or regarding ABSPC and the Clinic, together with all copies thereof. In addition, Group and its Practitioners shall cease to use all software arranged for or provided by ABSPC, and within thirty (30) days after termination shall return to ABSPC all software, related documentation and computer programs, and any copies thereof; provided, however, Group shall have ninety (90) days to return software, documentation, computer programs, and copies related to patient billing.

(g) Survival. The provisions of Sections 1.2(d) (Time Reports), 1.7 (Corporate Compliance Program), 3.3(c) (Billing Information), 4 (Term and Termination), 6 (Insurance), 8 (Property Rights and Use), 9 (Medical Records), 10 (Access to Books and Records), 12 (Confidentiality), 14 (Dispute Resolution), 15 (Notices) and 16 (General Provisions) shall survive termination of Agreement.

(h) Renewal, Extensions, New Agreements. Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Group prior to the first anniversary of the Effective Date of this Agreement.

Section 5. REMOVAL OF A PRACTITIONER

5.1 Cause for Removal. ABSPC may require the immediate cessation of services by any Practitioner and/or require Group to immediately remove from the coverage schedule under

this Agreement any Practitioner for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

- (a) Failure of Practitioner to meet any of the requirements of Section 1.3 (Professional Qualifications);
- (b) The disability of Practitioner (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Practitioner from carrying out one or more of the essential functions of Practitioner's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to ABSPC);
- (c) Practitioner uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription, or is otherwise in violation of ABSPC's drug-free workplace rules;
- (d) Any act or omission by Practitioner that appears to create the risk of imminent danger to the health of any individual pursuant to Alta Bates Medical Staff or Allied Health Professional Staff bylaws; or
- (e) Material failure to abide by any of the terms and conditions of this Agreement applicable to Practitioners.

Section 6. INSURANCE

6.1 Insurance.

(a) Professional Liability Insurance for Practitioners. Group at its sole cost and expense shall maintain professional liability insurance for services rendered by Group and each Practitioner in the Clinic of no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company which is acceptable to ABSPC. Group's insurance shall cover Group's and Medical Director's obligations (as set forth in detail in Exhibit 12.4 of this Agreement) concerning the Protected Health Information received from, or created by Group and/or Medical Director on behalf of, ABSPC pursuant to this Agreement. Upon ABSPC's request, Group shall provide to ABSPC a copy of the Certificates of Insurance evidencing the insurance coverage required under this Section. Such insurance policy or policies shall also provide for not less than thirty (30) days' notice to ABSPC of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section. If Group's professional liability coverage is on a "claims made" rather than an "occurrence" basis, and such coverage is later terminated, or converted to an occurrence coverage (or vice versa), Group shall at its expense obtain prior acts or tail coverage (as applicable) with the same liability limits required above covering all periods that this Agreement is or has been in force.

(b) Professional Liability Insurance for Non-Physicians. ABSPC shall maintain adequate professional liability insurance with respect to ABSPC's non-physician

employees that assist Practitioners under the terms of this Agreement, and ABSPC shall provide a certificate evidencing such coverage to Group upon request.

(c) Insurance for Administrative Services. With respect to Administrative Services provided under this Agreement, Medical Director (and/or any Substitute Medical Director) shall be included in ABSPC's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to the Medical Director's (and/or Temporary Medical Director's), Assistant Medical Director's and Professional Director's Administrative Services and not to any Coverage Services, Clinic Services or any professional services provided to patients.

Section 7. SOLE SOURCE IN PHYSICIAN STAFFING OF THE CLINIC

During the term of this Agreement and subject to any prohibition or limitation of state or federal law or regulations regarding such coverage agreements, Group shall be the sole source provider for all Specialty services in the Clinic, and ABSPC will not contract with or make an independent or other appointment of another provider to provide such services other than non-physician personnel (such as nurses) that are employed by ABSPC. However, nothing in this Agreement affect or limit the privileges or membership of other members of ABSMC's Alta Bates Medical Staff and Allied Health Professionals Staff, and this Agreement will not limit the ability of any patient or referring physician to request Specialty services in the Clinic from a physician or non-physician health care provider who is not part of the Group.

Section 8. PROPERTY RIGHTS AND USE

8.1 Ownership of Clinic Assets. ABSPC shall be the sole owner and holder of all title and interest in the assets of the Clinic, including, but not limited to:

- (a) Except for personal property of Group employees or contractors, all equipment, furnishings, improvements, appurtenances, and moveable assets located in the Clinic;
- (b) All leasehold interests of the Clinic;
- (c) All business records, including but not limited to all books of account and general administrative records pertaining to ABSPC and its operations, and contracts of any kind or nature;
- (d) All ABSPC Proprietary Property as further defined and described at Section 8.3(a) below; and
- (e) All ABSPC Intellectual Property as further defined and described at Section 8.3(d) below.

8.2 Access and Use of Clinic Assets and Records.

(a) Custody of all records generated pursuant to this Agreement shall be held by ABSPC and maintained in accordance with all applicable legal requirements for record retention, confidentiality, and access.

(b) Group shall use the equipment, supplies, services, Clinic and ABSPC Proprietary Property (as defined in Section 8.3(a) below) solely for the provision of services to Clinic patients and other matters related to the conduct of Group's responsibilities hereunder.

(c) Group accepts the Clinic in the condition existing as of the Effective Date, and acknowledges that, to the best of its knowledge, the Clinic premise is in good order, condition, and repair. Use of the Clinic by Group shall be in compliance with all applicable zoning, municipal, county, and state laws, ordinances and regulations governing and regulating the use of such premises, leases of real property for the premise of the Clinic and all covenants, conditions, and restrictions of record. Group further acknowledges that the equipment is, to the best of its knowledge, in good condition and repair as of the Effective Date, and accepts the equipment in the condition existing as of the Effective Date.

(d) Each party shall be entitled, upon request and with reasonable advance notice, to obtain access to and copies of (at its expense) records of the other party, including patient medical records and such other records, that are directly related to the performance of such party's obligations pursuant to this Agreement. However, the foregoing shall not allow for access to records that must necessarily be kept confidential as part of the conduct of either party's relationship with the other party (e.g., records concerning matters such as interactions with counsel and other confidential consultants, or with respect to negotiations between the parties, strategic planning, and subjects of a similar nature, or with respect to managed care or other third-party payor rates).

(e) Records shall be maintained for a period of not less than the longest potentially applicable statute of limitations for the particular record at issue. Both parties' access to records shall survive termination of this Agreement, as necessary to perform any responsibilities arising hereunder, or as may be necessary for the defense of any legal or administrative action or claim respecting such records, or relating to patient care or malpractice claims, or other similar matters to which such records may pertain. At the end of this retention period, and subject to compliance with applicable laws and such special requirements respecting medical records as may be established by the parties, ABSPC shall be entitled to dispose of such records in such manner as it deems necessary or appropriate.

8.3 Proprietary and Intellectual Property.

(a) Proprietary Property. ABSPC shall be the sole owner and holder of all title and interest, including all copyright, patent, service mark, and trademark rights, and interests in the logo, systems, forms, form contracts, policy manuals, marketing, and public relations materials relating to ABSPC and its Clinic, all of which are collectively referred to as "ABSPC Proprietary Property." Group agrees that it shall not at any time knowingly harm, misuse, or bring into disrepute ABSPC Proprietary Property.

(b) Use of Proprietary Property. ABSPC shall have full and absolute discretion with respect to any decision regarding the continued use, sale, disposal, gift, or other disposition of any and all ABSPC Proprietary Property. If so requested by ABSPC in connection with any post-termination disposition of ABSPC Proprietary Property, Group shall execute any release, waiver, or similar documents as necessary to evidence Group's abandonment of any further right or claim thereto.

(c) Corporate and Business Names. With respect to in corporate and business names:

(1) Group shall be the sole owner and holder of all title and interest, including all copyright, service mark, and trademark rights, and other intellectual property interests in its name "East Bay Perinatal Medical Associates."

(2) ABSPC shall be the sole owner and holder of all title and interest, including all copyright, service mark, and trademark rights, and other intellectual property interests in its names "East Bay Perinatal Center" and "Alta Bates Summit Perinatal Center."

(d) Intellectual Property and Assignment ABSPC shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Medical Director, or to which Medical Director is given access by ABSPC in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Medical Director either solely or jointly with ABSPC (collectively "Intellectual Property"). Medical Director and Group shall not have any interest in such Intellectual Property. Accordingly, Medical Director and Group hereby assigns to ABSPC all of Medical Director's and Group's right, title and interest in and to the Intellectual Property. Group further acknowledges Medical Director's obligation to assist ABSPC or its designee, at its expense, in every proper way to secure ABSPC's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to ABSPC or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordations and instruments necessary to obtain, maintain and transfer such rights to ABSPC or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit ABSPC's sole and exclusive intellectual property rights in and to its own data provided to Medical Director or Group during the course of this Agreement.

8.4 Facility Lease. Neither party shall engage in any conduct or activities that shall constitute a default under any facility lease or any other lease or contract relating to the operations of ABSPC and the Clinic.

8.5 Special Provisions Respecting Medicare and Medi-Cal Patients. ABSPC and Group agree to generate such records and make such disclosures as may be required, from time to time, by the Medicare, Medi-Cal, and other third-party payment programs with respect to ABSPC's and Group's participation in this Agreement.

Section 9. MEDICAL RECORDS

9.1 Creation of Medical Records. Group and Practitioners shall cause a complete medical record to be created and maintained for each patient evaluated and/or treated by Group in the Clinic. Group and Practitioners shall complete these medical records within the time frame set forth in the ABSMC Alta Bates Medical Staff and/or Allied Health Professional Staff bylaws. All medical records shall be kept current and complete and prepared in compliance with all state and federal regulations, the regulations of all accreditation institutions in which ABSPC participates, the Medical Staff bylaws, and ABSPC's rules and regulations.

9.2 Patient Records. Any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the sole property of ABSPC. Both during and after the term of this Agreement, Group shall be permitted to inspect and/or duplicate, at Group's expense, any individual chart or record to the extent necessary to meet professional responsibilities to such patient(s) and/or to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent; provided, however, that such inspection or duplication shall be 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 obtained by Group pursuant to this Section 9.2 and pursuant to Section 12 (Confidentiality) of this Agreement. This provision shall survive the expiration or termination of this Agreement for any reason.

9.3 Record Requirements. Each party agrees in connection with the subject matter of this Agreement to cooperate fully with the other party in order to assure that each party will be able to meet all requirements for record keeping associated with public or private third-party payment programs.

Section 10. ACCESS TO BOOKS AND RECORDS

10.1 Access. Group shall maintain and make available all necessary books, documents and records in order to assure that ABSPC will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of four (4) years after furnishing services pursuant to this Agreement, Group shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or any of their duly authorized representatives,

this Agreement, books, documents, and records of Group that are necessary to verify the nature and extent of costs incurred by ABSPC under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period through a subcontract with a related organization, such agreement must contain a clause to the effect that until the expiration of four (4) years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by ABSPC under this Agreement.

10.2 Limits. The availability of Group's agreements, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

Section 11. INDEPENDENT CONTRACTOR RELATIONSHIP

In the performance of all Administrative and Coverage Services, and all duties and other obligations under this Agreement, Group (and each Practitioner) shall be and at all times is, acting and performing as an independent and contractor, and shall not be considered employees, joint venturers or partners of ABSPC for any purpose whatsoever. Group (and its Practitioners) shall look only to Group for setting and administering the terms and conditions of their employment. Except as required by law, ABSPC shall neither have nor exercise any control or direction over the methods by which Group or any Practitioner shall perform services required under this Agreement. The standards of medical practice and professional duties of Group (and its Practitioners) shall be determined by Group. The sole interest and responsibility of ABSPC is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall remain the sole employer of each Practitioner, and neither Group nor any Practitioner shall have a claim under this Agreement or otherwise against ABSPC for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Practitioners; make state or federal unemployment insurance contributions on Practitioners' behalf; withhold state and federal income tax from payments to Practitioners; make disability insurance contributions on behalf of Practitioners; and obtain workers' compensation insurance on behalf of Practitioners. Group and/or each Practitioner, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold ABSPC harmless from and against any claim, liability or expense related to any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by ABSPC to Group under this Agreement and the compensation payable by Group to any Practitioner or any other physician or non-physician provider employed, contracted or engaged by Group.

Section 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

12.1 ABSPC Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to ABSPC hereunder, Group and Practitioners may have access to certain information of ABSPC that is confidential and constitutes valuable, special and unique property of ABSPC ("ABSPC Information"). Neither Group nor any Practitioners will at any time disclose to others, use, copy or permit to be copied, without ABSPC's express prior written consent, except pursuant to Practitioners' duties hereunder, any confidential or proprietary information of ABSPC. Confidential or proprietary information shall include, but not be limited to, information that concerns ABSPC's patients, costs, prices and treatment methods at any time used, developed or made by ABSPC, and that is not otherwise available to the public.

12.2 Terms of this Agreement. Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with ABSPC or any Sutter Health Affiliate), neither Group nor any Practitioner shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by ABSPC.

12.3 Patient Information. Group shall not disclose, and shall ensure that the Practitioners not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by ABSPC in writing, any patient or medical record information regarding ABSPC patients, and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of ABSPC and ABSMC Alta Bates Medical Staff and Allied Health Professionals Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act, (Public Law 104-191 ("HIPAA") and Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. Section 17921 et seq.) and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.).

12.4 Business Associate Requirements. By signing and/or acknowledging this Agreement, the parties and Medical Director hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"). The parties and Medical Director also agree to comply with the requirements set forth in **Exhibit 12.4** ("Business Associate Requirements") attached to this Agreement and incorporated herein by reference.

12.5 Intellectual Property Ownership and Assignment. ABSPC shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Medical Director (including any Substitute Medical Director) or Group, or to which Medical Director (including any Substitute Medical Director) or Group is given access by ABSPC in connection

with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Medical Director (including any Substitute Medical Director) or Group either solely or jointly with ABSPC (collectively "Intellectual Property"). Neither Medical Director (including any Substitute Medical Director) nor Group shall have any interest in such Intellectual Property. Accordingly, Group and Medical Director (including any Substitute Medical Director) hereby assign to ABSPC all of Medical Director's (including any Substitute Medical Director's) and/or Group's right, title and interest in and to the Intellectual Property. Medical Director (including any Substitute Medical Director) and Group further acknowledge their obligation to assist ABSPC or its designee, at its expense, in every proper way to secure ABSPC's, or its designee's, rights in the Intellectual Property and any copyrights, patents, trademarks, moral rights or other intellectual property rights relating thereto. This obligation includes maintaining and preserving accurate and complete records of all pertinent information and data with respect thereto ("Records"), disclosing to ABSPC or its designee all Intellectual Property and Records, and executing all applications, specifications, oaths, assignments, recordings and instruments necessary to obtain, maintain and transfer such rights to ABSPC or its designee (or, if not transferable, to waive such rights). The parties further agree that nothing in this paragraph or in this Agreement shall limit ABSPC's sole and exclusive intellectual property rights in and to its own data provided to Medical Director (including any Substitute Medical Director) or Group during the course of this Agreement.

Section 13. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

Additionally, each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party or any of its officers, directors, agents, subcontractors or employees, of its obligations under the Agreement with respect to PHI.

Section 14. DISPUTE RESOLUTION

14.1 Meet and Confer. In the event of any dispute between Group (including Practitioners) and ABSPC arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good

faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 14.2 (Agreement to Arbitrate).

14.2 Agreement to Arbitrate. The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 14.1 (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Streamlined Arbitration Rules and Procedures of JAMS, which service shall be selected by ABSPC at its sole discretion.

14.3 Initiating Arbitration. To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 15 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

14.4 Powers of Arbitrator. The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require ABSPC to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

14.5 Attorneys' Fees and Costs. The cost of arbitration shall be shared equally by ABSPC and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 14.4 (Powers of Arbitrator).

14.6 Venue. Venue for the arbitration shall be the county in which the contract was executed or the County of Sacramento.

Section 15. NOTICES

15.1 Notices. All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W9 tax form to ABSPC. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection.

If to ABSPC: East Bay Perinatal Center dba Alta Bates Summit
Perinatal Center
350 Hawthorne Avenue
Oakland, California 95609-3108
Attn: Charles J. Prosper, President and Chief Executive Officer

With a copy to: Sutter Health Office of the General Counsel
633 Folsom Street, 7th Floor
San Francisco, California 94197
Attn: East Bay Regional Counsel

If to Group: East Bay Perinatal Medical Associates
350 30th Street, Suite 208
Oakland, California 94609
Attn: Stuart M. Lovett, M.D., President

With a copy to: Carol Lucas
BuchalterNemer, A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, California 90017

15.2 Notice to Practitioners. All obligations and prohibitions imposed on Group pursuant to this Agreement are equally applicable to each Practitioner engaged by Group to provide services in the Clinic. Group shall ensure that each Practitioner received a copy of this Agreement and agrees to be bound by its terms and conditions.

Section 16. GENERAL PROVISIONS

16.1 Recitals, Exhibits, and Appendices. The recitals, exhibits, and appendices attached hereto or referred to herein and any Statements of Work between the parties that refer to this Agreement, are hereby incorporated into this Agreement by reference.

16.2 Ambiguities. This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law (including California Civil Code Section 1654 or any other similar applicable federal or state law or statute) or legal decision that would require interpretation of any ambiguities to be

resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

16.3 No Waiver. No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

16.4 Severability. Except as provided in Section 4.2(c) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the Term and Termination provisions of this Agreement.

16.5 Assignment/Subcontracting. The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If ABSPC gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all Time Reports submitted to ABSPC, and (ii) pay the subcontracting physician at the same rate, or a prorated portion of the same rate, specified in Section 3.1 (Compensation). Notwithstanding the foregoing, ABSPC may assign its rights and obligations under this Agreement to another Sutter Health affiliate without the other party's consent.

16.6 Use of Name. Group shall not use the name of ABSPC or any affiliated entity of ABSPC, or any of their trademarks, service marks, or trade names for any purpose without the prior written consent of ABSPC.

16.7 No Third Party Rights. Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

16.8 Governing Law. This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the State of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

16.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

16.10 Other Service Agreements. ABSPC's TractManager databases include copies of all other agreements under which Group, any Group physician (or any immediate family member of Group physician), provides services to ABSPC.

16.11 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement.

16.12 Excess Payment. If ABSPC makes a payment or payments to Group in excess of the amount(s) due and payable under this Agreement (the "Excess Payment"), ABSPC may offset the Excess Payment from future payments owed to Group under this Agreement, any other existing agreement between the parties, or any future agreement entered into between the parties. In the event that there are no future payments owed under this Agreement or other existing agreements between the parties, or that future payments are not sufficient to cover the Excess Payment, ABSPC may seek repayment of the Excess Payment or the remaining Excess Payment from Group and Group shall repay within ninety (90) days. If Group cannot repay the entire Excess Payment within ninety (90) days, the parties may agree upon a reasonable repayment plan, in which case Group shall execute a promissory note. Interest shall accrue on any repayment plan agreed upon pursuant to this Section at a per annum rate equal to the prime rate reported in The Wall Street Journal on the date the first repayment payment is made plus two (2) percentage points, but in no event in excess of the maximum rate of interest ABSPC is permitted to charge from time to time under applicable law.

16.13 No Referrals/Non-Exclusivity. Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party.

16.14 Tax Reporting. To ensure proper tax reporting of the compensation paid under this Agreement, Group shall complete, execute and deliver to ABSPC an IRS Form W 9 and California Form FTB-590 (if requested by ABSPC) which sets forth the correct taxpayer identification number for Group. To the extent required by law, ABSPC shall report all payments to Group on IRS form 1099 and its state law counterpart.

16.15 Counterparts. This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

16.16 Execution. By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

GROUP:

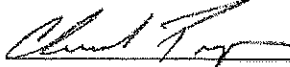
**East Bay Perinatal Medical Associates, a
California general partnership**

By: _____
Stuart Lovett, M.D., President

Date: _____

ABSPC:

**East Bay Perinatal Center dba Alta Bates
Summit Perinatal Center, a California
nonprofit public benefit corporation**

By: _____
Charles J. Prosper, President and
Chief Executive Officer

Date: 6/27/14

MEDICAL DIRECTOR ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of this Agreement and accepts the position of Medical Director, and agrees to carry out the duties and obligations of Medical Director as set forth in this Agreement. Medical Director agrees to comply with the terms of this Agreement applicable to Medical Director's Administrative Services.

By: _____
Stuart Lovett, M.D.

Non-Binding Administrative Acknowledgment Follows

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

GROUP:

**East Bay Perinatal Medical Associates, a
California general partnership**

By: Stuart Lovett
Stuart Lovett, M.D., President

Date: 6/22/14

ABSPC:

**East Bay Perinatal Center dba Alta Bates
Summit Perinatal Center, a California
nonprofit public benefit corporation**

By: _____
Charles J. Prosper, President and
Chief Executive Officer

Date: _____

MEDICAL DIRECTOR ACKNOWLEDGMENT

The undersigned physician hereby acknowledges receipt of a copy of this Agreement and accepts the position of Medical Director, and agrees to carry out the duties and obligations of Medical Director as set forth in this Agreement. Medical Director agrees to comply with the terms of this Agreement applicable to Medical Director's Administrative Services.

By: Stuart Lovett
Stuart Lovett, M.D.

Non-Binding Administrative Acknowledgment Follows

NON-BINDING ADMINISTRATIVE ACKNOWLEDGMENT

The undersigned acknowledges responsibility for administrative oversight of the contract preparation process. This signature is not required for this Agreement to be effective or binding and is not incorporated therein.

Date: 6/28/14

By: StOB
Stephen F. O'Brien, M.D., Chief Medical
Executive, Sutter East Bay Hospitals dba
Alta Bates Summit Medical Center

EXHIBIT 1.1(b)

Group Employment Contract Requirements

I. General

Group Employment Agreements shall be consistent with the terms of this Medical Director and Professional Services Agreement, and shall extend to the individual Group employees such responsibilities and performance obligations as necessary to enable Group to meet its responsibilities under this Medical Director and Professional Services Agreement.

II. Specific Requirements

In keeping with the foregoing, Group Employment Agreements shall include, but not by way of limitation, specific requirements with respect to:

- a. Compliance with the requirements set forth at Section 1 of this Medical Director and Professional Services Agreement;
- b. Compliance with the termination and post termination requirements set forth at Section 4 of this Medical Director and Professional Services Agreement; and
- c. Acknowledgment of the property rights and use provisions set forth at Section 8 of this Medical Director and Professional Services Agreement.

* * * * *

EXHIBIT 1.2(a)

Administrative Services

Medical Director, and to the extent applicable, any Substitute Medical Director shall be responsible to perform the administrative services set forth below.

a. **Overall Quality of Clinical Care.** Medical Director is responsible for the overall quality of clinical care that is provided in the Clinic. In furtherance of this requirement, Medical Director shall:

- Ensure appropriate scheduling of Practitioners to meet the clinical needs of Clinic patients;
- Oversee clinical management of perinatologists, midwives, and nurse practitioners;
- Exercise authority over hiring and termination of physicians, midwives, and nurse practitioners;
- Evaluate performances of physicians, midwives, and nurse practitioners in the Clinic and make appropriate decisions based on performance evaluations;
- Develop and participate in a system of peer review that ensures the quality of clinical care and the development of appropriate protocols; and
- Collaborate with ABSMC Administration to provide quality, cost-effective care to the specific population served by the Clinic.

b. **Medical Oversight.** Medical Director shall provide medical oversight for the Clinic.

c. **Policies and Procedures.** Medical Director shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Clinic. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel.

d. **Quality Assurance and Utilization.** In cooperation with ABSPC's and ABSMC's formal quality assurance program, Medical Director shall develop and implement appropriate quality assurance, performance and risk management activities for the Clinic. In addition, Medical Director shall monitor utilization and quality of services, and shall recommend steps necessary to remedy deficiencies therein.

e. **Budgets.** Medical Director shall assist ABSPC's administration in the development of operating and capital expenditure budgets for the proper and efficient operation of the Clinic. Medical Director shall assist ABSPC in operating the Clinic efficiently and in accordance with approved budgets and shall exercise diligence in keeping controllable costs of the Clinic to a minimum.

f. **Licensure.** Medical Director shall provide such professional guidance and supervision as necessary to maintain the Center's license as a community Clinic.

- g. **Credentialing.** Medical Director shall ensure the appropriate credentialing and delineation of clinical privileges for perinatologists, midwives, and nurse practitioners.
- h. **Dispute Resolution.** Medical Director shall manage the relationships and assist in the resolution of issues and disputes that may arise among covering providers and/or other members of Clinic staff.
- i. **Equipment.** Medical Director shall advise ABSPC on the selection, maintenance, and repair of equipment for the Clinic, and shall arrange for or advise ABSPC on the need for maintenance or repair of equipment within the Clinic.
- j. **Patient Complaints/Injuries.** Medical Director shall evaluate and address all complaints and inquiries of patients concerning the Clinic.
- k. **Personnel.** Medical Director shall advise ABSPC in the recruiting, evaluation, and retention of key non-Practitioner personnel working in the Clinic.
- l. **Compliance.** Medical Director shall comply with the ABSPC's and Sutter Health's corporate compliance programs and cooperate with any corporate compliance audits, reviews, or investigations which relate to the Clinic.
- m. **CLIA Laboratory Director.** Medical Director shall serve as the Laboratory Director under the Centers for Medicare & Medicaid Services' Clinical Laboratory Improvement Amendments to ensure overall operation and administration of the laboratory in accordance with regulatory requirements. In furtherance of thereof, Medical Director shall ensure that:
- Testing systems in the laboratory provide quality services in all aspects of test performance;
 - Physical and environmental conditions of the laboratory are adequate and appropriate for the testing performed;
 - The environment for employees is safe from physical, chemical, and biological hazards, and safety and biohazard requirements are followed;
 - Sufficient numbers of appropriately educated, experienced, and/or trained personnel who provide appropriate consultation, properly supervise, and accurately perform tests and report test results in accordance with the written duties and responsibilities specified by the Director, are employed in the laboratory;
 - New test procedures are reviewed, included in the procedure manual, and followed by personnel; and
 - The employee's responsibilities and duties are specified in writing.
- n. **Other Responsibilities.** Medical Director shall perform such other responsibilities as reasonably necessary for the proper operation of the Clinic.

EXHIBIT 1.3(i)

Provider Roster

Physicians

Stuart Lovett, M.D.
Jonathan Weiss, M.D.
Ralph DePalma, M.D.
David Marinoff, M.D.
Janet Goldman, M.D.
Leon Richmond, M.D.

Certified Nurse Midwives

Kathleen Belzer
Mary Diogo
Gwendolyn Haynes
Sallie Peters Hill
Natalie Martina
Andrea Pfeffer
Elizabeth Simms
Amy Willats

Nurse Practitioners

Mary Faulkner
Beahwa Yeoh
Shana Zatinsky
Cecille Guarino

Registered Dietitians

Missy Delmar
Kathryn Murphy
Evelyn Bird

Health Educators

Jennifer Beard
Sabrina Rascon

EXHIBIT 3.1

Compensation

1. Compensation for Professional Services.

1.1 General Rule. This Section 1.1 shall determine Group's reimbursement for all Professional Services except those reimbursable under Medi-Cal-specific billing codes (currently Z1032, Z1034, Z1036 and Z1038). (For Medi-Cal specific billing codes, the services shall be reimbursed pursuant to Section 1.2).

For purposes of this Section 1.1, all capitalized terms not otherwise defined herein shall have the meanings assigned by the Medicare program for purposes of calculating Medicare reimbursement payments by the Centers for Medicare and Medicaid Services to physicians (and NOT certified nurse midwives). The aggregate compensation to be paid by ABSPC to Group for Professional Services rendered by Group (through its Practitioners) to Clinic patients during the term of this Agreement shall be the result of the following formula:

(the Work Geographic Practice Cost Index in effect on the date the calculation is made multiplied by the total Work Relative Value Units performed by all Practitioners pursuant to the terms of this Agreement)

plus

(the Professional Liability Insurance Geographic Practice Index in effect on the date the calculation is made multiplied by the total Practice Liability Insurance Relative Value Units performed by all Practitioners pursuant to the terms of this Agreement)

Multiply the result of the foregoing calculation by the current Medicare conversion factor.

At the inception of this Agreement, the Work Geographic Cost Index is 1.058; the Professional Liability Insurance Cost Index is 0.516; and the Medicare conversion factor is \$24.6712.

1.2 Medi-Cal Specific Billing Codes. The Clinic anticipates that it will provide services that are billed to the Medi-Cal program under the following Medi-Cal specific billing codes: Z1032 (initial comprehensive visit); Z1034 (office visit, est); Z1036 (10th office visit) and Z1038 (postpartum visit). For these codes only, the compensation shall be the total listed under the table set forth under Section 1.3 below under the heading "EBPMA Fee-PSA." The parties acknowledge that the amounts reimbursable for services delivered to Medi-Cal beneficiaries that are billable under these Medi-Cal-specific billing codes were determined by reference to comparable billing codes under the Medicare system for physician services. If additional Medi-Cal specific billing codes come into existence during the term of this Agreement, ABSPC shall reimburse such services under the formula set forth under Section 1.1,

using the Work Relative Value Units and Practice Liability Insurance Relative Value Units attributable to comparable billing codes under the Medicare system.

1.3. Examples of Professional Services Compensation on a Per-Service Basis.

The result of implementing the compensation payable to EBPMA for Professional Services would yield the following payments for the most common services to be provided at the Clinic:

HCPCS	DESCRIPTION	EBPMA Fee PSA
59025	Fetal contract stress test pro fee	\$9.12
76815	OB US limited, pro fee	\$25.18
99201	Office/outpatient visit, new	\$22.90
99202	Office/outpatient visit, new	\$34.30
99203	Office/outpatient visit, new	\$57.20
99204	Office/outpatient visit, new	\$68.90
99205	Office/outpatient visit, new	\$82.70
99211	Office/outpatient visit, est	\$12.00
99212	Office/outpatient visit, est	\$18.10
99213	Office/outpatient visit, est	\$24.00
99214	Office/outpatient visit, est	\$37.50
99215	Office/outpatient visit, est	\$57.20
99241	Office consultation	\$30.60
99242	Office consultation	\$47.20
99243	Office consultation	\$59.50
99244	Office consultation	\$81.40
99245	Office consultation	\$102.20
Z1032	Initial comprehensive	\$126.31
Z1034	Office visit	\$60.48
Z1036	10th office visit	\$113.26
Z1038	Postpartum visit	\$60.48

2. **Timing of Payment.** No later than five (5) business days following the end of each calendar month, ABSPC shall procure from its billing company a detailed report of the Relative Value Units (Work Relative Value Units and Practice Liability Relative Value Units, breaking out separately any services billable under Medi-Cal-specific "Z" codes and including the work RVUs and PLI RVUs attributable to such services in Section 1.2) delivered by Group through its Practitioners on behalf of the Clinic pursuant to this Agreement to the Administrator. Upon receipt of such report, ABSPC shall calculate the total compensation hereunder earned by Group for Administrative Services and Professional Services during the month. ABSPC shall pay such sums to Group no later than five (5) business days following the date the calculation is made.

EXHIBIT 3.3(b)

Billings and Collections

1. Subject to Paragraph 4 below, ABSPC shall bill and collect for all ABSPC services. If ABSPC makes a Global Billing Determination, ABSPC shall in addition bill and collect for all Global Services.
2. Insofar as required by the responsible payor, individual physicians' UPIN numbers or National Provider Identifiers will also be used to identify the individual providing the services.
3. Group hereby assigns to ABSPC all rights to bill and collect payments for services rendered by Group physicians to Clinic patients including services provided at the Clinic and Global Services after a Global Determination delivered to Clinic patients that are uninsured or Medi-Cal fee-for-service patients.
4. Any payments received by Group and/or its employed or contracted providers for services provided within the scope of this Agreement shall be immediately turned over to ABSPC.
5. Failure to deposit funds and/or permit a daily sweep account described in Paragraph 4 above, shall be deemed a material breach of the Agreement.

* * * * *

EXHIBIT 3.3(d)

Receivables Management

I Receipts and Disbursements

- A. Revenues from managed care contracts shall be deposited in ABSPC's accounts, subject to payment by ABSPC of compensation to Group for its services, in accordance with the compensation provisions of Exhibit F.
- B. Group shall pay its Practitioners' compensation, including compensation to those independent contractors who have contracted directly with Group for the provision of professional services.
- C. ABSPC shall pay those independent contractors with whom it has contracted for the provision of services.

II Managed Care Regulatory Compliance

With respect to the provision of services to managed care patients, this Agreement shall be deemed to incorporate by reference all of the applicable requirements of Title 10, California Code of Regulations, Section 1300.67.8.

EXHIBIT 12.4

BUSINESS ASSOCIATE REQUIREMENTS

ABSPC and Group understand and agree that in providing the Administrative Services set forth in this Agreement, Group and Medical Director are each acting as a Business Associate of ABSPC (who shall be referred to in this Exhibit as the "Covered Entity").

The parties desire to comply with federal and California laws regarding the Use and Disclosure of individually identifiable health information, in particular with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under these laws.

Now therefore, in consideration of the promises set forth in this Agreement, the parties agree as follows:

1. **Definitions.** The parties agree that any capitalized terms shall have the same definition as given to them under HIPAA and HITECH and regulations promulgated under these laws.
2. **Protected Health Information.** Business Associate agrees that it shall keep confidential all Individually Identifiable Health Information protected under California and federal law, including, but not limited to, Protected Health Information that Business Associate receives from Covered Entity, or creates or receives on behalf of Covered Entity (hereafter "PHI"). Such PHI shall be and remain the property of Covered Entity.
3. **Obligations of Business Associate.** Business Associate shall limit its Use and Disclosure of PHI only as necessary and appropriate to fulfill its specific obligations to Covered Entity, and agrees to the following, without limiting the foregoing:
 - (a) **Use of Protected Health Information ("PHI"):** Business Associate agrees that it, and its agents, employees and Subcontractors, shall not Access, Use or Disclose PHI other than as permitted or required by the Agreement or as required by law.
 - (b) **Safeguards:** Business Associate shall comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement. Additionally, Business Associate will comply with the following specific requirement relevant to Subpart C of 45 CFR Part 164 ("Security Rule"):
 - i. Business Associate will securely sanitize all media containing Covered Entity's PHI (i.e., make the PHI unreadable or unusable through encryption or physical destruction) prior to disposal or re-use.
 - (c) **Reporting:** Business Associate shall report to the Privacy Officer of Covered Entity any Use or Disclosure of protected health information not provided for by the

Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR § 164.410 within forty-eight (48) hours of Discovery. Reports shall include, to the extent possible: A description of what happened, including the date of the discovery; the types of PHI that were involved; any steps individuals should take to protect themselves from potential harm; and what Business Associate is doing to investigate, mitigate, and protect against further unauthorized Disclosures or Breaches. Business Associate shall also promptly report in electronic form to the Security Officer of Covered Entity any Security Incident relating to Electronic PHI of which Business Associate becomes aware, except that no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, such as "pings" on a firewall. Reports required under section shall be made to the following individuals, as applicable:

Sutter Health, Chief Privacy Officer
2200 River Plaza Drive, 3rd Fl E
Sacramento, CA 95833
Ph: (916) 286-6587

Sutter Health, Chief Information Security Officer
3707 Schriever Avenue
Mather, CA 95655
Ph: (916) 454-8975

(d) Workforce, Agents and Subcontractors: Business Associate shall not disclose PHI to any member of its Workforce, or to any of its agents or Subcontractors, unless such Disclosure is necessary for Business Associate to fulfill the terms of the Agreement. Business Associate shall also ensure that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information in accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(1). Business Associate shall not disclose PHI, nor allow an agent or Subcontractor to Disclose PHI, outside of the United States of America without the express written consent of Covered Entity.

(e) Access to PHI: Upon the request by Covered Entity, Business Associate shall promptly provide PHI to Covered Entity within five (5) days to permit any individual whose PHI is maintained by Business Associate to have Access to and to copy his/her PHI in accordance with 45 CFR § 164.524, and applicable California law. Such PHI shall be produced in the format requested by Covered Entity, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. If an individual contacts Business Associate directly for such Access, Business Associate shall direct the individual to contact the Covered Entity. This requirement to provide Access to the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(f) Amendment of PHI: Upon the request of Covered Entity, Business Associate shall amend PHI and/or make PHI available to Covered Entity within five (5) business days for amendment, in such manner as Covered Entity may from time to time request, in accordance with 45 CFR § 164.526 and applicable California law. If an individual contacts Business Associate directly to amend PHI, Business Associate shall direct the individual to contact the Covered Entity. This requirement to amend the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(g) Accounting of Disclosures of PHI: Upon the request of Covered Entity, Business Associate shall provide to Covered Entity within five (5) business days an accounting of all Disclosures of PHI in order for Covered Entity to comply with 45 CFR § 164.528 Business Associate shall provide the date of the Disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the Disclosure. If an individual contacts Business Associate directly for such an accounting, Business Associate shall direct the individual to contact the Covered Entity.

(h) Minimum Necessary: Business Associate and its agents or Subcontractors shall request from Covered Entity and so Use and disclose only the Minimum Necessary PHI necessary to accomplish the purpose of the request, Use, or Disclosure. In all cases, Business Associate agrees to comply with guidance issued from time to time by the Secretary of Health and Human Services regarding Minimum Necessary.

(i) Prohibition on Sale of PHI: Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI.

(j) Audits, Investigations Inspections: Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created by the Business Associate on behalf of, the Covered Entity available to the Secretary of the United States Department of Health and Human Services ("Secretary"), or the Secretary's designee, for purposes of determining the Covered Entity's and/or Business Associate's compliance with the applicable laws and regulations. Business Associate shall cooperate with Covered Entity related to government or regulatory investigations, including making Business Associate's information relating to the Use and Disclosure of PHI available to Covered Entity.

(k) Mitigation Procedures: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI in violation of this Agreement.

(l) Legal Process: In the event that Business Associate is served with legal process (e.g., a subpoena) or request from a government agency (e.g., the Secretary) that potentially could require the Disclosure of PHI, Business Associate shall provide prompt notice of such legal process to the Privacy Officer of Covered Entity. In addition,

Business Associate shall not disclose the PHI without the express written consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a request by a governmental regulatory agency under its statutory or regulatory authority.

4. **Permitted Uses and Disclosures by Business Associate.**

(a) **Management and Administration.** Business Associate and its respective agents, employees and Subcontractors are authorized to Use or disclose PHI for Business Associate's own proper management and administration, and to fulfill any of Business Associate's legal responsibilities; provided, however, that the Disclosures are required by law or Business Associate has received from any third-party recipient of PHI written assurances that (i) the PHI will be held confidentially and Used or further disclosed only as required by law or for the purposes for which it was disclosed to the third-party, and (ii) the third-party will notify Business Associate of any instances of which the third-party becomes aware that the confidentiality of the PHI has been breached.

5. **Obligations of Covered Entity.**

(a) **Authorizations:** Covered Entity shall obtain from individuals any applicable consents, authorizations and other permissions necessary or required by law for Covered Entity and Business Associate to fulfill their obligations under this Agreement.

(b) **Restrictions:** Covered Entity shall notify Business Associate in writing of any unique restrictions in the Use or Disclosure of an individual's PHI that Covered Entity has agreed to that may affect Business Associate's performance of its obligations under this Agreement. Covered Entity must agree to the request of an individual to restrict Disclosure of PHI about the individual to a Health Plan if the Disclosure is for the purpose of carrying out Payment or Health Care Operations and is not otherwise required by law; and the PHI pertains solely to a health care item or service for which the individual, or person other than the Health Plan on behalf of the individual, has paid Covered Entity in full.

(c) **Revocations:** Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an individual relating to the Use or Disclosure of PHI, if such changes or revocation may affect Business Associate's performance obligations under this Agreement.

6. **Procedure Upon Termination of the Agreement.** Upon termination of the Agreement, and unless the Agreement is renewed, Business Associate shall return or destroy, at Covered Entity's option, all PHI that it maintains in any form, and shall retain no copies of PHI, if feasible. Business Associate shall certify to Covered Entity that Business Associate has destroyed and/or returned all PHI, in accordance with Covered Entity's request. If the parties agree that the return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections set forth in this Exhibit to the PHI, and limit further Use of the PHI to those purposes that make the return or destruction of the PHI infeasible. Business Associate

shall notify Covered Entity what PHI Business Associate shall retain. This obligation on Business Associate shall survive any termination of the Agreement.

EXHIBIT 18
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

File EB Perinatal
Coverage

*Alta Bates Summit
Medical Center*

A Sutter Health Affiliate

Date: August 19, 2008

To: Leo Hirai: Sinaiko Healthcare Consulting

From: Victor E. Meinke – Vice President, Business Development
Alta Bates Summit Medical Center

Subject: East Bay Perinatal Medical Associates: History and Summary of
Agreements

After our conversation this afternoon, I thought you may find it useful to have some history and a summary of the existing agreements between Alta Bates Summit Medical Center ("ABSMC") and East Bay Perinatal Medical Associates ("EBPMA").

EBPMA is a medical group that is owned by three partners. The partners have been involved with Alta Bates and Summit for about 20 years, providing high risk obstetrics (perinatology) consulting services to the hospital and the community physicians, management of the obstetrical and midwife 24 hour call panels for the hospital, and (prior to August 2007) a low risk, Medi-Cal (primarily) prenatal clinic. EBPMA has also been a valuable partner to ABSMC in expanding its high risk consulting practice to areas outside of the primary footprint of ABSMC, into the San Ramon, Martinez, Fremont and other geographical areas.

About 18 months ago, EBPMA began to struggle financially. Losses resulted from the operations of the low risk perinatal clinic and the expansion of their high risk services to outlying communities. In August 2007, ABSMC took over the operations of this low risk clinic (and renamed it the Alta Bates Summit Perinatal Center, "ABSPC") as a wholly owned subsidiary of ABSMC. In addition, various other agreements between ABSMC and EBPMA were restructured. There were three agreements that resulted from this restructuring with EBPMA, as follows:

- An agreement under which EBPMA provides 24 hour obstetrician and certified nurse midwife coverage for ABSMC (the Alta Bates campus, where deliveries are performed) and provides certain medical directorship duties was executed. This agreement is called the Perinatal Service Agreement. EBPMA is compensated for these services under a flat amount per month, based upon the agreement, in line with the fair market valuation performed at that time;

Alta Bates Summit Medical Center
History and Summary of Agreements with EBPMA
August 19, 2008
Page 2

- An agreement under which EBPMA provides perinate and certified nurse midwife professional services to patients of the ABSPC, and medical directorship administrative services. This agreement is called the Professional Services Agreement. EBPMA is compensated on a fee for service basis based upon Medicare rates for the professional services, and a flat fee for the medical directorship.
- An agreement under which EBPMA provides management services to ABSPC. This agreement is called the Management Services Agreement. As EBPMA had certain expertise in operating a low risk clinic that did not exist at ABSPC or ABSMC, the decision was made to contract with EBPMA to provide certain management services to ABSPC. These services are compensated based upon a fixed monthly payment. In addition, the agreements provides that to the extent ABSPC requires the use of certain clinical support staff (example is a social worker) that are employees of EBPMA, then ABSPC will compensate EBPMA at the actual rate of pay plus 125% to cover benefits.

EBPMA now finds itself struggling financially again. Although the above restructuring alleviated EBPMA from the losses of the clinic, EBPMA believes that the agreements do not adequately compensate them for their cost or the needs of the partners. Carole Gurgone has provided you with a financial summary of their request for funding. The following is the basis of the EBPMA argument for further funding:

- The actual cost of the coverage provided under the Perinatal Services Agreement exceeds the payment provided by ABSMC, primarily due to the difference in the cost and coverage requirements resulting from a "staff model" (ie, hired) Obstetrician and midwife call panel that requires added cost above a "community" call panel where there are volunteer paid staff available, and
- The group believes that payment at Medicare rates for perinate and, to some extent, midwife professional services by ABSPC for those services provided to ABSPC clinic patients does not adequately compensate them for their cost at a fair rate. The group feels that a "commercial" payment rate is more reasonable and reflective of their compensation cost.

Hope this helps at least provide a brief summary.

EXHIBIT 3; /3
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**ADMINISTRATIVE AND COVERAGE SERVICES AGREEMENT
FOR
EAST BAY CARDIAC SURGERY CENTER**

This Administrative and Coverage Services Agreement (this "**Agreement**") is entered into as of June 1, 2007 (the "**Effective Date**"), by and between Alta Bates Summit Medical Center, a California nonprofit public benefit corporation ("**Hospital**") and East Bay Cardiac Surgery Center ("**Group**"), a California general partnership.

RECITALS

A. Hospital operates an acute care general hospital in Oakland, California (the "**Summit Campus**") and in conjunction therewith maintains a cardiovascular surgery service (the "**CV Service**").

B. The CV Service is a Supplemental Service licensed by the California Department of Health Services and is required, among other things, (1) to have cardiovascular surgery services available at all times for emergencies [22 C.C.R. §70433(d)] and (2) to ensure that the surgeon responsible for the CV Service is certified by the Society for Thoracic Surgeons ("**STS**") or the American Board of Surgery with training and experience in cardiovascular surgery [22 C.C.R. §70435(b)].

C. In addition, in order to comply with requirements of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, and to assure the coordination and maintenance of high quality patient care in the CV Service, Hospital has determined that on-call availability of qualified physicians who specialize in the delivery of cardiovascular surgery professional services is necessary.

D. In connection with Hospital's commitment to quality patient care, Hospital provides the STS with quarterly reports of cardiovascular surgery outcomes data necessary for the STS to assess and report on the quality of cardiovascular surgery services provided at Hospital (the "**STS Reports**").

E. Hospital is in need of experienced, qualified physicians to provide administrative and coverage services for the CV Service, and non-physician personnel to gather data for, maintain the related database for and assist in preparation of the STS Reports.

F. Group is a California general partnership, duly organized pursuant to California law, which employs and contracts with physicians duly licensed to practice medicine in the State of California, qualified in cardiovascular surgery, certified by the American Board of Thoracic Surgery, and qualified to perform the services required by this Agreement (each a "**Physician**" and collectively the "**Physicians**"), and which employs and contracts with certain non-physician personnel qualified to gather and input cardiovascular surgery outcomes data for the STS Reports.

G. Hospital wishes to contract with Group to provide administrative and coverage services in accordance with the terms of this Agreement, and Group wishes to contract with Hospital to provide such services.

H. This Agreement replaces and supersedes any agreement(s) between the parties for the same or similar services as described herein.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

I. DUTIES OF GROUP AND PHYSICIAN

During the term of this Agreement, Group shall perform and comply with, or as applicable, shall cause each Physician to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including, but not limited to, the following:

1.1 Services.

(a) **Administrative Services.** Group shall ensure that Junaid Khan, M.D. serves as the medical director of the CV Service (the “**Medical Director**”), and, as such, is responsible for performing the specific duties and responsibilities set forth in Exhibit 1.1(a) attached hereto (the “**Administrative Services**”). The Administrative Services provided under this Agreement shall be limited to administrative and teaching services provided to Hospital and shall not include the provision of any professional services to patients. If Junaid Khan, M.D. is unable or unwilling to perform the Administrative Services, Russell Stanten, M.D. shall serve as the Medical Director to provide Administrative Services. If neither Junaid Khan, M.D. nor Russell Stanten, M.D. are able and willing to perform the Administrative Services, then Hospital and Group shall mutually select a Physician to serve as the Medical Director to provide Administrative Services.

(1) **Minimum Time Requirements.** Group shall ensure that the Medical Director devotes a minimum average of ten (10) hours per month to performing Administrative Services (the “**Minimum Time Requirement**”) during the term of this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that the Medical Director shall in no event devote less than 3 times the Minimum Time Requirement during any 3-month period during the term of this Agreement.

(2) **Administrative Time Reports.** Group shall ensure that Medical Director contemporaneously records the actual number of hours and a description of the actual services provided on a monthly time report (the “**Administrative Time Report**”) in the form attached hereto as Exhibit 1.1(a)(2), as modified from time to time by Hospital. On a monthly basis, Group shall deliver to the Administrator (as defined in Subsection (3) below), or cause Medical Director to deliver to the Administrator, completed and signed copies of the applicable Administrative Time Reports within 5 days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Group and Medical Director shall, from time to time, complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements. The Administrative Time Reports submitted by Medical Director shall be the basis upon which Hospital shall reimburse Group for Administrative Services.

(3) Coordination of Services. Group and Medical Director shall coordinate their activities in connection with the CV Service with Hospital through its Chief Medical Officer (the "Administrator"). Group or Medical Director shall inform the Administrator of any extended periods (i.e., one week or more) during which the Medical Director will be unavailable due to vacation, professional meetings, or other personal or professional commitments. The parties agree that Medical Director will not be unavailable for more than eight (8) weeks per year. If requested by Hospital, Group shall engage and provide a substitute physician (the "**Substitute Physician**"), approved in writing by Hospital, to perform the Administrative Services as required under this Agreement during all periods of such Medical Director's unavailability. Group shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform the Administrative Services as required under this Agreement.

(b) Coverage Services. Group shall ensure that sufficient Physicians are available to provide and shall provide professional cardiovascular surgery services to patients of the CV Service, as described further in Exhibit 1.1(b) (the "**Coverage Services**"). Group and each Physician shall report to and be accountable to the Administrator for the performance of Coverage Services.

(1) Coverage Schedule Reports. Within fifteen (15) days of the end of each month, Medical Group shall provide Hospital with a final coverage schedule documenting the Physicians providing Coverage Services during the previous month (the "**Coverage Schedule Report**"). Upon request of Hospital, Medical Group shall also complete and execute, or ensure that each Physician completes and executes, such other time studies or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

(c) Data Collection Services. Group shall provide non-physician personnel to provide the data collection services set forth in Exhibit 1.1(c) attached hereto (the "**Data Collection Services**").

1.2 Professional Qualifications. Group shall ensure that each Physician meets the following professional requirements at all times during the term of this Agreement:

(a) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice cardiovascular surgery;

(b) Maintain professional liability insurance in an amount and form as set forth in Section 1.9 (Insurance) of this Agreement;

(c) Be a member in good standing of Hospital's medical staff (the "**Medical Staff**"); and

(d) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

1.3 Representations and Warranties. Group represents and warrants to Hospital that:

(a) Neither Group nor any Physician is bound by any agreement or arrangement which would preclude Group or any Physician from entering into or fully performing the services required under this Agreement;

(b) No Physician's license to practice medicine in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(c) Neither Group nor any Physician has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation;

(d) Neither Group nor any Physician has any information that would reasonably indicate that Group or any Physician is not able to perform the services required under this Agreement; and

(5) No Physician is the subject of (a) a current or pending disciplinary action by the Medical Board of California or any equivalent medical licensing authority of any other state, or (b) a current or pending investigation by the Department of Health and Human Services Office of Inspector General, the Centers for Medicare and Medicaid Services or any similar state or federal health care agency.

1.4 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify Hospital of any event causing or likely to cause Group or any Physician to fail to meet the professional qualification requirements set forth in Section 1.2, or the representations and warranties set forth in Section 1.3, or any other breach of the terms of this Agreement by Group or any Physician. In addition, Group shall promptly notify Hospital when it receives notice of any malpractice or professional disciplinary action asserted or initiated against Group or any Physician. Group shall also promptly notify Hospital if any Physician's medical staff privileges at any health care facility is denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction.

1.5 Discharge Summaries. Following the discharge of any patient to whom a Physician has provided professional services under this Agreement, Group shall ensure that the applicable Physician shall complete discharge summaries in a timely manner for all patients admitted by Group.

1.6 Medically Indigent Care Policy. During the term of this Agreement, Group and each Physician agree and understand that they shall not participate in, nor shall they be entitled to any compensation related to, Hospital's medically indigent care policy.

1.7 Compliance with Rules and Laws. Group shall comply, and shall ensure that each Physician complies, with all policies, bylaws, rules and regulations of Hospital and its Medical Staff, applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), and all applicable federal, state and local laws, rules and regulations.

1.8 Compliance Program. Group shall comply and cooperate, and ensure that each Physician complies and cooperates, with Hospital's corporate compliance programs, and any corporate compliance audits, reviews and investigations that relate to any of the services provided by Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Group or any Physician, their personnel, and their activities as they relate to the provision of services under this Agreement. In addition, as requested by Hospital, Group shall ensure that each Physician participates in corporate compliance-related seminars and educational programs sponsored by Hospital.

1.9 Insurance. Group shall maintain for each Physician (and any Substitute Physician) professional liability insurance in the minimum amounts of \$1,000,000 per occurrence/\$3,000,000 annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable), in the above amounts, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

1.10 Use of Hospital Facilities. Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and each Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever, including without limitation, the operation of any private medical practice or other activities conducted by Group or any Physician. This Agreement shall not be construed as a lease to Group or any Physician of any portion of Hospital's facilities; insofar as Group or any Physician may use a portion of Hospital's facilities, Group and each Physician do so as a licensee only, and Hospital shall at all times have full and free access to the same.

1.11 Expenses. Neither Group nor any Physician shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and each Physician shall be solely responsible for, all expenses related to the performance of such Physician's duties under this Agreement, including but not limited to the following: (a) the compensation and benefits of each Physician; (b) professional license fees and professional association membership fees and dues; (c) automobile and other travel; (d) entertainment and promotion; (e) professional conventions and meetings; (f) professional liability insurance; (g) continuing medical education fees; and (h) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or any Physician.

1.12 Expert Witness Conflict of Interest. During the term of this Agreement, neither Group nor any Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (1) Hospital, (2) any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or (3) any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Group or any Physician from testifying as a factual witness in an action in which both Group and/or such Physician and Hospital (or any other hospital or health care facility owned or

operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

1.13 Nondiscrimination. Group and each Physician shall provide services under this Agreement without regard to any Hospital patient's race, color, creed, national origin, ancestry, religion, sex, marital status, sexual orientation, medical condition, health status, age, handicap, financial status, or ability to pay.

1.14 Anti-Referral Laws. Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Physician, and Hospital. This Agreement is not intended to influence Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Physician in any way from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

2.1 Equipment; Supplies; Personnel. Hospital shall use its reasonable best efforts to provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the CV Service. The parties acknowledge and agree that the CV Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital. Group acknowledges and agrees that if Group or any Physician alleges any breach by Hospital of this section, Group's sole and exclusive remedy shall be termination of this Agreement.

2.2 Rest Area. Hospital shall make available an appropriately furnished room in which Physicians may rest when their services are not otherwise required under the terms of this Agreement.

2.3 Insurance for Administrative Services. With respect to Administrative Services provided under this Agreement, Group and each Physician shall be included in Hospital's standard policy of insurance or self-insurance in amounts of \$1,000,000 per claim/\$3,000,000 annual aggregate. This insurance shall be applicable only to each Physician's administrative services and not to professional services provided by such Physician.

2.4 Performance Assessment. A formal performance assessment shall be conducted on each Physician by Hospital on an annual basis, in the form attached hereto as Exhibit 2.4, as modified from time to time by Hospital.

2.5 Responsibility for Service. To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to its patients.

3. COMPENSATION

3.1 Compensation for Administrative Services. As payment in full for Administrative Services provided under this Agreement, Hospital shall pay Group One Hundred Twenty Five Dollars (\$125) per hour for actual hours of Administrative Services performed by the Medical Director and reported on Administrative Time Reports as required by Section 1.1(a)(2), subject to a maximum annual amount of Fifteen Thousand Dollars (\$15,000) regardless of how many hours of Administrative Services are provided and reported on the Administrative Time Reports for the year. If this Agreement is terminated prior to the end of its term, the maximum annual compensation for Administrative Services shall be prorated based on the actual number of days that this Agreement was in effect. Compensation shall be paid on a monthly basis within fifteen (15) days of Hospital's receipt of completed Administrative Time Reports for services provided during the preceding month. Notwithstanding the foregoing, no compensation will be payable to Group for any Administrative Services for which Group has not submitted the documentation required under Section 1.1(a)(2).

3.2 Compensation for Coverage Services and Data Collection Services. As payment in full for Coverage Services and Data Collection Services provided under this Agreement, Hospital shall pay Group Four Hundred Eighty Five Thousand Dollars (\$485,000) per year, so long as Group provides the Coverage Services and Data Collection Services required by this Agreement and submits the Coverage Schedule Reports as required by Section 1.1(b)(1). If this Agreement is terminated prior to the end of its term, the maximum annual compensation for Coverage Services and Data Collection Services shall be prorated based on the actual number of days that this Agreement was in effect. Compensation shall be paid on a monthly basis within fifteen (15) days of Hospital's receipt of completed Coverage Schedule Reports for services provided during the preceding month. Notwithstanding the foregoing, no compensation will be payable to Group for any Coverage Services or Data Collection Services for which Group has not submitted the documentation required under Section 1.1(b)(1).

3.3 Benefits. The parties agree and understand that no Physician will receive any vacation pay, sick leave, paid time off, retirement benefits, health plan benefits, disability benefits, fringe benefits, or any other benefits of any kind provided by Hospital to its employees.

3.4 Tax Reporting. To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

3.5 No Billing of Patients. Group's and each Physician's provision of professional services to patients is not covered by this Agreement, and neither Group nor any Physician shall bill or assert any claim for payment against any patient or payor for services performed by any Physician under this Agreement. Group and each Physician shall be solely responsible for billing for professional services provided to patients.

4. TERM

4.1 Term. The term of this Agreement shall be three years commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.2.

4.2 Early Termination.

(a) Immediate Termination by Hospital. Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

- (1) Failure of Group to remove any Physician from provision of services under this Agreement as required under Section 4.2(b) (Removal of Physician);
- (2) Failure of Group or any Physician to obtain and maintain professional liability insurance as required in Section 1.9 (Insurance);
- (3) Failure of Group to ensure that each Physician meets the professional qualifications requirements as required in Section 1.2 (Professional Qualifications);
- (4) The inaccuracy of any representation or warranty set forth in, or the failure of Group to ensure that each Physician satisfies the standards set forth in, Section 1.3 (Representations and Warranties) hereof, at anytime during the term of this Agreement;
- (5) The occurrence of any incident involving Group or any Physician that significantly impairs the operation of Hospital or Hospital's license, accreditation, or Medicare or Medi-Cal participation;
- (6) Exclusion of Group from the participation in any federal health care program; including the Medicare or Medi-Cal programs; or
- (7) Closure of the CV Service, or sale or closure of the Hospital at which the CV Service is located.

(b) Removal of Physician. It is specifically understood that Hospital may require the immediate removal of any Physician for cause, with written notice to Group specifying the reasons therefor, if such Physician:

- (1) Loses his/her license to practice medicine, or has such license substantially restricted;
- (2) Loses his/her Medical Staff membership or clinical privileges;
- (3) Loses his/her eligibility to provide professional services to Medicare or Medi-Cal patients, or has such eligibility substantially restricted;
- (4) Fails to meet the professional qualifications requirements set forth in Section 1.2 (Professional Qualifications);
- (5) Fails to meet the representations and warranties set forth in Section 1.3 (Representations and Warranties) hereof;
- (6) Dies, becomes legally incompetent, or disabled (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician

designated by Hospital, which prevents, or is substantially certain to prevent, such Physician from carrying out one or more of the essential functions of the Physician's position, with or without reasonable accommodation, for a continuous period of 90 days);

- (7) Is convicted of a felony or a crime involving moral turpitude;
- (8) Uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;
- (9) Fails to maintain a professional standard of conduct;
- (10) Jeopardizes the quality of care provided to Hospital patients by any act or omission;
- (11) Fails to abide by the terms and conditions of this Agreement; or
- (12) With respect to the Medical Director only, the death of a Medical Director or permanent disability of a Medical Director such that the Medical Director, with reasonable accommodation, is unable to perform the duties and responsibilities set forth in this Agreement, unless Group promptly provides a replacement medical director, subject to Hospital's prior approval.

(c) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.2(a), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of a written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Medical Director to deliver Administrative Time Reports in a timely manner, (ii) failure of Medical Director to satisfy the minimum time requirements set forth in Section 1.1(a)(1) hereof, (iii) failure to provide the Coverage Services described in Section 1.1(b) and Exhibit 1.1(b); (iv) failure to provide the Data Collection Services as required by this Agreement; or (v) any act or omission by Group or any Physician that jeopardizes the quality of care provided to Hospital's patients.

(d) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(e) **Without Cause Termination.** After the second anniversary of the Effective Date, either party may elect to terminate this Agreement, without cause, upon ninety (90) days' written notice to the other party.

4.3 Effect of Expiration or Termination.

(a) **Termination of Obligations.** Except as otherwise provided in this Section 4.3, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(b) **Pre-Termination Services.** Hospital shall pay Group any unpaid monthly payment due for any period prior to the termination date.

(c) **Liability for Breach.** With the exception of a termination pursuant to Section 2.1, a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(d) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Group shall immediately vacate, and cause each Physician to immediately vacate, Hospital premises and remove all of Group's and each Physician's work items and materials from Hospital premises and turn over to Hospital all records, charts, software, patient and vendor lists and materials relating to the services performed by Group or any Physician under this Agreement. All patient records shall remain the exclusive property of Hospital; provided, however, that: (i) Group and each Physician shall have the continuing right to inspect and copy all records pertaining to a particular patient in the event a malpractice claim is asserted against Group or any Physician as a result of medical activities conducted under this Agreement; and (ii) each Physician shall have the continuing right to inspect and copy all records as required for professional licensing and certification purposes. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(e) **Survival.** The provisions of Sections 1.8 (Compliance Program), 1.9 (Insurance), 2.3 (Insurance for Administrative Services), 4.3 (Effect of Expiration or Termination), 4.4 (No Procedural Rights), 4.5 (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality), 8 (Dispute Resolution), 9 (Notices) and 10 (Miscellaneous) shall survive termination of this Agreement.

4.4 No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Trustees, a committee of the Medical Staff, or any other body. Group represents and warrants that each Physician is aware of and accepts this condition.

4.5 Renewal, Extensions, New Agreements. Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this

Agreement or a new agreement for the same or substantially similar services prior to the first anniversary of the date of this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP

In performing the services described in this Agreement, each Physician and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Physician performs the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physicians, and neither Group nor any Physician shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group and/or each Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to any Physician or any other physician employed or engaged by Group.

6. ACCESS TO BOOKS AND RECORDS

6.1 Access. Group and each Physician shall maintain and make available all necessary books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of four years after furnishing services pursuant to this Agreement, Group and each Physician shall make available upon written request of the Secretary of the Department of Health and Human Services (the "**Secretary**") or the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement, books, documents, and records of Group or any Physician that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of \$10,000 or more over a twelve-month period through a subcontract, such agreement must contain a clause to the effect that until the expiration of four years after the furnishing of services under the subcontract, the subcontractor shall make available, upon written request of the Secretary, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the subcontractor that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

6.2 Limits. The availability of Group's or any Physician's books, documents, and records shall be subject at all times to all applicable legal requirements, including, without

limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY

7.1 Hospital Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Group and each Physician may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that neither Group nor any Physician shall at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to each Physician's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information which concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and which is not otherwise available to the public.

7.2 Terms of this Agreement. Except for disclosure to Group's or any Physician's legal counsel, accountant or financial advisor (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Physician shall disclose any terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or consented to in writing by Hospital.

7.3 Patient Information. Neither Group nor any Physician shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital or CV Service patients, and Group and each Physician shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

8. DISPUTE RESOLUTION

In the event that any dispute arises between Group or any Physician, and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an officer of Group and an executive officer of the Hospital who have the authority to negotiate and bind the respective parties to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore, otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law,

and remedy, if any. The cost of such arbitration shall be shared equally by Hospital and Group, provided that each party shall pay its own legal expenses.

9. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attn: Warren J. Kirk
President and CEO

With a copy to: Sutter Health Office of the General Counsel
345 California Street, Suite 2000
San Francisco, California 94104
Attn: Assistant General Counsel

If to Group: East Bay Cardiac Surgery Center
3300 Webster Street, Suite 500
Oakland, California 94609

10. MISCELLANEOUS

10.1 No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any other breach or any other provision.

10.2 Severability. Except as provided in Section 4.2(d), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

10.3 Assignability. The rights and obligations of each party under this Agreement shall inure to the benefit of the parties and to their respective successors and permitted assigns. Neither party may assign any of its rights and obligations under this Agreement without obtaining the prior written consent of the other party.

10.4 Use of Names and Logos. Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

10.5 No Third Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

10.6 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

10.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

10.9 Amendments. Amendments to this Agreement shall be made only in a writing duly executed by both parties hereto.

10.10 Advice of Counsel. The parties represent and warrant that they have consulted with (or had the opportunity to consult with) their own independent legal counsel or advisors concerning their rights and duties under this Agreement, and have read and understand the terms of this Agreement. In the case of any uncertainty under this Agreement, this Agreement shall be construed without regard to which party was primarily responsible for drafting this Agreement.

10.11 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disaster, strikes, or any cause beyond the reasonable control of the non-performing party.

10.12 Other Service Agreements. Exhibit 10.12 attached hereto lists all other agreements or arrangements under which Group, or any Physician (or any immediate family member of any Physician) provides services to Hospital. If any such service agreement is entered into after the date of this Agreement, the parties shall execute and attach a revised Exhibit 10.12 that includes a reference to such agreement.

10.13 Indemnification. Each party agrees to indemnify, defend and hold harmless the other party and each of such other party's officers, directors, members, shareholders, agents and employees, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorneys' fees) (each a "**Claim**"), arising directly or indirectly, in whole or in part, out of (i) a breach of this Agreement by the indemnifying party, or (ii) any professional act or omission of the indemnifying party in providing services under this Agreement; provided that if any insurance coverage maintained by either party would otherwise cover a Claim, in whole or in part, nothing in this Section shall be construed to relieve the insurance carrier of its obligations under such coverage, which in all cases shall be primary to either party's indemnification obligations hereunder.

10.14 Recitals and Exhibits. The recitals and exhibits are hereby incorporated into this Agreement by this reference.

10.15 Headings. The section headings set forth in this Agreement are for convenient reference only, and shall have no bearing on the construction or interpretation of this Agreement.

10.16 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation,

audits, proceedings or disputes relating to this Agreement or the CV Service, other than proceedings or disputes between the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

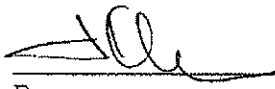
HOSPITAL:

Alta Bates Summit Medical Center


By: Warren J. Kirk
Title: President and CEO

GROUP:

East Bay Cardiac Surgery Center

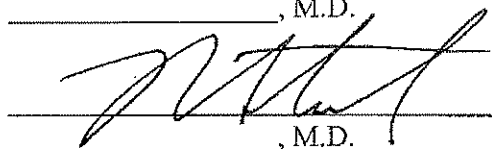

By: _____
Title: President

PHYSICIAN ACKNOWLEDGMENT

The undersigned physicians hereby acknowledges receipt of a copy of this Agreement and accepts the position(s) and agrees to carry out the duties as set forth in this Agreement.



_____, M.D.



_____, M.D.

_____, M.D.

_____, M.D.

_____, M.D.

EXHIBIT 1.1(a)

ADMINISTRATIVE SERVICES

1. **Medical Director Services.** The Medical Director shall be responsible for performing the following administrative services:
 - a. **License and Accreditation.** The Medical Director shall provide such professional guidance and supervision as necessary to obtain and maintain the CV Service's license and accreditation.
 - b. **Policies and Procedures.** The Medical Director shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the CV Service. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies shall be approved by the Board of Trustees, and procedures shall be approved by Hospital's administration and the Medical Staff where appropriate.
 - c. **Call Schedule.** The Medical Director shall develop a system for assuring physician coverage of the CV Service, 24 hours per day, seven days per week, as set forth in greater detail in Exhibit 1.1(b).
 - d. **Personnel.** The Medical Director shall advise Hospital in the recruiting, evaluation, and retention of key Hospital personnel working in the CV Service.
 - e. **Supervision.** The Medical Director shall provide clinical supervision of technical personnel in the CV Service.
 - f. **Training and Education.** The Medical Director shall train or arrange for the training of CV Service personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and the Medical Director.
 - g. **Budgets.** The Medical Director shall assist Hospital's administration in the development of operating and capital expenditure budgets for the proper and efficient operation of the CV Service. The Medical Director shall operate the CV Service efficiently, and in accordance with approved budgets, and shall exercise diligence in keeping controllable costs of the CV Service to a minimum.

- h. Planning.** Upon request of Hospital, the Medical Director shall participate in Hospital's planning process as it relates to the operation of the CV Service.
- i. Quality Assurance.** In cooperation with Hospital's formal quality assurance program, the Medical Director shall develop and implement appropriate quality assurance activities for the CV Service. In addition, the Medical Director shall monitor utilization and quality of services, and shall recommend steps necessary to remedy deficiencies therein. These activities shall be conducted through Hospital's Medical Staff committee structure; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.
- j. Equipment.** The Medical Director shall advise Hospital on the selection, maintenance, and repair of equipment for the CV Service; and shall arrange for or advise Hospital on the need for maintenance or repair of equipment within the CV Service.
- k. Reimbursement.** The Medical Director shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the CV Service.
- l. Committees.** The Medical Director shall participate on Hospital and Medical Staff committees at the request of the Administrator or the Medical Staff.
- m. Other Responsibilities.** The Medical Director shall perform such other responsibilities as reasonably necessary for the proper operation of the CV Service.

EXHIBIT 1.1(a)(2)ADMINISTRATIVE TIME REPORT

PHYSICIAN TIME REPORT

Physician: _____

Month: _____ Year: _____

A. ADMINISTRATIVE SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
Management/Staff Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Committee Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Utilization Management:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Quality Review:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
AMI Initiatives (list dates)						
Sutter Health System-wide Meetings						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Review of Patient Progress (list dates)						
Supervision/Education of Interns, Residents (list dates)						
Supervision/Education of Nurses, Technicians, Staff (list dates)						

Physician Education/Consultation (list dates)						
Community Presentation (list dates)						
Protocol/Policy Development (list dates)						
Service Development (list dates)						
Other, describe: (list dates)						
Other Meetings, describe:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Total Hours						

Certification By Physician: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature

Title

Date

Printed Name

Telephone No.

Fax No.

Administrator Signature

Title

Date

Printed Name

Telephone No.

Fax No.

EXHIBIT 1.1(b)

COVERAGE SERVICES

1. **Coverage Services.** Group shall ensure that sufficient Physicians are available to provide and provide professional cardiovascular surgery services to patients of the CV Service upon a date specific call schedule that is mutually agreed upon by Hospital and Group, including but not limited to the following:
 - a. Group shall ensure that sufficient Physicians are available, 24 hours per day, 7 days per week, to provide professional cardiovascular surgery services for patients of the CV Service, for patients of the Hospital's emergency department and for medically indigent patients that present to Hospital.
 - b. Group shall ensure that at least one Physician is able to be on site at the Summit Campus within 30 minutes of receiving a call to evaluate a patient.
 - c. Group shall ensure that at least one Physician is available to provide back-up coverage for angioplasty procedures, and that such Physician is able to be on site at the Hospital's Summit Campus within 30 minutes of receiving a call to provide such services.
2. **Special Qualification Requirement.** Group shall ensure that Physicians providing Coverage Services under this Agreement have sufficient Medical Staff privileges to provide such Coverage Services.

EXHIBIT 1.1(c)

DATA COLLECTION SERVICES

Group shall provide Hospital with quarterly reports of cardiovascular surgery outcomes data for the services provided at Hospital (the "**Reports**"). The Reports shall include, among other things, morbidity and mortality data. In connection with Group providing Hospital with the Reports, Group shall cause its non-physician personnel to gather, in coordination with Hospital and Physicians, all data necessary to produce the Reports in the form and substance required by the STS in order for the STS to assess, and recognize, the quality of Hospital's cardiovascular surgery programs.

EXHIBIT 2.4

PERFORMANCE EVALUATION

[Form Attached]

Performance Assessment

<p>Performance Assessment Period</p> <p>From: ____ / ____ / ____ TO: ____ / ____ / ____</p>	<p>Facility: _____</p>
<p>Medical Director: _____</p>	<p>Reviewer: _____</p>

<p>Rating Determination:</p> <p>Meets: Meets or Exceeds Expectations</p> <p>Does Not Meet: Does not meet minimum expectations and improvement required</p>
--

ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures _____ Services functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key _____ services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure _____ resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees _____ Services competency assessment program.		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project.		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that _____ Services technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain _____ license, JCAHO accreditation, and Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the _____ personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form, adhering to defined reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to The Administrator and Medical Staff as appropriate.		
Comments:		

Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction as to benefit medical staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for _____ personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing _____ expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of _____ Services (i.e., clinical guidelines, clinical pathways, patient-driven protocols).		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health.		
❖ Participates on hospital and Medical Staff committees as requested by The Administrator and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with _____ Services to review program needs and referring physician requests.		
Comments:		

Technical Procedures	Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.		
❖ Ensures that _____ Services are consistent with written policies, processes and procedures.		
❖ Provides consultation as requested to Sutter Health technical workgroups and performance improvement committees.		
❖ Effectively collaborates with The Administrator and Medical Staff to identify and evaluate new _____ services.		
Comments:		

Strategic Initiatives	Meets	Does Not Meet
❖ Actively participates in _____ Department's annual planning process.		
❖ Promotes and participates in Sutter Health and system-wide integration efforts.		
❖ Supports and facilitates change management efforts with key stakeholders.		
❖ Promotes and participates in ongoing efforts related to standardization and implementation of _____ Services as identified by the Management Team.		
❖ Supports the operating and capital equipment budgeting process.		
Comments:		

Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations .	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

Operations Manager: _____

Nursing Director: _____

Regional Director: _____

EXHIBIT 10.12

OTHER SERVICE AGREEMENTS

- None.

EXHIBIT 19-2
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**ADMINISTRATIVE AND COVERAGE SERVICES AGREEMENT
FOR
EAST BAY CARDIAC SURGERY CENTER**

This Administrative and Coverage Services Agreement (this “**Agreement**”) is entered into as of February 4, 2009 (the “**Effective Date**”), by and between Alta Bates Summit Medical Center, a California nonprofit public benefit corporation (“**Hospital**”) and East Bay Cardiac Surgery Center (“**Group**”), a California general partnership.

RECITALS

A. Hospital operates an acute care general hospital in Oakland, California (the “**Summit Campus**”) and in conjunction therewith maintains a cardiothoracic surgery service (the “**Cardiac Service**”).

B. The Cardiac Service is a Supplemental Service licensed by the California Department of Health Services and is required, among other things, (1) to have cardiothoracic surgery services available at all times for emergencies [22 C.C.R. §70433(d)] and (2) to ensure that the surgeon responsible for the Cardiac Service is certified by the Society for Thoracic Surgeons (“**STS**”) or the American Board of Surgery with training and experience in cardiothoracic surgery [22 C.C.R. §70435(b)].

C. In addition, in order to comply with requirements of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd, and to assure the coordination and maintenance of high quality patient care in the Cardiac Service, Hospital has determined that on-call availability of qualified physicians who specialize in the delivery of cardiothoracic surgery professional services is necessary.

D. In connection with Hospital’s commitment to quality patient care, Hospital provides the STS with quarterly reports of cardiothoracic surgery outcomes data necessary for the STS to assess and report on the quality of cardiothoracic surgery services provided at Hospital (the “**STS Reports**”).

E. Hospital is in need of experienced, qualified physicians to provide administrative and coverage services for the Cardiac Service, and non-physician personnel to gather data for, maintain the related database for and assist in preparation of the STS Reports.

F. Group is a California general partnership, duly organized pursuant to California law, which employs and contracts with physicians duly licensed to practice medicine in the State of California, qualified in cardiothoracic surgery, certified by the American Board of Thoracic Surgery, and qualified to perform the services required by this Agreement (each a “**Physician**” and collectively the “**Physicians**”), and which employs and contracts with certain non-physician personnel qualified to gather and input cardiothoracic surgery outcomes data for the STS Reports. –

G. Hospital wishes to contract with Group to provide administrative and coverage services in accordance with the terms of this Agreement, and Group wishes to contract with Hospital to provide such services.

H. This Agreement replaces and supersedes any agreement(s) between the parties for the same or similar services as described herein, including, but not limited to, the Administrative and Coverage Services Agreement dated June 1, 2007. The parties acknowledge this new agreement was necessary due to Hospital requiring additional coverage and administrative services from Group.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. DUTIES OF GROUP AND PHYSICIAN

During the term of this Agreement, Group shall perform and comply with, or as applicable, shall cause each Physician to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including, but not limited to, the following:

1.1 Services.

(a) **Administrative Services.** Group shall ensure that Junaid Khan, M.D. serves as the medical director of the Cardiac Service (the "**Medical Director**"), and, as such, is responsible for performing the specific duties and responsibilities set forth in Exhibit 1.1(a) attached hereto (the "**Administrative Services**"). The Administrative Services provided under this Agreement shall be limited to administrative and teaching services provided to Hospital and shall not include the provision of any professional services to patients. If Junaid Khan, M.D. is unable or unwilling to perform the Administrative Services, Russell Stanten, M.D. shall serve as the Medical Director to provide Administrative Services. If neither Junaid Khan, M.D. nor Russell Stanten, M.D. are able and willing to perform the Administrative Services, then Hospital and Group shall mutually select a Physician to serve as the Medical Director to provide Administrative Services.

(1) **Minimum Time Requirements.** Group shall ensure that the Medical Director devotes a minimum average of forty (40) hours per month to performing Administrative Services (the "**Minimum Time Requirement**") during the term of this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that the Medical Director shall in no event devote less than three (3) times the Minimum Time Requirement during any three (3)-month period during the term of this Agreement.

(2) **Administrative Time Reports.** Group shall ensure that Medical Director contemporaneously records the actual number of hours and a description of the actual services provided on a monthly time report (the "**Administrative Time Report**") in the form attached hereto as Exhibit 1.1(a)(2), as modified from time to time by Hospital. On a monthly basis, Group shall deliver to the Administrator (as defined in Subsection (3) below), or cause Medical Director to deliver to the Administrator, completed and signed copies of the applicable

Administrative Time Reports within five (5) days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Group and Medical Director shall, from time to time, complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements. The Administrative Time Reports submitted by Medical Director shall be the basis upon which Hospital shall reimburse Group for Administrative Services.

(3) Coordination of Services. Group and Medical Director shall coordinate their activities in connection with the Cardiac Service with Hospital through its Chief Medical Officer (the “**Administrator**”). Group or Medical Director shall inform the Administrator of any extended periods (i.e., one (1) week or more) during which the Medical Director will be unavailable due to vacation, professional meetings, or other personal or professional commitments. The parties agree that Medical Director will not be unavailable for more than eight (8) weeks per year. If requested by Hospital, Group shall engage and provide a substitute physician (the “**Substitute Physician**”), approved in writing by Hospital, to perform the Administrative Services as required under this Agreement during all periods of such Medical Director’s unavailability. Group shall be solely responsible for compensating the Substitute Physician, and shall cause the Substitute Physician to perform the Administrative Services as required under this Agreement.

(b) Coverage Services. Group shall ensure that sufficient Physicians are available to provide and shall provide professional cardiothoracic surgery services to patients of the Cardiac Service, as described further in Exhibit 1.1(b) (the “**Coverage Services**”). Group and each Physician shall report to and be accountable to the Administrator for the performance of Coverage Services.

(1) Coverage Schedule Reports. Within fifteen (15) days of the end of each month, Medical Group shall provide Hospital with a final coverage schedule documenting the Physicians providing Coverage Services during the previous month (the “**Coverage Schedule Report**”). Upon request of Hospital, Medical Group shall also complete and execute, or ensure that each Physician completes and executes, such other time studies or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

(c) Data Collection Services. Group shall provide non-physician personnel to provide the data collection services set forth in Exhibit 1.1(c) attached hereto (the “**Data Collection Services**”).

1.2 Professional Qualifications. Group shall ensure that each Physician meets the following professional requirements at all times during the term of this Agreement:

(a) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice cardiothoracic surgery;

(b) Maintain professional liability insurance in an amount and form as set forth in Section 1.9 (Insurance) of this Agreement;

(c) Be a member in good standing of Hospital's medical staff (the "**Medical Staff**"); and

(d) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating physician.

1.3 Representations and Warranties. Group represents and warrants to Hospital that:

(a) Neither Group nor any Physician is bound by any agreement or arrangement which would preclude Group or any Physician from entering into or fully performing the services required under this Agreement;

(b) No Physician's license to practice medicine in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(c) Neither Group nor any Physician has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation;

(d) Neither Group nor any Physician has any information that would reasonably indicate that Group or any Physician is not able to perform the services required under this Agreement; and

(5) No Physician is the subject of (a) a current or pending disciplinary action by the Medical Board of California or any equivalent medical licensing authority of any other state, or (b) a current or pending investigation by the Department of Health and Human Services Office of Inspector General, the Centers for Medicare and Medicaid Services or any similar state or federal health care agency.

1.4 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify Hospital of any event causing or likely to cause Group or any Physician to fail to meet the professional qualification requirements set forth in Section 1.2, or the representations and warranties set forth in Section 1.3, or any other breach of the terms of this Agreement by Group or any Physician. In addition, Group shall promptly notify Hospital when it receives notice of any malpractice or professional disciplinary action asserted or initiated against Group or any Physician. Group shall also promptly notify Hospital if any Physician's medical staff privileges at any health care facility is denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction.

1.5 Discharge Summaries. Following the discharge of any patient to whom a Physician has provided professional services under this Agreement, Group shall ensure that the applicable Physician shall complete discharge summaries in a timely manner for all patients admitted by Group.

1.6 Medically Indigent Care Policy. During the term of this Agreement, Group and each Physician agree and understand that they shall not participate in, nor shall they be entitled to any compensation related to, Hospital's medically indigent care policy.

1.7 Compliance with Rules and Laws. Group shall comply, and shall ensure that each Physician complies, with all policies, bylaws, rules and regulations of Hospital and its Medical Staff, applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), and all applicable federal, state and local laws, rules and regulations.

1.8 Compliance Program. Group shall comply and cooperate, and ensure that each Physician complies and cooperates, with Hospital's corporate compliance programs, and any corporate compliance audits, reviews and investigations that relate to any of the services provided by Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Group or any Physician, their personnel, and their activities as they relate to the provision of services under this Agreement. In addition, as requested by Hospital, Group shall ensure that each Physician participates in corporate compliance-related seminars and educational programs sponsored by Hospital.

1.9 Insurance. Group shall maintain for each Physician (and any Substitute Physician) professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence/Three Million Dollars (\$3,000,000) annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire "prior acts" or "tail" coverage (as applicable), in the above amounts, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

1.10 Use of Hospital Facilities. Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and each Physician solely to provide services under this Agreement and shall not be used for any other purpose whatsoever, including without limitation, the operation of any private medical practice or other activities conducted by Group or any Physician. This Agreement shall not be construed as a lease to Group or any Physician of any portion of Hospital's facilities; insofar as Group or any Physician may use a portion of Hospital's facilities, Group and each Physician do so as a licensee only, and Hospital shall at all times have full and free access to the same.

1.11 Expenses. Neither Group nor any Physician shall incur any expense or financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and each Physician shall be solely responsible for, all expenses related to the performance of such Physician's duties under this Agreement, including but not limited to the following: (a) the compensation and benefits of each Physician; (b) professional license fees and professional association membership fees and dues; (c) automobile and other travel; (d) entertainment and promotion; (e) professional conventions and meetings; (f) professional liability insurance; (g) continuing medical education fees; and

(h) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or any Physician.

1.12 Expert Witness Conflict of Interest. During the term of this Agreement, neither Group nor any Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (1) Hospital, (2) any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or (3) any employee of Hospital or such other Sutter Health hospital or health care facility if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Group or any Physician from testifying as a factual witness in an action in which both Group and/or such Physician and Hospital (or any other hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other hospital or health care facility) are defendants.

1.13 Nondiscrimination. Group and each Physician shall provide services under this Agreement without regard to any Hospital patient's race, color, creed, national origin, ancestry, religion, sex, marital status, sexual orientation, medical condition, health status, age, handicap, financial status, or ability to pay.

1.14 Anti-Referral Laws. Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Physician, and Hospital. This Agreement is not intended to influence Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Physician in any way from establishing medical staff membership or clinical privileges at any other healthcare facility.

2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

2.1 Equipment; Supplies; Personnel. Hospital shall use its reasonable best efforts to provide and maintain all customary and necessary equipment, supplies, maintenance, utilities and personnel reasonably required for operation of the Cardiac Service. The parties acknowledge and agree that the Cardiac Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The addition, deletion or purchase of equipment and supplies and the selection, removal and retention of personnel shall be the exclusive function of Hospital. Group acknowledges and agrees that if Group or any Physician alleges any breach by Hospital of this section, Group's sole and exclusive remedy shall be termination of this Agreement.

2.2 Rest Area. Hospital shall make available an appropriately furnished room in which Physicians may rest when their services are not otherwise required under the terms of this Agreement.

2.3 Insurance for Administrative Services. With respect to Administrative Services provided under this Agreement, Group and each Physician shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to each Physician's administrative services and not to professional services provided by such Physician.

2.4 Performance Assessment. A formal performance assessment shall be conducted on each Physician by Hospital on an annual basis, in the form attached hereto as Exhibit 2.4, as modified from time to time by Hospital.

2.5 Responsibility for Service. To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to its patients.

3. COMPENSATION

3.1 Compensation for Coverage Services and Data Collection Services. As payment in full for Administrative Services, Coverage Services and Data Collection Services provided under this Agreement, Hospital shall pay Group One Million Dollars (\$1,000,000) per year, so long as Group (a) provides the Administrative Services, Coverage Services and Data Collection Services required by this Agreement; (b) submits the Coverage Schedule Reports as required by Section 1.1(b)(1); and (c) provides Administrative Time Reports documenting the Minimum Time Requirements. If this Agreement is terminated prior to the end of its term, the maximum annual compensation for Administrative Services, Coverage Services and Data Collection Services shall be prorated based on the actual number of days that this Agreement was in effect. Compensation shall be paid on a monthly basis within fifteen (15) days of Hospital's receipt of completed Coverage Schedule Reports and Administrative Time Reports for services provided during the preceding month. Notwithstanding the foregoing, no compensation will be payable to Group for any Administrative Services, Coverage Services or Data Collection Services for which Group has not submitted the documentation required under Sections 1.1(a)(2) and 1.1(b)(1). Moreover, if Group submits Administrative Time Reports in any three-month period for less than 120 hours, the Group's compensation in the next month shall be reduced by \$150 per each hour below 120 hours.

3.2 Benefits. The parties agree and understand that no Physician will receive any vacation pay, sick leave, paid time off, retirement benefits, health plan benefits, disability benefits, fringe benefits, or any other benefits of any kind provided by Hospital to its employees.

3.3 Tax Reporting. To the extent required by law, Hospital shall report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart. To ensure that payments are properly reported, Group shall complete, execute and deliver to Hospital an IRS Form W-9.

3.4 No Billing of Patients. Group's and each Physician's provision of professional services to patients is not covered by this Agreement, and neither Group nor any Physician shall bill or assert any claim for payment against any patient or payor for services performed by any Physician under this Agreement. Group and each Physician shall be solely responsible for billing for professional services provided to patients.

4. TERM

4.1 Term. The term of this Agreement shall be two (2) years commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.2.

4.2 Early Termination.

(a) Immediate Termination by Hospital. Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

- (1) Failure of Group to remove any Physician from provision of services under this Agreement as required under Section 4.2(b) (Removal of Physician);
- (2) Failure of Group or any Physician to obtain and maintain professional liability insurance as required in Section 1.9 (Insurance);
- (3) Failure of Group to ensure that each Physician meets the professional qualifications requirements as required in Section 1.2 (Professional Qualifications);
- (4) The inaccuracy of any representation or warranty set forth in, or the failure of Group to ensure that each Physician satisfies the standards set forth in, Section 1.3 (Representations and Warranties) hereof, at anytime during the term of this Agreement;
- (5) The occurrence of any incident involving Group or any Physician that significantly impairs the operation of Hospital or Hospital's license, accreditation, or Medicare or Medi-Cal participation;
- (6) Exclusion of Group from the participation in any federal health care program; including the Medicare or Medi-Cal programs; or
- (7) Closure of the Cardiac Service, or sale or closure of the Hospital at which the Cardiac Service is located.

(b) Removal of Physician. It is specifically understood that Hospital may require the immediate removal of any Physician for cause, with written notice to Group specifying the reasons therefor, if such Physician:

- (1) Loses his/her license to practice medicine, or has such license substantially restricted;
- (2) Loses his/her Medical Staff membership or clinical privileges;

(3) Loses his/her eligibility to provided professional services to Medicare or Medi-Cal patients, or has such eligibility substantially restricted;

(4) Fails to meet the professional qualifications requirements set forth in Section 1.2 (Professional Qualifications);

(5) Fails to meet the representations and warranties set forth in Section 1.3 (Representations and Warranties) hereof;

(6) Dies, becomes legally incompetent, or disabled (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, such Physician from carrying out one (1) or more of the essential functions of the Physician's position, with or without reasonable accommodation, for a continuous period of ninety (90) days);

(7) Is convicted of a felony or a crime involving moral turpitude;

(8) Uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;

(9) Fails to maintain a professional standard of conduct;

(10) Jeopardizes the quality of care provided to Hospital patients by any act or omission;

(11) Fails to abide by the terms and conditions of this Agreement; or

(12) With respect to the Medical Director only, the death of a Medical Director or permanent disability of a Medical Director such that the Medical Director, with reasonable accommodation, is unable to perform the duties and responsibilities set forth in this Agreement, unless Group promptly provides a replacement medical director, subject to Hospital's prior approval.

(c) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.2(a), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of a written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of Medical Director to deliver Administrative Time Reports in a timely manner, (ii) failure of Medical Director to satisfy the minimum time requirements set forth in Section 1.1(a)(1) hereof, (iii) failure to provide the Coverage Services described in Section 1.1(b) and Exhibit 1.1(b); (iv) failure to provide the Data Collection Services as required by this Agreement; or (v) any act or omission by Group or any Physician that jeopardizes the quality of care provided to Hospital's patients.

(d) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(e) **Without Cause Termination.** After the first anniversary of the Effective Date, either party may elect to terminate this Agreement, without cause, upon ninety (90) days' written notice to the other party.

4.3 Effect of Expiration or Termination.

(a) **Termination of Obligations.** Except as otherwise provided in this Section 4.3, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(b) **Pre-Termination Services.** Hospital shall pay Group any unpaid monthly payment due for any period prior to the termination date.

(c) **Liability for Breach.** With the exception of a termination pursuant to Section 2.1, a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

(d) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Group shall immediately vacate, and cause each Physician to immediately vacate, Hospital premises and remove all of Group's and each Physician's work items and materials from Hospital premises and turn over to Hospital all records, charts, software, patient and vendor lists and materials relating to the services performed by Group or any Physician under this Agreement. All patient records shall remain the exclusive property of Hospital; provided, however, that: (i) Group and each Physician shall have the continuing right to inspect and copy all records pertaining to a particular patient in the event a malpractice claim is asserted against Group or any Physician as a result of medical activities conducted under this Agreement; and (ii) each Physician shall have the continuing right to inspect and copy all records as required for professional licensing and certification purposes. Any personal property that is not so removed may be removed by Hospital at Group's expense.

(e) **Survival.** The provisions of Sections 1.8 (Compliance Program), 1.9 (Insurance), 2.3 (Insurance for Administrative Services), 4.3 (Effect of Expiration or Termination), 4.4 (No Procedural Rights), 4.5 (Renewal, Extensions, New Agreements), 5 (Independent Contractor Relationship), 6 (Access to Books and Records), 7 (Confidentiality),

8 (Dispute Resolution), 9 (Notices) and 10 (Miscellaneous) shall survive termination of this Agreement.

4.4 No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Trustees, a committee of the Medical Staff, or any other body. Group represents and warrants that each Physician is aware of and accepts this condition.

4.5 Renewal, Extensions, New Agreements. Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services prior to the first anniversary of the date of this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP

In performing the services described in this Agreement, each Physician and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Physician performs the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physicians, and neither Group nor any Physician shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group and/or each Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to any Physician or any other physician employed or engaged by Group.

6. ACCESS TO BOOKS AND RECORDS

6.1 Access. Group and each Physician shall maintain and make available all necessary books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of four (4) years after furnishing services pursuant to this Agreement, Group and each Physician shall make available upon written request of the Secretary of the Department of Health and Human Services (the "Secretary") or the U.S. Comptroller

General, or any of their duly authorized representatives, this Agreement, books, documents, and records of Group or any Physician that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period through a subcontract, such agreement must contain a clause to the effect that until the expiration of four (4) years after the furnishing of services under the subcontract, the subcontractor shall make available, upon written request of the Secretary, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the subcontractor that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

6.2 Limits. The availability of Group's or any Physician's books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY

7.1 Hospital Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Group and each Physician may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that neither Group nor any Physician shall at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to each Physician's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information which concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and which is not otherwise available to the public.

7.2 Terms of this Agreement. Except for disclosure to Group's or any Physician's legal counsel, accountant or financial advisor (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Physician shall disclose any terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or consented to in writing by Hospital.

7.3 Patient Information. Neither Group nor any Physician shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital or Cardiac Service patients, and Group and each Physician shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.) and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

8. DISPUTE RESOLUTION

In the event that any dispute arises between Group or any Physician, and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an officer of Group and an executive officer of the Hospital who have the authority to negotiate and bind the respective parties to a resolution. At the meeting, the parties shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding and shall be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator shall have no power to award any punitive or exemplary damages. The arbitrator shall have no power to alter, modify, ignore, otherwise deviate from the express terms of this Agreement, and the arbitrator shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The cost of such arbitration shall be shared equally by Hospital and Group, provided that each party shall pay its own legal expenses.

9. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Alta Bates Summit Medical Center
2450 Ashby Avenue
Berkeley, California 94705
Attn: Warren J. Kirk
President and CEO

With a copy to: Sutter Health Office of the General Counsel
345 California Street, Suite 2000
San Francisco, California 94104
Attn: Assistant General Counsel

If to Group: East Bay Cardiac Surgery Center
3300 Webster Street, Suite 500
Oakland, California 94609

10. MISCELLANEOUS

10.1 No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any other breach or any other provision.

10.2 Severability. Except as provided in Section 4.2(d), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

10.3 Assignability. The rights and obligations of each party under this Agreement shall inure to the benefit of the parties and to their respective successors and permitted assigns. Neither party may assign any of its rights and obligations under this Agreement without obtaining the prior written consent of the other party.

10.4 Use of Names and Logos. Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

10.5 No Third Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

10.6 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

10.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hercof.

10.9 Amendments. Amendments to this Agreement shall be made only in a writing duly executed by both parties hereto.

10.10 Advice of Counsel. The parties represent and warrant that they have consulted with (or had the opportunity to consult with) their own independent legal counsel or advisors concerning their rights and duties under this Agreement, and have read and understand the terms of this Agreement. In the case of any uncertainty under this Agreement, this Agreement shall be construed without regard to which party was primarily responsible for drafting this Agreement.

10.11 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disaster, strikes, or any cause beyond the reasonable control of the non-performing party.

10.12 Other Service Agreements. Exhibit 10.12 attached hereto lists all other agreements or arrangements under which Group, or any Physician (or any immediate family member of any Physician) provides services to Hospital. If any such service agreement is entered into after the date of this Agreement, the parties shall execute and attach a revised Exhibit 10.12 that includes a reference to such agreement.

10.13 Indemnification. Each party agrees to indemnify, defend and hold harmless the other party and each of such other party's officers, directors, members, shareholders, agents and employees, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorneys' fees) (each a "**Claim**"), arising directly or indirectly, in whole or in part, out of (i) a breach of this Agreement by the indemnifying party, or (ii) any professional act or omission of the indemnifying party in providing services under this Agreement; provided that if any insurance coverage maintained by either party would otherwise cover a Claim, in whole or in part, nothing in this Section shall be construed to relieve the insurance carrier of its obligations under such coverage, which in all cases shall be primary to either party's indemnification obligations hereunder.

10.14 Recitals and Exhibits. The recitals and exhibits are hereby incorporated into this Agreement by this reference.

10.15 Headings. The section headings set forth in this Agreement are for convenient reference only, and shall have no bearing on the construction or interpretation of this Agreement.

10.16 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Cardiac Service, other than proceedings or disputes between the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.


HOSPITAL:

Alta Bates Summit Medical Center


By: Warren L. Kirk
Title: President and CEO

GROUP:

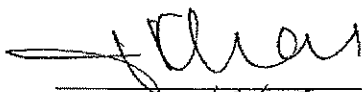
East Bay Cardiac Surgery Center

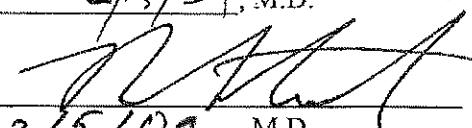

By: _____
Title: President

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PHYSICIAN ACKNOWLEDGMENT

The undersigned physicians hereby acknowledges receipt of a copy of this Agreement and acccpts the position(s) and agrees to carry out the duties as set forth in this Agreement.



2/5/09, M.D.


2/5/09, M.D.

_____, M.D.

_____, M.D.

_____, M.D.

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EXHIBIT 1.1(a)

ADMINISTRATIVE SERVICES

1. **Medical Director Services.** The Medical Director shall be responsible for performing the following administrative services:
 - a. **License and Accreditation.** The Medical Director shall provide such professional guidance and supervision as necessary to obtain and maintain the Cardiac Service's license and accreditation.
 - b. **Policies and Procedures.** The Medical Director shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Cardiac Service. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies shall be approved by the Board of Trustees, and procedures shall be approved by Hospital's administration and the Medical Staff where appropriate.
 - c. **Call Schedule.** The Medical Director shall develop a system for assuring physician coverage of the Cardiac Service, 24 hours per day, seven days per week, as set forth in greater detail in Exhibit 1.1(b).
 - d. **Personnel.** The Medical Director shall advise Hospital in the recruiting, evaluation, and retention of key Hospital personnel working in the Cardiac Service.
 - e. **Supervision.** The Medical Director shall provide clinical supervision of technical personnel in the Cardiac Service.
 - f. **Training and Education.** The Medical Director shall train or arrange for the training of Cardiac Service personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staffs, as well as other employee groups deemed appropriate by Hospital and the Medical Director.
 - g. **Budgets.** The Medical Director shall assist Hospital's administration in the development of operating and capital expenditure budgets for the proper and efficient operation of the Cardiac Service. The Medical Director shall operate the Cardiac Service efficiently, and in accordance with approved budgets, and shall exercise diligence in keeping controllable costs of the Cardiac Service to a minimum.
 - h. **Planning.** Upon request of Hospital, the Medical Director shall participate in Hospital's planning process as it relates to the operation of the Cardiac Service.

- i. **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, the Medical Director shall develop and implement appropriate quality assurance activities for the Cardiac Service. In addition, the Medical Director shall monitor utilization and quality of services, and shall recommend steps necessary to remedy deficiencies therein. These activities shall be conducted through Hospital's Medical Staff committee structure; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities.
- j. **Equipment.** The Medical Director shall advise Hospital on the selection, maintenance, and repair of equipment for the Cardiac Service; and shall arrange for or advise Hospital on the need for maintenance or repair of equipment within the Cardiac Service.
- k. **Reimbursement.** The Medical Director shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the Cardiac Service.
- l. **Committees.** The Medical Director shall participate on Hospital and Medical Staff committees at the request of the Administrator or the Medical Staff.
- m. **Other Responsibilities.** The Medical Director shall perform such other responsibilities as reasonably necessary for the proper operation of the Cardiac Service.

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EXHIBIT 1.1(a)(2)ADMINISTRATIVE TIME REPORT

PHYSICIAN TIME REPORT

Physician: _____

Month: _____ Year: _____

A. ADMINISTRATIVE SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
Management/Staff Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Committee Meeting:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Utilization Management:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Quality Review:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
AMI Initiatives (list dates)						
Sutter Health System-wide Meetings						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Review of Patient Progress (list dates)						
Supervision/Education of Interns, Residents (list dates)						
Supervision/Education of Nurses, Technicians, Staff (list dates)						

Physician Education/Consultation (list dates)						
Community Presentation (list dates)						
Protocol/Policy Development (list dates)						
Service Development (list dates)						
Other, describe: (list dates)						
Other Meetings, describe:						
Meeting: _____ Date: _____						
Meeting: _____ Date: _____						
Total Hours						

Certification By Physician: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature

Title

Date

Printed Name_____
Telephone No._____
Fax No.

Administrator Signature

Title

Date

Printed Name_____
Telephone No._____
Fax No.

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EXHIBIT 1.1(b)

COVERAGE SERVICES

1. **Coverage Services.** Group shall ensure that sufficient Physicians are available to provide and provide professional cardiothoracic surgery services to patients of the Cardiac Service upon a date specific call schedule that is mutually agreed upon by Hospital and Group, including but not limited to the following:
 - a. Group shall ensure that sufficient Physicians are available, 24 hours per day, 7 days per week, to provide professional cardiothoracic surgery services for patients of the Cardiac Service, for patients of the Hospital's emergency department and for medically indigent patients that present to Hospital.
 - b. Group shall ensure that the following personnel are able to be on site at the Summit Campus within 30 minutes of receiving a call to evaluate a patient:
 - (1) A Physician;
 - (2) A second Physician or, alternatively, a general surgeon; and
 - (3) A third individual who either meets the qualifications in (1) or (2), or is qualified as a surgical physician assistant.Those coverage requirements are designed to comply with 22 CCR §70435(b).
 - c. Group shall ensure that at least one Physician is available to provide back-up coverage for angioplasty procedures, and that such Physician is able to be on site at the Hospital's Summit Campus within 30 minutes of receiving a call to provide such services.
2. **Special Qualification Requirement.** Group shall ensure that personnel providing Coverage Services under this Agreement have sufficient Medical Staff privileges to provide such Coverage Services.

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EXHIBIT 1.1(c)

DATA COLLECTION SERVICES

Group shall provide Hospital with quarterly reports of cardiothoracic surgery outcomes data for the services provided at Hospital (the “**Reports**”). The Reports shall include, among other things, morbidity and mortality data. In connection with Group providing Hospital with the Reports, Group shall cause its non-physician personnel to gather, in coordination with Hospital and Physicians, all data necessary to produce the Reports in the form and substance required by the STS in order for the STS to assess, and recognize, the quality of Hospital’s cardiothoracic surgery programs.

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EXHIBIT 2.4

PERFORMANCE EVALUATION

[Form Attached]

Performance Assessment

<p>Performance Assessment Period</p> <p>From: ____ / ____ TO: ____ / ____</p>	<p>Facility: _____</p>
<p>Medical Director: _____</p>	<p>Reviewer: _____</p>

<p>Rating Determination:</p> <p>Meets: Meets or Exceeds Expectations</p> <p>Does Not Meet: Does not meet minimum expectations and improvement required</p>
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ACCOUNTABILITIES

Quality of Clinical Services	Meets	Does Not Meet
❖ Ensures _____ Services functions effectively and efficiently by actively participating in the development, implementation, maintenance and monitoring of key _____ services and responsibilities.		
❖ Effectively minimizes undesirable process variation by developing and implementing assessment quality control activities.		
❖ Collaborates with the _____ Manager to ensure _____ resources are allocated to optimize clinical and service outcomes.		
❖ Establishes, approves and oversees _____ Services competency assessment program.		
❖ Participates in clinical effectiveness projects, actively pursuing the quality, financial, and utilization outcomes defined by each project.		
Comments:		

Compliance	Meets	Does Not Meet
❖ Ensures that _____ Services technical and operational policies, processes, procedures and practices comply with regulatory requirements.		
❖ Provides guidance, supervision and professional services as necessary to maintain _____ license, JCAHO accreditation, and Title 22 requirements at a level appropriate to services provided.		
❖ Collaborates with the _____ Manager to ensure that professional licenses of the _____ personnel are current.		
❖ Assists in the development of plans for corrective action and/or regulatory compliance. Approves final plans as appropriate and ensures that plans are implemented as defined, achieving the desired outcomes.		
❖ Provides accurate, complete time reports by independently completing the Physician Time Report form, adhering to defined reporting instructions.		
❖ Effectively communicates accreditation, licensure, and risk management-related information to The Administrator and Medical Staff as appropriate.		
Comments:		

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Clinical Consultation	Meets	Does Not Meet
❖ Ensures adequate physician presence to provide clinical direction of physician and patient care practices to an acceptable degree of quality and within desired timeframes.		
❖ Supervises the development and provision of continuing education materials and instruction as to benefit medical staff.		
❖ Establishes, approves and oversees an up-to-date and comprehensive continuing education program for _____ personnel.		
❖ Effectively consults with physicians in a wide variety of cases, to ensure appropriate test selection, sequence, interpretation, diagnosis and therapy.		
❖ Effectively resolves patient care events and ensures acceptable outcomes by providing _____ expertise.		
❖ Participates in and contributes to the development of processes to ensure appropriate utilization of _____ Services (i.e., clinical guidelines, clinical pathways, patient-driven protocols).		
Comments:		

Communication	Meets	Does Not Meet
❖ Maintains effective communication with key stakeholders within the hospital and within the Sutter Health.		
❖ Participates on hospital and Medical Staff committees as requested by The Administrator and Medical Staff, maintaining at least an 80% attendance record.		
❖ Participates in regular monthly meetings with _____ Services to review program needs and referring physician requests.		
Comments:		

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Technical Procedures	Meets	Does Not Meet
❖ Effectively directs the development, maintenance, implementation and updating of policies, processes and procedures in accordance with regulatory requirements and accreditation standards.		
❖ Ensures that _____ Services are consistent with written policies, processes and procedures.		
❖ Provides consultation as requested to Sutter Health technical workgroups and performance improvement committees.		
❖ Effectively collaborates with The Administrator and Medical Staff to identify and evaluate new _____ services.		
Comments:		

Strategic Initiatives	Meets	Does Not Meet
❖ Actively participates in _____ Department's annual planning process.		
❖ Promotes and participates in Sutter Health and system-wide integration efforts.		
❖ Supports and facilitates change management efforts with key stakeholders.		
❖ Promotes and participates in ongoing efforts related to standardization and implementation of _____ Services as identified by the Management Team.		
❖ Supports the operating and capital equipment budgeting process.		
Comments:		

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Overall Performance Rating	Overall Level of Performance
Meets or Exceeds Expectations	
Does not meet minimum expectations and improvement required	

Medical Director Comments:

Signatures:

Medical Director: _____

Operations Manager: _____

Nursing Director: _____

Regional Director: _____

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EXHIBIT 10.12

OTHER SERVICE AGREEMENTS

None currently.

A master list of all service agreements between the parties is maintained in Sutter Health's TractManager System.

EXHIBIT 19-3
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER EAST BAY HOSPITALS
dba ALTA BATES SUMMIT MEDICAL CENTER**

**ADMINISTRATIVE, COVERAGE, DATA COLLECTION AND
INDIGENT CARE SERVICES AGREEMENT**
Cardiac Service, Summit Campus

This Administrative, Coverage, Data Collection and Indigent Care Services Agreement ("Agreement") is effective as of **February 1, 2014** (the "Effective Date"), between **Sutter East Bay Hospitals**, a California nonprofit public benefit corporation, doing business as **Alta Bates Summit Medical Center** ("Hospital"), and **East Bay Cardiac Surgery Center Medical Group**, a California general partnership ("Group").

RECITALS

A. Hospital operates an acute care general hospital located in Oakland, California (the "Summit Campus"), and in conjunction therewith maintains a cardiothoracic surgery service ("the Cardiac Service").

B. The Cardiac Service is a Supplemental Service licensed by the California Department of Health Services, and is required, among other things: (i) pursuant to Title 22 of the California Code of Regulations, Section 70433(d), to have cardiothoracic surgery services available at all times for emergencies; and (ii) pursuant to Title 22 of the California Code of Regulations, Section 70435(b), to ensure that the physician responsible for the Cardiac Service is certified by the American Board of Thoracic Surgery with training and expertise in cardiothoracic surgery.

C. In addition, in order to comply with requirements of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), found at Title 42 of the United States Code, Section 1395dd, and to ensure the coordination and maintenance of high quality patient care in the Cardiac Service, including cardiothoracic surgery services provided to patients in Hospital's Emergency Department at the Summit Campus and including patients who have no insurance or ability to pay, Hospital has determined that on-call availability of qualified physicians who specialize in the delivery of cardiothoracic surgery professional services is necessary.

D. In connection with Hospital's commitment to quality patient care, Hospital provides The Society of Thoracic Surgeons ("STS") with quarterly reports of cardiothoracic surgery outcomes data necessary for the STS to assess and report on the quality of cardiothoracic surgery services provided at Hospital (the "STS Reports"). Hospital also provides the California Office of Statewide Health and Planning Development, pursuant to requirements under Title 22 of the California Code of Regulations, Section 97172, with a semi-annual report regarding patients who undergo coronary artery bypass graft surgery ("CAGB Reports").

E. Hospital is in need of experienced, qualified physicians to provide administrative and coverage services for the Cardiac Service, and is in need of physicians and non-physician personnel to gather data for, maintain the related database for and assist in preparation of the STS Reports and the CAGB Reports.

F. Group is a California general partnership, duly organized pursuant to California law, which employs and contracts with physicians duly licensed to practice medicine in the State of California, qualified in cardiothoracic surgery, certified by the American Board of Thoracic Surgery, and qualified to perform the administrative, coverage and data collection services required by this Agreement (each a "Physician," and collectively the "Physicians"). Group also employs and contracts with certain non-physician personnel qualified to gather and input cardiothoracic surgery outcomes data for the STS Reports and CAGB Reports.

G. Hospital wishes to contract with Group to provide Physicians to perform the administrative, coverage and data collection services in accordance with the terms of this Agreement and to provide non-physician personnel to provide the services related to the preparation of the STS Reports and CAGB Reports in accordance with the terms of this Agreement. Group wishes to contract with Hospital to provide such services.

H. Recognizing that that Physicians' obligation to render medically necessary professional medical services to Hospital patients in the Cardiac Service even if patients have neither insurance nor an ability to pay for those services imposes a significant financial burden on Group and Physicians, also wishes to provide reimbursement to Group for medical services provided by Physicians while Physicians are providing on-call coverage services at Hospital to Hospital patients who are in one of the following payment categories: (i) charity care; (ii) self-pay; (iii) bad debt; (iv) Medicare Part A only; or (v) pending eligibility for the Medi-Cal program ("Indigent Patients").

I. This Agreement supersedes the Administrative, Coverage, Data Collection and Indigent Care Services Agreement for Cardiac Service at the Summit Campus entered into between Hospital and Group effective February 4, 2011.

NOW, THEREFORE, the parties agree as follows:

Section 1. DUTIES OF GROUP AND PHYSICIANS

During the term of this Agreement, Group shall perform or comply with, or, as applicable, cause Physicians to perform and comply with, all duties, responsibilities, conditions and covenants set forth in this Agreement, including but not limited to the following:

1.1 Services.

(a) **Administrative Services.** During the term of this Agreement, Group shall ensure that **Junaid H. Khan, M.D.** serves as the medical director of the Cardiac Service (the "Medical Director"). The Medical Director shall be responsible for performing the specific duties and responsibilities set forth in Exhibit 1.1(a) attached hereto, for acting as a liaison between the Cardiac Service, Hospital's Medical Staff at the Summit Campus and other departments within the Hospital and for overseeing Group's performance of this Agreement (the "Administrative Services"). The Administrative Services provided under this Agreement shall be limited to administrative and teaching services provided to Hospital and shall not include the provision of any professional services to patients. If Junaid H. Khan, M.D. is unable or unwilling to perform the Administrative Services, **Russell D. Stanten, M.D.** shall serve as the Medical Director to provide Administrative Services. If neither Junaid H. Khan, M.D. nor Russell D. Stanten, M.D.

is able and willing to perform the Administrative Services, the Hospital and Group shall mutually select a Physician to serve as the Medical Director to provide Administrative Services.

(1) Administrative Time Requirements. Group shall ensure that the Medical Director shall devote a **maximum of thirty (30) hours per month** performing the services described in this Agreement. The parties recognize that the actual time required to perform the services covered under this Agreement may vary from month to month; however, the annual compensation paid to Group shall be capped as provided in Section 3.1(a) (Compensation for Administrative Services) of this Agreement, regardless of the number of hours expended by the Medical Director above three hundred sixty (360) hours in any given year.

(2) Administrative Time Reports. Group shall ensure that the Medical Director contemporaneously records the hours and the actual services provided on a monthly basis using Hospital's electronic time reporting system for administrative services ("Electronic Time Report"), or if an exception to using the electronic system is approved in advance by Hospital's Regional Compliance Officer, a paper time report in the format to be provided by Hospital ("Paper Time Report"), as modified from time to time by Hospital. Electronic Time Reports and Paper Time Reports may also be referred to in this Agreement as "Time Reports." Group shall ensure that Medical Director delivers to the Administrative Director of Professional, Cardiovascular and Rehabilitation Services (the "Administrator") or his/her designee completed and signed copies of the applicable Time Reports within ten (10) days after the end of each calendar month, or as otherwise requested by Hospital during the term of this Agreement, to allow for Hospital's verification of services. Hospital shall have no obligation to pay Physician for services when Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Physician shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

(3) Coordination of Services. Hospital, through its Administrator, Group and the Medical Director shall coordinate their activities in connection with the Cardiac Service. Group or the Medical Director shall inform the Administrator of any extended periods (i.e., one [1] week or more) during which the Medical Director will be unavailable due to vacation, professional meetings, or other personal or professional commitments. The parties agree that the Medical Director will not be unavailable for more than eight (8) weeks per year. During all periods of the Medical Director's unavailability, if requested by Hospital, Group shall engage and provide a substitute physician to serve as the medical director ("Substitute Medical Director") to perform the Administrative Services required of the Medical Director under this Agreement. Group shall be solely responsible for compensating the Substitute Medical Director, and shall cause the Substitute Medical Director to perform all the Administrative Services as required under this Agreement.

(b) Coverage Services. During the term of this Agreement, Group shall ensure that sufficient Physicians are available to provide and shall provide professional cardiothoracic surgery services to patients of the Cardiac Service, as described further in Exhibit 1.1(b) (the "Coverage Services"). Group and each Physician shall report to and be accountable to the Administrator for the performance of Coverage Services.

(1) Coverage Schedule Reports. Within five (5) days of the end of each month, Group shall provide Hospital with a final coverage schedule documenting the Physicians providing the Coverage Services during the previous month (the "Coverage Schedule Report"). Upon request of Hospital, Group shall also complete and execute, or ensure that each Physician completes and executes, such other time studies or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal Requirements.

(c) Data Collection Services. During the term of this Agreement, Group shall provide Physicians and non-physician personnel to provide the data collection services set forth in Exhibit 1.1(c) attached hereto (the "Data Collection Services").

(1) Data Collection Requirements. Group shall ensure that the Physician and non-physician personnel shall devote the necessary hours required to collect data and prepare STS Reports and CAGB Reports for a maximum of three hundred fifty (350) patient cases in the Cardiac Service per year (the "Data Collection Requirements") during the term of this Agreement. The parties recognize that the number of patient cases covered under this Agreement may vary from month to month; however, the annual compensation paid to Group shall be capped as provided in Section 3.1(c) (Compensation for Data Collection Services) of this Agreement, regardless of the number of patient cases reported by Group above three hundred fifty (350) in any given year.

(2) Data Collection Case Number Reports. Group shall ensure that the Physicians and non-physician personnel contemporaneously record the number of patient cases for which the Data Collection Services were provided on a monthly report (the "Data Collection Case Number Report") in the form attached hereto as Exhibit 1.1(c)(2), as modified from time to time by Hospital. On monthly basis, Group shall deliver to the Administrator completed and signed copies of the Data Collection Case Number Reports within ten (10) days after the end of each calendar month during the term of this Agreement. The Data Collection Case Number Reports submitted by Group shall be the basis upon which Hospital shall reimburse Group for Data Collection Services.

(3) Coordination of Services. Hospital, through its Administrator, Group, Physicians and the non-physician personnel shall coordinate their activities in connection with the Data Collection Services.

(d) Indigent Care Services. As requested by Hospital, while providing the Coverage Services, each Physician shall render necessary and appropriate non-elective medical services to specific Indigent Patients in the Cardiac Service at Hospital's Summit Campus ("Indigent Care Services"). Physicians shall also adhere to the Sutter Health's Policy on Financial Assistance for Uninsured Patients, Including Charity Care. The parties agree that the compensation for Indigent Care Services shall be as provided in Section 3.1(b) (Compensation for Coverage and Indigent Care Services) regardless of the number of Indigent Patients to whom Physicians provide services or the amount of professional medical services provided to Indigent Patients.

1.2 Professional Qualifications. Group shall ensure that each Physician providing Administrative or Coverage Services shall at all times:

- (a) Hold an unrestricted license to practice medicine in the State of California;
- (b) Be permitted to prescribe medications and hold a valid Drug Enforcement Agency permit;
- (c) Be board certified and or board eligible by the American Board of Thoracic Surgery and qualified in cardiothoracic surgery;
- (d) Be a member in good standing of Hospital's Medical Staff at the Summit Campus and be subject to all of the attendant privileges, responsibilities and conditions of such membership; and
- (e) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating provider.

1.3 Representations and Warranties. Group represents and warrants to Hospital that:

- (a) Neither Group nor any Physician is bound by any agreement or arrangement which would preclude Group from entering into this Agreement, or Group or any Physician from fully performing the services required under this Agreement;
- (b) No Physician's license to practice medicine in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
- (c) No Physician's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
- (d) Neither Group nor any Physician has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation;
- (e) Neither Group nor any Physician has information that would reasonably indicate that Group or any Physician is not able to perform the services required under this Agreement; and
- (f) No Physician is the subject of (i) a current or pending disciplinary action by the Medical Board of California or any equivalent medical licensing authority of any other state, or (ii) a current or pending investigation by the Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services or any similar state or federal health care agency.

1.4 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify Hospital of any event causing or likely to cause a failure by any Physician to meet the professional qualifications set forth in Section 1.2 (Professional Qualifications), or the representations and warranties set forth in Section 1.3 (Representations and Warranties), or any

other breach of the terms of this Agreement by Group or any Physician. In addition, Group shall promptly notify Hospital when it receives notice of any malpractice or professional disciplinary action asserted or initiated against Group or any Physician.

1.5 Discharge Summaries. Following the discharge of any patient to whom a Physician has provided professional services while providing Coverage Services under this Agreement, Group shall ensure that the applicable Physician shall complete discharge summaries in a timely manner for all patients admitted by Group.

1.6 Compliance with Rules and Laws. Group shall comply, and shall ensure that Physicians comply, with all policies, bylaws, rules and regulations of Hospital and the Medical Staff at the Summit Campus and applicable standards and recommendations of the Joint Commission. Group also shall comply, and shall ensure that Physicians comply, with all applicable provisions of federal, state and local laws, rules and regulations, as well as rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the Hospital; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payors whose members/beneficiaries receive care from Hospital. This shall specifically include compliance with applicable provisions of Title 22 of the California Code of Regulations.

1.7 Corporate Compliance Program. Group and each Physician shall comply with Hospital's corporate compliance program, as applicable. Group and Physicians shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group or any Physician and/or any of the services provided by Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of documents and/or information related to the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physicians shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

1.8 Quality Improvement and Risk Management. Group and Physicians shall participate in the quality improvement, utilization review and risk management programs of Hospital, and shall cooperate with any related audits, reviews or investigations.

1.9 System-wide Clinical Integration. Group and the Physicians shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

1.10 Use of Hospital Facilities. Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group, Physicians and non-physician personnel solely to provide Administrative Services, Coverage, Data Collection or Indigent Care Services under this Agreement and shall not be used for any other purpose whatsoever. No part of Hospital's premises shall be used at any time by Group or any Physician for their own purposes or as an office for the general practice of medicine.

1.11 Expert Witness Conflict of Interest. During the terms of this Agreement, neither Group nor any Physician, nor any non-physician personnel shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert

testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (i) Hospital, (ii) any other hospital or health care facility known by Group or Physicians to be owned or operated by, or affiliated with, Sutter Health, or (iii) any employee of Hospital or such other known Sutter Health hospital or health care facility, if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing shall prevent Group or any Physician or non-physician personnel from testifying as a factual witness in an action in which both Group and/or such Physician or non-Physician personnel and Hospital (or any other Hospital or health care facility known by Group or Physicians to be owned, operated by or affiliated with Sutter Health, or any employee of Hospital or such other known Sutter Health hospital or health care facility) are defendants.

1.12 Anti-Referral Laws. Nothing in this Agreement, or any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Physician and Hospital. This Agreement is not intended to influence Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

1.13 Non-Discrimination. Group and each of its Physicians shall provide services under this Agreement without regard to any patient's race, color, creed, ethnicity, religion, national origin, ancestry, citizenship, marital status, age, sex, sexual orientation, pre-existing medical condition, physical or mental handicap, financial status, insurance status, economic status, or ability to pay for medical services.

1.14 Failure to Provide Coverage Services. In the event Group fails to provide any of the Coverage Services as required in this Agreement, Hospital, in its discretion, shall have the right to terminate this agreement and contract with another provider to render such Coverage Services.

1.15 Working Cooperatively with Others. Group shall ensure that Physicians shall at all times work cooperatively with others toward enhancing the quality of patient care. Group shall ensure that Physicians refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

Section 2. DUTIES OF HOSPITAL

During the term of this Agreement, Hospital shall perform and comply with all duties and responsibilities, conditions and covenants set forth in this Agreement, including the following:

2.1 Equipment, Supplies, Etc. Hospital shall operate the Cardiac Service with all customary and necessary equipment, furniture, computers, supplies, maintenance, utilities and personnel reasonably required for operation of the Cardiac Service. The parties acknowledge and agree that the Cardiac Service is currently equipped, maintained and staffed in a reasonable and satisfactory manner. The selection, deletion and purchasing of additional or replacement equipment and the selection, removal and retention of personnel shall be the exclusive function

of Hospital, with input from the Medical Director as requested by the Administrator. Notwithstanding any other provision of this Agreement, if Group should ever allege that Hospital has materially breached its obligations under this Section 2.1, Group's sole and exclusive remedy shall be termination of this Agreement.

2.2 Performance Assessment. Hospital shall assess each Physician's performance annually using a form provided by Hospital, as modified by Hospital from time to time.

2.3 Responsibility for Services. To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Cardiac Service.

Section 3. COMPENSATION, EXPENSES AND BILLING

3.1 Compensation. As payment in full for the Administrative, Coverage, Data Collection, and Indigent Care Services provided by Group under this Agreement, Hospital shall compensate Group as follows:

(a) **Compensation for Administrative Services.** Hospital shall pay to Group **Three Hundred Dollars (\$300) per hour** for actual hours worked and documented pursuant to Section 1.1(a)(2) (Administrative Time Reports), **up to a maximum of Nine Thousand Dollars (\$9,000) per month or an annual maximum of One Hundred Eight Thousand Dollars (\$108,000).** Payments shall be made within thirty (30) days after the Administrator receives completed and signed Administrative Time Reports for the applicable month. Payments will be sent to the address indicated on the IRS Form W-9 submitted by Group to Hospital pursuant to Section 3.5 (Tax Reporting); however, the address for payments may be changed or modified by Group from time to time upon written notice to Hospital and by submitting a new IRS Form W-9, if so requested by Hospital.

(1) **Compensation for Substitute Medical Director.** Notwithstanding anything to the contrary in this Agreement, accounting and payment of compensation for Administrative Services shall include such services rendered by the Substitute Medical Director provided that the documentation required under Section 1.1(a)(2) (Administrative Time Reports) of this Agreement evidencing the services and hours provided by the Substitute Medical Director is submitted to Hospital.

(b) **Compensation for Coverage and Indigent Care Services.** Hospital shall pay to Group **Eight Hundred Sixty-Two Thousand Dollars (\$862,000) per year or Seventy-One Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$71,833.33) per month** for the Coverage Services and Indigent Care Services provided by the Physicians under Section 1.1(b) (Coverage Services) and 1.1(d) (Indigent Care Services), but only upon Hospital's receipt of completed and signed Coverage Schedule Reports. Payments shall be made within twenty-one (21) days after the Administrator receives completed and signed Coverage Schedule Reports for the applicable month. Payments hereunder shall be made to Group and not to any individual Physician. It is specifically understood and agreed that the Physicians shall be and remain on Group's payroll and not on Hospital's payroll. *Notwithstanding the foregoing, no compensation shall be payable to Group for any Coverage Services for which Group or*

Physicians have not submitted the documentation required under Section 1.1(b)(1) (Coverage Schedule Reports) of this Agreement. Compensation under this Section includes compensation for both Coverage Services and Indigent Care Services, and neither Group nor any Physician shall be eligible to receive or shall receive separate payments for such Indigent Care Services under this Agreement, under any other agreement between Group, Physicians and Hospital or under Hospital's Reimbursement Policy entitled "For Physicians Seeking Payment For Charity/Indigent/Medi-Cal Pending Patients Seen In Or Admitted To the Alta Bates Summit Medical Center" or any other policy related to the payment of services for Indigent Patients.

(c) **Compensation for Data Collection Services.** Hospital shall pay to Group **One Thousand One Hundred Dollars (\$1,100) per patient case, up to a maximum of Three Hundred Eighty-Five Thousand Dollars (\$385,000) per year** for the Data Collection Services provided by the Physicians and non-physician personnel under Section 1.1(c) (Data Collection Services), but only upon Hospital's receipt of completed and signed Data Collection Case Number Reports, pursuant to Section 1.1(c)(2) (Data Collection Case Number Reports), documenting the number of patient cases for which Data Collection Services were provided. Payments shall be made within thirty (30) days after the Administrator receives completed and signed Data Collection Case Number Reports for the applicable month. Payments hereunder shall be made to Group and not to any individual Physician or non-physician personnel. It is specifically understood and agreed that the Physicians and non-physician personnel shall be and remain on Group's payroll and not on Hospital's payroll. *Notwithstanding the foregoing, no compensation shall be payable to Group for any Data Collection Services for which Group has not submitted the documentation required under Section 1.1(c)(2) (Data Collection Case Number Reports) of this Agreement.*

3.2 Expenses.

(a) **Expense Reimbursement Maximum.** Hospital shall reimburse Group for, or at its election pay directly, once during the term of this Agreement, actual documented expenses up to a maximum of One Thousand Six Hundred Fifty Dollars (\$1,650) for Junaid H. Khan, M.D. to attend the "Transcatheter Heart Valve Therapies Symposium" conference (the "Conference") sponsored by the Society of Thoracic Surgeons. Items that shall be included in the maximum amount reimbursed to Group for the Conference shall be the registration fee for the Conference, meals, airfare, parking, mileage, and accommodations. Hospital shall also reimburse Group for, or at its election pay directly, once during the term of this Agreement actual documented expenses up to Three Thousand Two Hundred Dollars (\$3,200) for Junaid H. Khan, M.D. to attend a LeaderLab sponsored by Sutter Health (the "LeaderLab"). Items that shall be included in the maximum amount reimbursed to Group for the LeaderLab shall be the registration fee for the LeaderLab, meals and accommodations. Hospital and Group understand and agree that such expenses for the Conference and the LeaderLab: (i) have been approved by Hospital in advance in accordance with Hospital policy and at Hospital's sole discretion, (ii) are incurred for the benefit of Hospital and (iii) are reasonable and ordinary and necessary business expenses directly and substantially related to Junaid H. Khan, M.D.'s job duties as the Medical Director and to procedures discussed at the Conference that can only be provided at Hospital by the Medical Director. Such reimbursement shall be conditioned upon the inclusion of the request for reimbursement in the applicable month's Administrative Time Report and timely submission of receipts.

(b) **Expense Documentation.** Junaid H. Khan, M.D. and Group shall properly document all reasonable and necessary business expenses incurred by Dr. Khan and Group related to Dr. Khan's attendance at the Conference and the LeaderLab in order to be eligible for reimbursement pursuant to Section 3.2(a) (Expense Reimbursement Maximum). Proper documentation will not guarantee reimbursement.

(c) **Other Expenses.** Except for the expenses specifically discussed in Section 3.2(a) above, neither Group nor any Physician shall incur any financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Physicians shall be solely responsible for the following: (a) Physicians' compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings; (d) professional liability insurance; and (e) all compensation attributable to any employees (including non-physician personnel), subcontractors, or back-up physicians engaged by Group or a Physician.

3.3 Billing and Collection.

(a) **Hospital Billing.** Hospital shall bill and collect for the technical component of medical professional services delivered to all patients in the Cardiac Service.

(b) **Group Billing.** Group shall be solely responsible for the billing and collection of all charges for the professional component of medical services delivered to Hospital patients by Group or any Physician. All such billings shall be billed under a single group provider number assigned to Group and shall comply with all applicable federal and state laws, regulations, rules, and guidelines. Hospital shall have no liability for bad debts or uncollectible accounts billed by Group or Group's billing agent. Neither Group nor any Physician shall bill or assert any claim for payment against any patient or payor for the Administrative, Coverage or Data Collection Services provided by Group, Physicians and non-physician personnel under this Agreement.

3.4 Fair Market Value Compensation. The compensation provided under Section 3.1 (Compensation) represents the parties' good faith determination of the reasonable fair market value compensation for the Administrative Services, Coverage Services, Data Collection Services and Indigent Care Services to be provided by Group, Physicians and non-physician personnel under this Agreement.

3.5 Tax Reporting. To ensure proper tax reporting of the compensation paid under this Agreement, Group shall complete, execute and deliver to Hospital an IRS Form W-9 and California Form FTB-590 (if requested by Hospital) which sets forth the correct taxpayer identification number for Group. To the extent required by law, Hospital shall report all payments to Group on IRS form 1099 and its state law counterpart.

Section 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be **two (2) years** commencing on the Effective Date of this Agreement, unless terminated earlier pursuant to Section 4.2. hereof.

4.2 Early Termination. This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

- (1) The inaccuracy of any representation of Group in Section 1.3 (Representations and Warranties);
- (2) Failure of Group to remove a Physician after requested by Hospital pursuant to Section 5 (Removal of a Physician);
- (3) Loss or restriction of Hospital's license or accreditation, or destruction, sale or closure of the Hospital or the portion(s) thereof dedicated to the operation of the Cardiac Service, such that Hospital is not able to continue the uninterrupted operation of the Cardiac Service;
- (4) Any incident involving Group or any Physician that significantly impairs the operation of Hospital or Hospital's license, accreditation, or Medicare or Medi-Cal participation;
- (5) Either party becomes insolvent or declares bankruptcy;
- (6) Failure of Group to maintain professional liability insurance pursuant to Section 6.1 (Professional Liability Insurance); and
- (7) The dissolution or discontinuance of the operations of Group.

(b) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.2(a), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure to provide the Administrative Services described in Section 1.1(a) (Administrative Services), the Coverage Services described in Section 1.1(b) (Coverage Services), the Data Collection Services Described in Section 1.1(c) (Data Collection Services), or the Indigent Care Services provided in Section 1.1(d) (Indigent Care Services); (ii) failure of Group or the Medical Director to satisfy the Administrative Time Requirements set forth in Section 1.1(a)(1) (Administrative Time Requirements); (iii) failure of Group or the Medical Director to deliver Administrative Time Reports in a timely manner; (iv) failure of Group or Physicians to deliver Coverage Schedule Reports in a timely manner; (v) failure of Group, Physicians or the non-physician personnel to satisfy the Data Collection Requirements set forth in Section 1.1(c)(1) (Data Collection Requirements); (vi) failure of Group to provide the Data Collection Case Number Time Reports in a timely manner; and (vii) any act or omission by Group or any Physician that jeopardizes the quality of care provided to Hospital's patients.

(c) **Legal Jeopardy.** If, as a result of a change in law or its interpretation after the Effective Date, either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

(d) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon ninety (90) days' advance written notice to the other party.

4.3 Effect of Expiration or Termination.

(a) **Termination of Obligations.** Except as otherwise provided in this Section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(b) **Pre-Termination Services.** Hospital shall pay Group for any unpaid Administrative, Coverage or Data Collection Services provided prior to the termination date, with such amount prorated on a daily basis if the termination date occurs on a day other than the last day of a month.

(c) **Liability for Breach.** With the exception of Section 2.1 (Equipment, Supplies, Etc.), a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 10 (Dispute Resolution) of this Agreement.

(d) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Group shall immediately vacate, and shall cause all Physicians to immediately vacate, Hospital premises and remove all of Group's and each Physician's and non-physician personnel's work items and materials from Hospital premises and turn over to Hospital all records, charts, software, patient and vendor lists and materials relating to the services performed by Group, Physicians or any non-physician personnel under this Agreement. All patient records shall remain the exclusive property of Hospital; provided, however, that: (i) Group and each Physician shall have the continuing right to inspect and copy all records pertaining to a particular patient in the event a malpractice claim is asserted against Group or any Physician as a result of medical activities conducted under this Agreement; and (ii) each Physician shall have the continuing right to inspect and copy all records as required for professional licensing and certification purposes. Any personal property that is not removed upon expiration or termination of this Agreement shall be removed by Hospital at Group's expense.

(e) **Survival.** The provisions of Sections 1.1(a)(2) (Administrative Time Reports), 1.1(c)(2) (Data Collection Case Number Reports), 1.7 (Corporate Compliance Program), 4.3 (Effect of Expiration or Termination), 4.4 (Renewals, Extensions, New Agreements), 5.2 (No Procedural Rights), 6 (Insurance), 7 (Access to Books and Records), 9 (Confidentiality), 10 (Dispute Resolution), 11 (Notices) and 12 (Miscellaneous Provisions) shall survive termination of Agreement.

4.4 Renewal, Extensions, New Agreements. Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Group prior to the first anniversary of the Effective Date of this Agreement.

Section 5. REMOVAL OF A PHYSICIAN

5.1 Cause for Removal. Hospital may require the immediate cessation of services by any Physician and/or require Group to immediately remove from providing services under this Agreement any Physician for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

(a) Failure of Physician to meet any of the requirements of Section 1.2 (Professional Qualifications);

(b) The death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for a continuous period of ninety [90] days);

(c) Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;

(d) After notice and opportunity to cure, any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to Summit Medical Staff bylaws; or

(e) Failure to abide by any of the terms and conditions of this Agreement applicable to Physicians.

(f) Upon the request of Hospital's Chief Executive Officer ("CEO") if, in the CEO's best judgment, such removal is in the best interest of Hospital. Removal of the Physician pursuant to this Section 5.1(f) will not solely constitute cause for filing a report with the California Medical Board. No action will be reported to the California Medical Board except in accordance with law and Medical Staff Bylaws.

5.2 No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership at the Summit Campus. Therefore, this Agreement may be terminated with respect to individual Physicians in accordance with this Section 5 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff at the Summit Campus, or any other body. Group represents and warrants that all Physicians are aware of and accept this condition.

Section 6. INSURANCE

6.1 Professional Liability Insurance. Group, at its sole cost and expense, shall maintain professional liability insurance for services rendered by Group and each Physician in the Cardiac Service in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate from an insurance company which is acceptable to Hospital. If Group's professional liability coverage is on a "claims made" rather than an "occurrence" basis, and such coverage is later terminated, or converted to an occurrence coverage (or vice versa), Group shall at its expense obtain prior acts or tail coverage (as applicable) with the same liability limits required above covering all periods that this Agreement is or has been in force. Such insurance shall cover Group's and Physician's obligations (as set forth in detail in Exhibit 9.4 of this Agreement) concerning the Protected Health Information ("PHI") received from, or created by Group and Physician on behalf of, Sutter Health pursuant to this Agreement. Upon Hospital's request, Group shall provide to Hospital a copy of the Certificates of Insurance evidencing the insurance coverage required under this Section. Group shall provide Hospital with notice of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section.

6.2 Insurance for Administrative Services. With respect to Administrative and Data Collection Services provided under this Agreement, the Medical Director, Physicians and non-physician personnel shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to the Medical Director's Administrative Services and the Physicians' and non physician personnel's Data Collection Services and not to any Coverage or Indigent Care Services nor any other professional medical services provided to patients by Group or any Physician.

Section 7. ACCESS TO BOOKS AND RECORDS

7.1 Access. Group shall maintain and make available all necessary agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of 4 years after furnishing services pursuant to this Agreement, Group shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or any of their duly authorized representatives, agreements, books, documents, and records of Group that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period through a subcontract with a related organization, such agreement must contain a clause to the effect that until the expiration of 4 years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

7.2 Limits. The availability of Group's agreements, books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

Section 8. INDEPENDENT CONTRACTOR RELATIONSHIP

In the performance of the services described in this Agreement, Group (and each Physician and non-physician personnel) shall be and at all times is, acting and performing as an independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Group, any Physician, or and non-physician personnel shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physicians and non-physician personnel, and neither Group nor any Physician or and non-physician personnel shall have a claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Physicians and non-physician personnel; make state or federal unemployment insurance contributions on Physicians' and non-physician personnel's behalf; withhold state and federal income tax from payments to Physicians and non-physician personnel; make disability insurance contributions on behalf of Physicians and non-physician personnel; and obtain workers' compensation insurance on behalf of Physicians and non-physician personnel as required by law. Group, and/or each Physician and non-physician personnel, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Group to any Physician and non-physician personnel employed, contracted or engaged by Group.

Section 9. CONFIDENTIALITY

9.1 Hospital Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Physicians, non-physician personnel and Group may have access to certain information of Hospital that is

confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Group agrees that Group, Physicians and non-physician personnel will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Physicians' and non-physician personnel's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

9.2 Terms of this Agreement. Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), Group, Physicians and non-physician personnel shall not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

9.3 Patient Information. Group shall not disclose, and shall ensure that the Physicians and non-physician personnel do not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Group, Physicians and non-physician personnel shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff at the Summit Campus, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

9.4 Business Associate Requirements. By signing and/or acknowledging this Agreement, the parties and Physicians hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of PHI. The parties and Physicians also agree to comply with the requirements set forth in Exhibit 9.4 ("Business Associate Requirements") attached to this Agreement and incorporated herein by reference.

9.5 Remedy. Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement or removing a Provider upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

Section 10. DISPUTE RESOLUTION

10.1 Meet and Confer. In the event of any dispute between Group (including Physicians) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 10.2 (Agreement to Arbitrate).

10.2 Agreement to Arbitrate. The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 10.1 (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Streamlined Arbitration Rules and Procedures of JAMS, which service shall be selected by Hospital at its sole discretion.

10.3 Initiating Arbitration. To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 11 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

10.4 Powers of Arbitrator. The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

10.5 Attorneys' Fees and Costs. The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding

by the arbitrator that the arbitration was initiated in bad faith as described in Section 10.4 (Powers of Arbitrator).

10.6 Venue. Venue for the arbitration shall be the county in which the contract was executed or the County of Sacramento.

Section 11. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter East Bay Hospitals dba Alta Bates Summit
Medical Center
350 Hawthorne Avenue
Oakland, California 94609
Attn: Charles J. Prosper, Chief Executive Officer
-and-
Stephen F. O'Brien, M.D., Chief Medical
Executive
-and-
Leo Dominguez, Administrative Director of
Professional, Cardiovascular and Rehabilitation
Services

With a copy to: Sutter Health
Office of the General Counsel
633 Folsom Street, 7th Floor
San Francisco, California 94107
Attn: East Bay Regional Counsel

If to Group: East Bay Cardiac Surgery Center Medical Group
3300 Webster Street, Suite 500
Oakland, California 94609
Attention: President

Section 12. MISCELLANEOUS PROVISIONS

12.1 No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.

12.2 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

12.3 Assignability and Subcontracting. The rights and obligations of each party under this Agreement shall inure to the benefit of the parties and to their respective successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or

obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician/non-physician personnel and the services provided by that physician/non-physician personnel on all Administrative Time Reports, Coverage Schedule Reports and Data Collection Case Number Reports submitted to Hospital, and (ii) pay the subcontracting physician/non-physician personnel at the same rate specified in Section 3.1. (Compensation).

12.4 Use of Names and Logos. Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

12.5 No Third Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

12.6 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

12.7 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

12.8 Amendments and Extensions. Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

12.9 Other Service Agreements. Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any physician employed by Group, (or any immediate family member of any such physician) provides services to Hospital.

12.10 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement.

12.11 Advice of Counsel. The parties represent and warrant that they have consulted with (or had the opportunity to consult with) their own independent legal counsel or advisors concerning their rights and duties under this Agreement, and have read and understand the terms of this Agreement. In the case of any uncertainty under this Agreement, this Agreement shall be construed without regard to which party was primarily responsible for drafting this Agreement.

12.12 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disaster, strikes, or any cause beyond the reasonable control of the non-performing party.

12.13 Indemnification. Each party agrees to indemnify, defend and hold harmless the other party and each of such other party's officers, directors, members, shareholders, agents and

employees, from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorneys' fees) (each a "Claim") arising directly or indirectly, in whole or in part, out of (i) a breach of this Agreement by the indemnifying party, or (ii) any professional act or omission of the indemnifying party in providing services under this Agreement; provided, that if any insurance coverage maintained by either party would otherwise cover a Claim, in whole or in part, nothing in this Section shall be construed to relieve the insurance carrier of its obligations under such coverage, which in all cases shall be primary to either party's indemnification obligations hereunder.

Additionally, each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party or any of its officers, directors, agents, Subcontractors or employees, of its obligations under the Agreement with respect to PHI.

12.14 Recitals and Exhibits. The recitals and exhibits are hereby incorporated into this Agreement by reference.

12.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Signature Page Follows

SIGNATURE PAGE

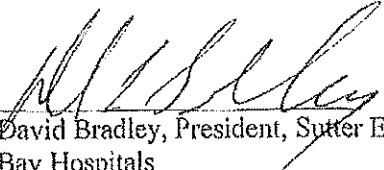
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

GROUP:

**Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center**

**East Bay Cardiac Surgery Center Medical
Group**

By: 
David Bradley, President, Sutter East
Bay Hospitals

By: _____

Name: _____

Title: _____

Date: 1-31-2014

Date: _____

MEDICAL DIRECTOR ACKNOWLEDGMENT

The undersigned physicians hereby acknowledge receipt of a copy of this Agreement and accept the position of Medical Director and Physicians agree to carry out the duties related to Administrative, Coverage, Data Collection and Indigent Care Services as set forth in this Agreement.

Junaid Khan, M.D.

Date: _____

Russell Stanten, M.D.

Date: _____

NON-BINDING ADMINISTRATIVE ACKNOWLEDGMENT

The undersigned acknowledges responsibility for administrative oversight of the contract preparation process. This signature is not required for this Agreement to be effective or binding and is not incorporated therein.

Stephen F. O'Brien, M.D.,
Chief Medical Executive

Date: _____

SIGNATURE PAGE

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Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

GROUP:

East Bay Cardiac Surgery Center Medical
Group

By: _____
David Bradley, President, Sutter East
Bay Hospitals

Date: _____

By:  _____


Name: Junaid Khan, MD

Title: Partner

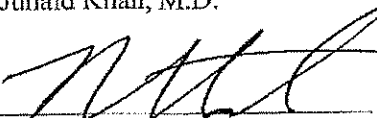
Date: 1/31/14

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Date: 1/31/14


Russell Stanten, M.D.

Date: 1/31/14

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Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

East Bay Cardiac Surgery Center Medical
Group

By: _____
David Bradley, President, Sutter East
Bay Hospitals

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

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Junaid Khan, M.D.

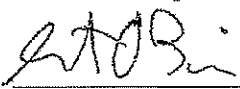
Date: _____

Russell Stanten, M.D.

Date: _____

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Stephen F. O'Brien, M.D.,
Chief Medical Executive

Date: 1/31/14

EXHIBIT 1.1(a)**ADMINISTRATIVE SERVICES**

The Medical Director shall be responsible to perform the Administrative Services set forth below.

- a. **License and Accreditation.** The Medical Director shall provide such professional guidance and supervision as necessary to obtain and maintain the Cardiac Service's license and accreditation.
- b. **Policies and Procedures.** The Medical Director shall develop, maintain, implement, and update as necessary policies and procedures for the effective operation of the Cardiac Service. These policies and procedures shall be consistent with applicable licensing regulations, and shall promote high quality patient care, standardization of procedures, efficiency of scheduling, and highly trained professional and technical personnel. Policies shall be approved by the Board of Directors, and procedures shall be approved by Hospital's Administration and the Medical Staff at the Summit Campus where appropriate.
- c. **Call Schedule.** The Medical Director shall develop a system for assuring appropriate Physician coverage of the Cardiac Service, 24 hours per day, 7 days per week, as set forth in greater detail in Exhibit 1.1(b).
- d. **Personnel.** The Medical Director shall advise Hospital Administration in the recruiting, evaluation, and retention of key Hospital personnel working in the Cardiac Service.
- e. **Supervision.** The Medical Director shall provide clinical oversight of technical personnel in the Cardiac Service.
- f. **Training and Education.** The Medical Director shall train or arrange for the training of Cardiac Service personnel, and shall develop such continuing education materials and instruction as necessary to properly instruct members of Hospital's medical, nursing, and allied health professional staff, as well as other employee groups deemed appropriate by Hospital and the Medical Director.
- g. **Budgets.** The Medical Director shall assist Hospital's Administration in the development of operating and capital expenditure budgets for the proper and efficient operation of the Cardiac Service. The Medical Director shall operate the Cardiac Service efficiently and in accordance with approved budgets and shall exercise diligence in keeping controllable costs of the Cardiac Service to a minimum.
- h. **Planning.** Upon request of Hospital, the Medical Director shall participate in Hospital's planning processes as it relates to the operation of the Cardiac Service and to the overall success of the Hospital.
- i. **Quality Assurance.** In cooperation with Hospital's formal quality assurance program, the Medical Director shall develop and implement appropriate quality assurance activities for the Cardiac Service. In addition, the Medical Director shall monitor utilization and

quality of services rendered in the Cardiac Service, and shall recommend steps necessary to remedy deficiencies therein. These activities shall be conducted through Hospital's Medical Staff committee structure at the Summit Campus; nothing in this Agreement is intended to affect the privileges and immunities that attend such Medical Staff activities. .

j. **Equipment.** The Medical Director shall advise Hospital on the selection, maintenance, and repair of equipment for the Cardiac Service and shall arrange for or advise Hospital on the need for maintenance or repair if equipment within the Cardiac Service.

k. **Reimbursement.** The Medical Director shall cooperate with Hospital in the preparation of claim forms for reimbursement, and of other appropriate reports on the operation of the Cardiac Service.

l. **Committees.** The Medical Director shall participate on Hospital and Summit Medical Staff committees at the request of the Hospital Administration or the Summit Medical Staff.

m. **Other Responsibilities.** The Medical Director shall perform such other responsibilities as reasonably necessary for the proper operation of the Cardiac Service.

EXHIBIT 1.1(b)

COVERAGE SERVICES

1. **Coverage Services.** Group shall ensure that sufficient Physicians are available to provide and provide professional cardiothoracic surgery services to patients of the Cardiac Service (including patients presenting to Hospital's Summit Campus Emergency Department) upon a date-specific call schedule that is mutually agreed upon by Hospital and Group, including but not limited to the following:
 - a. Group shall ensure that sufficient Physicians are available, twenty-four (24) hours per day, seven (7) days per week, to provide professional cardiothoracic surgery services for patients of the Cardiac Service, including patients of Hospital's Summit Campus Emergency Department, Hospital inpatients and Indigent Patients that present to Hospital.
 - b. Group shall ensure that the following personnel are able to be on site at the Summit Campus within thirty (30) minutes of receiving a call to evaluate a patient:
 - i. A Physician;
 - ii. A second Physician or, alternatively, a general surgeon; and
 - iii. A third individual who either meets the qualifications in (i) or (ii), or is qualified as a surgical physician assistant.

The coverage requirements set forth above are designed to comply with Title 22 of the California Code of Regulations, Section 70435(b).
 - c. Group shall ensure that at least one (1) Physician is available to provide back-up coverage for angioplasty procedures, and that such Physician is able to be on site at the Hospital's Summit Campus within thirty (30) minutes of receiving a call to provide such services.
2. **Special Qualification Requirement.** Group shall ensure that personnel providing Coverage Services under this Agreement have sufficient Medical Staff privileges at the Summit Campus to provide such Coverage Services.

EXHIBIT 1.1(c)

DATA COLLECTION SERVICES

Group shall provide Hospital with quarterly reports of cardiothoracic surgery outcomes data for the services provided by Hospital (the "Reports"). The Reports shall include, among other things, morbidity and mortality data.

In connection with Group providing Hospital with the Reports, group shall cause its Physicians and non-physician personnel to, in coordination with Hospital:

- (i) gather all data and prepare any specific forms necessary to produce the Reports in the forms and substance required by the STS in order for the STS to assess, and recognize, the quality of Hospital's cardiothoracic surgery programs;
- (ii) gather all data and prepare any specific forms necessary to produce the Reports in the forms and substance required by the California Office of Statewide Health and Planning Development in order for Hospital to file the semi-annual CAGB Reports; and
- (v) conduct quarterly and year end audits of the data gathered and forms prepared.

EXHIBIT 1.1(c)(2)**DATA COLLECTION CASE NUMBER REPORT**

Month: _____ Year: _____

DATA COLLECTION SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
Number of Patient Cases in the Cardiac Service for which Data Collection Services Were Performed						
Other, describe:						
<i>TOTAL</i>						

Certification: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Administrative Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature_____
Title_____
Date:_____
Printed Name_____
Administrator Signature_____
Title_____
Date_____
Printed Name

EXHIBIT 9.4

BUSINESS ASSOCIATE REQUIREMENTS

Hospital and Group understand and agree that in providing the Administrative Services set forth in this Agreement, Group and Physician(s) providing the Administrative Services are each acting as a Business Associate of Hospital (who shall be referred to in this Exhibit as the "Covered Entity").

The parties desire to comply with federal and California laws regarding the Use and Disclosure of individually identifiable health information, in particular with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated under these laws.

Now therefore, in consideration of the promises set forth herein, the parties agree as follows:

1. **Definitions.** The parties agree that any capitalized terms shall have the same definition as given to them under HIPAA and HITECH and regulations promulgated under these laws.

2. **Protected Health Information.** Business Associate agrees that it shall keep confidential all Individually Identifiable Health Information protected under California and federal law, including, but not limited to, Protected Health Information that Business Associate receives from Covered Entity, or creates or receives on behalf of Covered Entity (hereafter "PHI"). Such PHI shall be and remain the property of Covered Entity.

3. **Obligations of Business Associate.** Business Associate shall limit its Use and Disclosure of PHI only as necessary and appropriate to fulfill its specific obligations to Covered Entity, and agrees to the following, without limiting the foregoing:

(a) **Use of Protected Health Information ("PHI").** Business Associate agrees that it, and its agents, employees and Subcontractors, shall not Access, Use or Disclose PHI other than as permitted or required by the Agreement or as required by law.

(b) **Safeguards.** Business Associate shall comply with Subpart C of 45 CFR Part 164 ("Security Rule") with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement. Additionally, Business Associate will comply with the following specific requirement relevant to Subpart C of 45 CFR Part 164 ("Security Rule"):

i. Business Associate will securely sanitize all media containing Covered Entity's PHI (i.e., make the PHI unreadable or unusable through encryption or physical destruction) prior to disposal or re-use.

(c) **Reporting.** Business Associate shall report to the Privacy Officer of Covered Entity any Use or Disclosure of protected health information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR § 164.410 within forty-eight (48) hours of Discovery. Reports shall include, to the extent possible: A description

of what happened, including the date of the discovery; the types of PHI that were involved; any steps individuals should take to protect themselves from potential harm; and what Business Associate is doing to investigate, mitigate, and protect against further unauthorized Disclosures or Breaches. Business Associate shall also promptly report in electronic form to the Security Officer of Covered Entity any Security Incident relating to Electronic PHI of which Business Associate becomes aware, except that no report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system, such as "pings" on a firewall. Reports required under section shall be made to the following individuals, as applicable:

Sutter Health, Chief Privacy Officer
2200 River Plaza Drive, 3rd Fl E
Sacramento, CA 95833
Ph: (916) 286-6587

Sutter Health, Chief Information Security Officer
3707 Schriever Avenue
Mather, CA 95655
Ph: (916) 454-8975

(d) Workforce, Agents and Subcontractors: Business Associate shall not disclose PHI to any member of its Workforce, or to any of its agents or Subcontractors, unless such Disclosure is necessary for Business Associate to fulfill the terms of the Agreement. Business Associate shall also ensure that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information in accordance with 45 CFR § 164.502(e)(1)(ii) and 164.308(b)(1). Business Associate shall not disclose PHI, nor allow an agent or Subcontractor to Disclose PHI, outside of the United States of America without the express written consent of Covered Entity.

(e) Access to PHI: Upon the request by Covered Entity, Business Associate shall promptly provide PHI to Covered Entity within five (5) days to permit any individual whose PHI is maintained by Business Associate to have Access to and to copy his/her PHI in accordance with 45 CFR § 164.524, and applicable California law. Such PHI shall be produced in the format requested by Covered Entity, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. If an individual contacts Business Associate directly for such Access, Business Associate shall direct the individual to contact the Covered Entity. This requirement to provide Access to the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(f) Amendment of PHI: Upon the request of Covered Entity, Business Associate shall amend PHI and/or make PHI available to Covered Entity within five (5) business days for amendment, in such manner as Covered Entity may from time to time request, in accordance with 45 CFR § 164.526 and applicable California law. If an individual contacts Business Associate directly to amend PHI, Business Associate shall direct the individual to contact the Covered Entity. This requirement to amend the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

(g) Accounting of Disclosures of PHI: Upon the request of Covered Entity, Business Associate shall provide to Covered Entity within five (5) business days an accounting of all

Disclosures of PHI in order for Covered Entity to comply with 45 CFR § 164.528 Business Associate shall provide the date of the Disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the Disclosure. If an individual contacts Business Associate directly for such an accounting, Business Associate shall direct the individual to contact the Covered Entity.

(h) Minimum Necessary: Business Associate and its agents or Subcontractors shall request from Covered Entity and so Use and disclose only the Minimum Necessary PHI necessary to accomplish the purpose of the request, Use, or Disclosure. In all cases, Business Associate agrees to comply with guidance issued from time to time by the Secretary of Health and Human Services regarding Minimum Necessary.

(i) Prohibition on Sale of PHI: Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI.

(j) Audits, Investigations Inspections: Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created by the Business Associate on behalf of, the Covered Entity available to the Secretary of the United States Department of Health and Human Services ("Secretary"), or the Secretary's designee, for purposes of determining the Covered Entity's and/or Business Associate's compliance with the applicable laws and regulations. Business Associate shall cooperate with Covered Entity related to government or regulatory investigations, including making Business Associate's information relating to the Use and Disclosure of PHI available to Covered Entity.

(k) Mitigation Procedures: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI in violation of this Agreement.

(l) Legal Process: In the event that Business Associate is served with legal process (e.g., a subpoena) or request from a government agency (e.g., the Secretary) that potentially could require the Disclosure of PHI, Business Associate shall provide prompt notice of such legal process to the Privacy Officer of Covered Entity. In addition, Business Associate shall not disclose the PHI without the express written consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a request by a governmental regulatory agency under its statutory or regulatory authority.

4. Permitted Uses and Disclosures by Business Associate.

(a) Management and Administration. Business Associate and its respective agents, employees and Subcontractors are authorized to Use or disclose PHI for Business Associate's own proper management and administration, and to fulfill any of Business Associate's legal responsibilities; provided, however, that the Disclosures are required by law or Business Associate has received from any third-party recipient of PHI written assurances that (i) the PHI will be held confidentially and Used or further disclosed only as required by law or for the purposes for which it was disclosed to the third-party, and (ii) the third-party will notify Business Associate of any instances of which the third-party becomes aware that the confidentiality of the PHI has been breached.

5. **Obligations of Covered Entity.**

(a) **Authorizations:** Covered Entity shall obtain from individuals any applicable consents, authorizations and other permissions necessary or required by law for Covered Entity and Business Associate to fulfill their obligations under this Agreement.

(b) **Restrictions:** Covered Entity shall notify Business Associate in writing of any unique restrictions in the Use or Disclosure of an individual's PHI that Covered Entity has agreed to that may affect Business Associate's performance of its obligations under this Agreement. Covered Entity must agree to the request of an individual to restrict Disclosure of PHI about the individual to a Health Plan if the Disclosure is for the purpose of carrying out Payment or Health Care Operations and is not otherwise required by law; and the PHI pertains solely to a health care item or service for which the individual, or person other than the Health Plan on behalf of the individual, has paid Covered Entity in full.

(c) **Revocations:** Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an individual relating to the Use or Disclosure of PHI, if such changes or revocation may affect Business Associate's performance obligations under this Agreement.

6. **Procedure Upon Termination of the Agreement.** Upon termination of the Agreement, and unless the Agreement is renewed, Business Associate shall return or destroy, at Covered Entity's option, all PHI that it maintains in any form, and shall retain no copies of PHI, if feasible. Business Associate shall certify to Covered Entity that Business Associate has destroyed and/or returned all PHI, in accordance with Covered Entity's request. If the parties agree that the return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections set forth in this Exhibit to the PHI, and limit further Use of the PHI to those purposes that make the return or destruction of the PHI infeasible. Business Associate shall notify Covered Entity what PHI Business Associate shall retain. This obligation on Business Associate shall survive any termination of the Agreement.

EXHIBIT 3; /6
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

SUTTER EAST BAY HOSPITALS
dba ALTA BATES SUMMIT MEDICAL CENTER
EAST BAY CARDIAC SURGERY CENTER MEDICAL GROUP

PROMISSORY NOTE

Date: April 7, 2014

FOR VALUE RECEIVED, the undersigned, East Bay Cardiac Surgery Center Medical Group, a California general partnership ("Debtor") promises to pay to the order of Sutter East Bay Hospitals, a California nonprofit public benefit corporation, doing business as Alta Bates Summit Medical Center ("Hospital"), or to such other party at such other place as Hospital may from time to time designate in writing, in lawful money of the United States, the amounts of principal and accrued interest under the terms set forth below. Capitalized terms used in this Promissory Note ("Note") and not otherwise defined, shall have the meaning provided in the Administrative, Coverage, Data Collection and Indigent Care Services Agreement entered into by Hospital and Debtor effective as of February 4, 2011 (the "Agreement").

A. Pursuant to the Agreement, Debtor provides Physicians and non-physician personnel to provide Data Collection Services. Section 3.1(c)(1) (Compensation for Data Collection Services) of the Agreement provides that, if the Data Collection Case Number Reports for the third year of the Agreement (February 4, 2013 – February 3, 2014) show that Data Collection Services were performed on less than three hundred (300) patient cases for that third year of the Agreement, Debtor shall repay to Hospital Eight Hundred Forty-Five Dollars (\$845) per each patient case below three hundred (300) within thirty (30) days of notification by Hospital.

B. Hospital and Debtor entered into an Administrative, Coverage, Data Collection and Indigent Care Services Agreement, effective as of February 1, 2014 ("Renewal"), which supersedes the Agreement. Therefore, the third year of the Agreement consists of the period February 4, 2013 – January 31, 2014.

C. Debtor completed two hundred eighty (280) cases in the third year of the Agreement. The number of patient cases less than three hundred (300) is twenty (20), yielding a repayment amount from Debtor to Hospital of Sixteen Thousand Nine Hundred Dollars (\$16,900) ("Principal").

D. Hospital hereby waives its right to collect payment within thirty (30) days of notification to Debtor. Instead, Hospital and Debtor agree to the repayment plan detailed below. By waiving its right to collect payment within thirty (30) days of notification to Debtor, Hospital does not waive any other provision of the Agreement or any provisions in the Renewal.

E. Debtor shall repay to Hospital the Principal and accrued interest in equal installments over the course of four (4) months from the Date of this Note (the "Repayment Period"). Interest shall accrue during the Repayment Period at a per annum rate equal to the prime rate reported in *The Wall Street Journal* on the date of this Note, plus two (2) percentage points, but in no event in excess of the maximum rate of interest Hospital is permitted to charge from time to time under applicable law. If a range of prime rates is reported, the highest rate shall apply. It is the intent of the parties at all times to comply with applicable usury laws. If any applicable law is interpreted so as to render any amount received by Hospital hereunder as usurious, then all excess amounts theretofore collected by Hospital shall be credited against the principal balance of the outstanding Principal (or, if the Principal has been or would be repaid in

full, refunded to Debtor), and the provisions of this Note shall be immediately reformed and the amounts thereafter collectible hereunder reduced, without the execution of any other documents, instruments or agreements, so as to comply with applicable law, but so as to permit the recovery by Hospital of the fullest amount otherwise called for hereunder.

F. Any payments shall be applied first toward accrued and unpaid interest due, and second, shall be applied to reduce principal.

G. All or any portion of the principal and interest due under this Note may be prepaid by Debtor without penalty prior to the dates on which payments are due.

H. If Debtor is in default under this Note, all principal and accrued interest shall be immediately due and payable.

I. Debtor waives any right to be released by reason of any extension of time or change in terms of payment. Demand, presentation, protest, notice of dishonor, and notices of default are also waived by Debtor.

J. This Note is governed by the internal laws of the State of California.

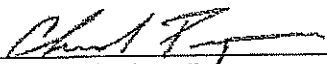
Hospital:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

Debtor:

East Bay Cardiac Surgery Center Medical
Group

By:


Name: Charles J. Prosper,
Title: Chief Executive Officer

By:

Name:
Title:

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J. This Note is governed by the internal laws of the State of California.

Hospital:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

Debtor:

East Bay Cardiac Surgery Center Medical
Group

By:

Name: Charles J. Prosper,
Title: Chief Executive Officer

By:



Name: Junaid Khan, M.D.
Title: Cardiac Surgeon

EXHIBIT 20-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER EAST BAY HOSPITALS
dba ALTA BATES SUMMIT MEDICAL CENTER**

CALL COVERAGE AGREEMENT
Vascular Surgery

This Call Coverage Agreement ("Agreement") is entered into as of **November 1, 2011**, (the "Effective Date") between **Sutter East Bay Hospitals**, a California nonprofit public benefit corporation dba **Alta Bates Summit Medical Center** ("Hospital"), and **East Bay Vascular Medical Group, A Professional Corporation**, a California professional corporation ("Group").

RECITALS

A. Hospital operates an acute care general hospital with campuses located in Berkeley, California ("Alta Bates Campus") and Oakland, California ("Summit Campus"), (each a "Campus," collectively "Campuses") and offers the community a twenty-four (24) hour comprehensive emergency service through an emergency department at both the Alta Bates Campus and the Summit Campus (each an "Emergency Department," together the "Emergency Departments").

B. Hospital wishes to maintain adequate physician on-call coverage in its Emergency Departments and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Group employs or contracts with physicians ("Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Vascular Surgery ("Specialty"). Physicians are willing to participate on the on-call panels for one or both of Hospital's Emergency Departments pursuant to the terms and conditions set forth herein. All Physicians who are employed by or who contract with Group and who meet the qualifications under Section I.g. (Qualifications) may perform services under this Agreement. In addition, Physicians added to Group during the term of this Agreement shall be considered part of Group and may perform services under this Agreement without a specific amendment to this Agreement.

D. Recognizing that Physicians' obligation to render medically necessary professional medical services to Hospital patients in the Emergency Departments even if patients have neither insurance nor an ability to pay for those services ("Indigent Patients") imposes a significant financial burden on Group and Physicians, Hospital also wishes to provide reimbursement to Group for medical services provided by Physicians to Indigent Patients while Physicians are providing on-call coverage services at Hospital.

NOW THEREFORE, the parties agree as follows:

1. **DUTIES AND RESPONSIBILITIES OF GROUP AND PHYSICIANS**

a. **On-Call Coverage.** Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's physicians in the Emergency Departments. As a member of the on-call panels at either or both of Hospital's Emergency Departments, at all times during each Physician's Coverage Shift (and as necessary for completion of services or follow-up care), Group agrees that each Physician will provide: (i) consultation or assistance within the scope of that Physician's Alta Bates and/or Summit Medical Staff privileges to physicians in either or both of the Emergency Departments; (ii) consultation or assistance within the scope of that Physician's Alta Bates and/or Summit Medical Staff privileges to other Alta Bates and/or Summit Medical Staff members who call for Specialty consults for their patients who are in the Hospital; and (iii) direct treatment to all patients who present in the Alta Bates Campus and/or Summit Campus Emergency Departments and who are in need of medical care within the Specialty as required in accordance with Hospital's Alta Bates and/or Summit Medical Staff Bylaws, Policies and Procedures.

b. **Response Time.** Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For the purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities, responding without delay by telephone when notified, and being physically present in a Emergency Department when necessary to provide services within thirty (30) minutes of a request for services. If any Physician, for any reason, is encumbered by a conflicting duty, Group shall at its own expense arrange for back-up coverage.

c. **Consultations and Transfers.** During Coverage Shifts, Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

d. **Indigent Care Services.** As requested by Hospital, and during Coverage Shifts, each Physician shall render necessary and appropriate non-elective Specialty medical services to specific Indigent Patients, either in the Emergency Department(s) that the Physician is covering or on the floor at the Campus(es) that the Physician is covering if the Physician is called for a consultation ("Indigent Care Services"). The parties agree that the compensation for Indigent Care Services shall be as provided in Section 3 (Compensation) regardless of the number of Indigent Patients to whom Physicians provide services or the amount of professional medical services provided to Indigent Patients.

e. **Emergency Department On-Call Time Report.** Group and/or Physicians shall contemporaneously record the actual number of Coverage Shifts and the campuses at which Coverage Shifts were worked on a monthly time report (the "Emergency Department On-Call Time Report") in the form attached hereto as **Exhibit A**, as modified from time to time by Hospital. On a monthly basis, Group and/or Physicians shall deliver to Hospital's Vice President of Medical Affairs completed and signed copies of the Emergency Department On-Call Time Reports within five (5) days after the end of each calendar month during the term of this Agreement. Hospital shall have no obligation to pay Group for services under this Agreement when Emergency Department On-Call Time Reports are submitted more than ninety (90) days after the end of a calendar month. Upon request of Hospital, Group and/or Physicians shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

f. **Non-Discrimination.** Group and Physicians will not discriminate against any person presenting to Hospital's Emergency Department by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, color, age, creed, gender, national origin, ancestry, marital status, sexual orientation, disability, financial status, or any other basis protected by law. Group and Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

g. **Qualifications.** During the term of this Agreement, each Physician must be a duly qualified and licensed physician in the State of California, practicing in the Specialty. Each Physician must also maintain an appointment to either the Alta Bates Campus Medical Staff or the Summit Campus Medical Staff or both, depending on where the Physician is providing the services under this Agreement, in accordance with each campus's Medical Staff bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

h. **Compliance.** Group and Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, the Medical Staff(s) at the Alta Bates Campus and/or Summit Campus, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon that Physician's professional medical judgment and will be made in the best interests of that Physician's patients.

i. **Insurance.** Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional

negligence with limits of liability for Group and each Physician of no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. If coverage is provided on a claims-made policy, Medical Group further agrees to maintain continuous coverage, by either obtaining "tail" insurance from the preceding carrier, or "nose" coverage from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than seven (7) years. Group agrees to provide proof of current insurance and will, in the event of modification, termination, expiration or cancellation of any of the required policies of insurance give Hospital written notice within five (5) business days.

j. **Billing and Collection.** Group or Physicians will separately bill and collect charges at their own expense for any professional services rendered during Coverage Shifts.

k. **Reporting of Payments.** To ensure that payments under Section 3 of this Agreement are properly reported, Group will complete, execute and deliver to Hospital an IRS Form W-9 (**Exhibit B**).

2. HOSPITAL'S RESPONSIBILITIES

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. **Tax Reporting.** To the extent required by law, Hospital will report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. COMPENSATION

a. In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, Hospital shall pay to Group the sum of **Six Hundred Fifty Dollars (\$650) per Physician per twenty-four (24) hour Coverage Shift** if the Physician covers either the Alta Bates Campus or the Summit Campus but not both concurrently, and the sum of **One Thousand Two Hundred Dollars (\$1,200) per Physician per twenty-four (24) hour Coverage Shift** if the Physician covers both the Alta Bates and Summit Campuses concurrently. Compensation shall be issued by the twenty-first (21st) day of the month for services provided in the preceding month provided that Hospital receives completed and signed Emergency Department On-Call Time Reports for the preceding month by the fifth (5th) day of the month. Payments shall be sent to the address indicated on the W-9 submitted by Group to Hospital pursuant to Section 1.k. (Reporting of Payments); however, the address for payments may be changed or modified by Group from time to time upon written notice to Hospital and by submitting a new W-9 if so requested by Hospital.

b. Compensation under this Section includes compensation for Indigent Care Services, and neither Group nor any Physician shall be eligible to receive or shall receive separate payments from Hospital or from Sutter East Bay Medical Foundation ("SEBMF") for such Indigent Care Services under this Agreement, under any other agreement between Group, Physicians and Hospital or SEBMF or under Hospital's Reimbursement Policy For Physicians Seeking Payment For Charity/Indigent/Medi-Cal Pending Patients Seen In Or Admitted To the Alta Bates Summit Medical Center or any other policy related to the payment of services for Indigent Patients. This Agreement shall supersede any Indigent Care Services Agreement that Group or any Physician may have with Hospital.

4. TERM

This Agreement will have an effective term of **two (2) years** commencing on the Effective Date (the "Initial Term"), and will automatically renew for an additional ninety (90) days upon the expiration of the Initial Term unless (a) the parties enter into a new replacement agreement upon the expiration of the Initial Term, or (b) either party gives the other party advance written notice of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least ninety (90) days' advance written notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one (1) year from the Effective Date.

5. REMOVAL OF A PHYSICIAN

a. **Cause for Removal.** Hospital may require the immediate cessation of services by any Physician and/or require Group to immediately remove from providing services under this Agreement any Physician for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

(i) Failure of Physician to meet any of the requirements of Section 1.g (Qualifications);

(ii) The death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for a continuous period of ninety [90] days);

(iii) Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;

(iv) After notice and opportunity to cure, any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to the Alta Bates and/or Summit Medical Staff bylaws; or

(v) Failure to abide by any of the terms and conditions of this Agreement applicable to Physicians.

b. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership at either the Alta Bates Campus or the Summit Campus. Therefore, this Agreement may be terminated with respect to individual Physicians in accordance with this Section 5 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff at the Summit Campus, or any other body. Group represents and warrants that all Physicians are aware of and accept this condition.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In the performance of the services described in this Agreement, Group and each Physician shall be and at all times are, acting and performing as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Physician shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physicians, and neither Group nor any Physician shall have a claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Physicians; make state or federal unemployment insurance contributions on Physicians' behalf; withhold state and federal income tax from payments to Physicians; make disability insurance contributions on behalf of Physicians; and obtain workers' compensation insurance on behalf of Physicians. Group, and/or each Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Group to any Physician employed, contracted or engaged by Group.

7. **ACCESS TO BOOKS AND RECORDS**

a. **Access.** Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to

meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Group agrees as follows:

(i) Until the expiration of four (4) years after the furnishing of services under this Agreement, Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

(ii) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Group will enforce, a clause to the same effect as subparagraph (i) immediately above.

b. **Limits.** The availability of Group's agreements, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

8. CONFIDENTIALITY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Group and Physicians may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Except pursuant to Physicians' duties hereunder, neither Group nor any Physician will at any time disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, any confidential or proprietary information of Hospital. Confidential or proprietary information shall include, but not be limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or any Physician's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Physician shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Neither Group nor any Physician shall disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients ("Patient Information"), and Group and Physicians shall

comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Alta Bates and Summit Medical Staffs, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including Physicians) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 11 (Notices), below, as well as any additional rules of arbitration. The written

notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

10. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

If any insurance coverage maintained by the Indemnifying Party would otherwise cover a liability, loss, expense (including reasonable attorneys' fees) or claim for injury or damages arising out of performance of this Agreement in whole or in part, nothing in this Section 10 shall be construed to relieve the insurance carrier of its obligations under

such coverage, which in all cases shall be primary to the Indemnifying Party's obligations.

11. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center
350 Hawthorne Avenue
Oakland, California 94609
Attn: David Bradley, Chief Executive Officer

With a copy to: Sutter Health Office of the General Counsel
633 Folsom Street, 7th Floor
San Francisco, California 94107
Attn: East Bay Regional Counsel

If to Group: East Bay Vascular Medical Group, A
Professional Corporation
365 Hawthorne Avenue, Suite 103
Oakland, California 94609
Attn: Nan Webb

12. MISCELLANEOUS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including Section 1654 of the California Civil Code or any other similar federal or state statute) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable, and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.

d. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its respective successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all Emergency Department On-Call Time Reports submitted to Hospital, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation).

f. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

g. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by either party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and terminates and supersedes any prior written or oral agreement of the parties with respect to the subject matter.

j. **Amendments and Extensions.** Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

k. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any physician employed by Group (or any immediate family member of any such physician), provides services to Hospital.

l. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Emergency Departments, other than proceedings or disputes between the parties to this Agreement.

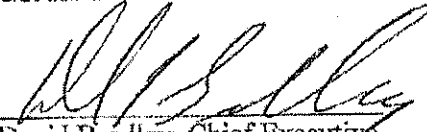
m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

Sutter East Bay Hospitals dba Alta Bates
Summit Medical Center

By:


David Bradley, Chief Executive
Officer

Date:

10-27-2011

GROUP:

East Bay Vascular Medical Group, A
Professional Corporation

By:


Ronald L. Webb, M.D., President

Date:

26 Oct 2011

NON-BINDING ADMINISTRATIVE ACKNOWLEDGMENT

The undersigned acknowledges responsibility for administrative oversight of the contract preparation process. This signature is not required for this Agreement to be effective or binding and is not incorporated therein.

Date:

10/20/11

By:

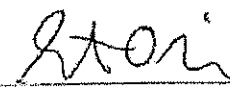

Stephen F. O'Brien, M.D., Vice
President of Medical Affairs

EXHIBIT A

Emergency Department On-Call Time Report

[Attached]



**Alta Bates Summit
Medical Center**

A Sutter Health Affiliate

Sutter East Bay Hospitals dba Alta Bates Summit Medical Center

EMERGENCY DEPARTMENT ON-CALL TIME REPORT

Submit Form by FAX to: 510-869-8644

This time report is required in order to receive payment for services. Time Reports are to be submitted on a MONTHLY basis. Recorded hours on this time report must correspond directly with the responsibilities contained within the contractual agreement.

To receive payment in a timely manner, this form must be submitted by the 5th day of the month following service.

Specialty:
Coverage Month/Year:
Physician Name:
Group Name:
Address:
Phone #:

APPROVAL SIGNATURES:

Certification by Physician/Group: By signing below I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of services and hours performed during the month indicated.

<i>Physician Signature</i>	<i>Date</i>
<i>Hospital Administrator</i>	<i>Date</i>

**Submit Form by FAX to:
510-869-8644**

Total # Shifts Worked: _____		
<i>Indicate days(s) and campus covered</i>		
Day of Month	Campus	
	Alta Bates	Summit
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EXHIBIT B

IRS FORM W-9

[Attached]

EXHIBIT 42/4
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

EDEN MEDICAL CENTER
CALL COVERAGE AGREEMENT
Thoracic Surgery

This Call Coverage Agreement ("Agreement") is entered into as of **July 1, 2011**, (the "**Effective Date**") between **Eden Medical Center**, a California nonprofit public benefit corporation ("**Hospital**") and **Bay Area Surgical Specialists, Inc., A Medical Corporation**, a California professional corporation ("**Group**").

RECITALS

A. Hospital operates an acute care general hospital with campuses located at 20103 Lake Chabot Road in Castro Valley, California (the "**Eden Campus**") and at 13855 East 14th Street in San Leandro, California (the "**San Leandro Campus**"), (each a "**Campus**," together the "**Campuses**"). Each Campus offers its respective community a twenty-four (24) hour comprehensive emergency service through an emergency department (each an "**Emergency Department**," together the "**Emergency Departments**"), and the Eden Campus offers the community a trauma service (the "**Trauma Service**").

B. Hospital wishes to maintain adequate physician on-call coverage in its Emergency Departments and Trauma Service and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("**EMTALA**"), 42 U.S.C. §1395dd.

C. Hospital is also in need of professional thoracic surgery on-call coverage of the Emergency Departments and Trauma Service in order to meet its obligations with respect to its trauma center designation.

D. Recognizing that that physicians' obligation to render medically necessary professional medical services to Hospital patients in the Emergency Departments and Trauma Service even if patients have neither insurance nor an ability to pay for those services imposes a significant financial burden on physicians, Hospital also wishes to include in its reimbursement for call coverage services, reimbursement for medical services provided by physicians while physicians are providing on-call coverage services at Hospital to Hospital patients who have neither insurance nor an ability to pay for professional medical services rendered to them ("**Indigent Patients**").

E. Group employs or contracts with physicians (each a "**Physician**," collectively the "**Physicians**") who are duly qualified and licensed to practice medicine in the State of California and who are board certified in thoracic surgery (the "**Specialty**"). Physicians are willing to participate on the on-call panel for Hospital's Emergency Departments and Trauma Service pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties agree as follows:

1. **DUTIES AND RESPONSIBILITIES OF GROUP AND PHYSICIANS**

a. **On-Call Coverage.** Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's physicians in the Emergency Departments and Trauma Service. When a Physician is scheduled for a Coverage Shift pursuant to the Specialty call Schedule, that Physician shall be on-call to provide Specialty services for both the Eden and San Leandro Campuses concurrently. As a member of the on-call panel(s) at Hospital's Emergency Departments and Trauma Service, at all times during each Physician's Coverage Shifts (and as necessary for completion of services or follow-up care), Group agrees that each Physician will provide, within the scope of that Physician's Medical Staff privileges: (i) consultation or assistance to physicians in either or both of the Emergency Departments and/or the Trauma Service; (ii) consultation or assistance to other Medical Staff members who call for Specialty consults for their patients who are in the Hospital; and (iii) direct treatment to all patients who present in the Eden Campus and San Leandro Campus Emergency Departments and Trauma Service and who are in need of medical care within the Specialty as required in accordance with Hospital's Medical Staff Bylaws, Policies and Procedures.

b. **Response Time.** Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For the purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities, responding without delay by telephone when notified, and being physically present in an Emergency Department or Trauma Service when necessary to provide services within thirty (30) minutes of a request for services.

c. **Back-up Coverage.** During Coverage Shifts, Physicians may be on-call at another hospital and/or schedule elective surgeries. However, if a Physician knows or anticipates that, during a Coverage Shift, he/she will be unable to be physically present within the required response time to a request from an Emergency Department physician at either the Eden Campus or San Leandro Campus or to a request from the Trauma Service, it is Group's or that Physician's financial and administrative responsibility to provide a back-up physician, qualified to practice medicine in the Specialty, who can respond in lieu of that Physician within the time frame set forth in Section 1.b. (Response Time) above.

d. **Consultations and Transfers.** During Coverage Shifts, Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

c. **Indigent Care Services.** As requested by Hospital, and during Coverage Shifts, Physicians shall render necessary and appropriate non-elective medical services to specific Indigent Patients in the Emergency Departments and Trauma Service ("Indigent Care Services"). The parties agree that the compensation for Indigent Care Services shall be as provided in Section 3 (Compensation) regardless of the number of Indigent Patients to whom Physicians provides services or the amount of professional medical services provided to Indigent Patients.

f. **On-Call Invoice.** Group and/or Physicians shall contemporaneously record the actual number of Coverage Shifts worked on a monthly invoice (the "On-Call Invoice") in the form attached hereto as **Exhibit A**, as modified from time to time by Hospital. On a monthly basis, Group and/or Physicians shall deliver to Hospital completed and signed copies of the On-Call Invoice within five (5) days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Group and/or Physicians shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

g. **Non-Discrimination.** Group and Physicians will not discriminate against any person presenting to Hospital's Emergency Departments and Trauma Service by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, national or ethnic origin, political opinion, sex, or disability. Group and Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

h. **Qualifications.** During the term of this Agreement, each Physician must be a duly qualified and licensed physician in the State of California and be board certified in the Specialty. Each Physician must also maintain an appointment to Hospital's Medical Staff in accordance with the Medical Staff Bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

i. **Compliance.** Group and Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, the Medical Staff, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon that Physician's professional medical judgment and will be made in the best interests of that Physician's patients.

j. **Insurance.** Group, at its sole cost and expense, shall maintain professional liability insurance for services rendered pursuant to this Agreement by

Group and each Physician in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate from an insurance company which is acceptable to Hospital. If Group's professional liability coverage is on a "claims made" rather than an "occurrence" basis, and such coverage is later terminated, or converted to an occurrence coverage (or vice versa), Group shall at its expense obtain prior acts or tail coverage (as applicable) with the same liability limits required above covering all periods that this Agreement is or has been in force. Upon Hospital's request, Group shall provide to Hospital a copy of the Certificates of Insurance evidencing the insurance coverage required under this Section. Group shall provide Hospital with notice of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section.

k. **Records and Reports.** Each Physician shall promptly submit to Hospital's medical records administrator, and/or the patient's private physician, written reports of all examinations, treatment and procedures performed pursuant to this Agreement. Each Physician shall use the medical records and report forms provided by each Emergency Department or Trauma Service. Group and each Physician agree that all records and reports required by this Section 1.i. shall be the exclusive personal property of Hospital.

l. **Billing and Collection.** Group or Physicians will separately bill and collect charges at their own expense for any professional services rendered during Coverage Shifts.

m. **Reporting of Payments.** To ensure that payments under Section 3 of this Agreement are properly reported, Group will complete, execute and deliver to Hospital an IRS Form W-9 (**Exhibit B**).

n. **Non-Exclusivity.** Group and each Physician acknowledge and agree that Hospital may contract with other medical groups and physicians to provide on-call services in the Specialty.

2. **HOSPITAL'S RESPONSIBILITIES**

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. **Tax Reporting.** To the extent required by law, Hospital will report all payments to Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. **COMPENSATION**

a. In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty,

Hospital shall pay to Group the sum of **Eight Hundred Fifty Dollars (\$850) per twenty-four (24) hour Coverage Shift** performed by a Physician covering both the Eden and San Leandro Campuses concurrently. Compensation shall be issued by the fifteenth (15th) day of the month for services provided in the preceding month provided that Hospital receives completed and signed On-Call Invoice for the preceding month by the fifth (5th) day of the month.

b. Compensation under this Section includes compensation for professional Specialty services provided to Indigent Patients while Physicians are on Coverage Shifts. Neither Group nor any Physician shall be eligible to receive or shall receive separate payments for services rendered to Indigent Patients under this Agreement, under any other agreement between Group, Physicians and Hospital or under Hospital's Indigent Care Policy or any other policy related to the payment of services for Indigent Patients.

4. **TERM**

This Agreement will have an effective term of **one (1) year** commencing on the Effective Date (the "Initial Term"), and will automatically renew for an additional ninety (90) days upon the expiration of the Initial Term unless (a) the parties enter into a new replacement agreement upon the expiration of the Initial Term, or (b) either party gives the other party advance written notice of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least ninety (90) days' advance written notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one (1) year from the Effective Date.

5. **REMOVAL OF A PHYSICIAN**

a. **Cause for Removal.** Hospital may require the immediate cessation of services by any Physician and/or require Group to immediately remove from providing services under this Agreement any Physician for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

(i) Failure of Physician to meet any of the requirements of Section 1.f. (Qualifications);

(ii) The death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for a continuous period of ninety [90] days);

(iii) Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled

substances at the work place and while on duty, unless in accordance with a physician's prescription;

(iv) After notice and opportunity to cure, any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to the Medical Staff Bylaws; or

(v) Failure to abide by any of the terms and conditions of this Agreement applicable to Physicians.

b. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated with respect to individual Physicians in accordance with this Section 5 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff or any other body. Group represents and warrants that all Physicians are aware of and accept this condition.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In the performance of the services described in this Agreement, Group and each Physician shall be and at all times is, acting and performing as an independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Physician personnel shall perform the services required under this Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall at all times relevant to the performance of services under this Agreement remain the sole employer of Physicians, and neither Group nor any Physician shall have a claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Physicians; make state or federal unemployment insurance contributions on Physicians' behalf; withhold state and federal income tax from payments to Physicians; make disability insurance contributions on behalf of Physicians; and obtain workers' compensation insurance on behalf of Physicians. Group, and/or each Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Group to any Physician employed, contracted or engaged by Group.

7. **ACCESS TO BOOKS AND RECORDS**

a. **Access.** Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Group agrees as follows:

(i) Until the expiration of four (4) years after the furnishing of services under this Agreement, Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

(ii) If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Group will enforce, a clause to the same effect as subparagraph (a) immediately above.

b. **Limits.** The availability of Group's agreements, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

8. **CONFIDENTIALITY**

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Group and Physicians may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that it will not, and will ensure that Physicians will not, at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's written consent, except pursuant to duties pursuant to this Agreement, any confidential or proprietary information of Hospital, including but not limited to information that concerns Hospital's patients, costs, prices and treatment protocols at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Group will not, and will ensure that Physicians will not, disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Group will not, and will ensure that Physicians will not, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Group and Physicians will comply with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital shall have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

9. DISPUTE RESOLUTION

a. **Meet and Confer.** In the event of any dispute between Group (including Physicians) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 11 (Notices), below, as well as any additional rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

10. INDEMNITY

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

If any insurance coverage maintained by the Indemnifying Party would otherwise cover a liability, loss, expense (including reasonable attorneys' fees) or claim for injury

or damages arising out of performance of this Agreement in whole or in part, nothing in this Section 10 shall be construed to relieve the insurance carrier of its obligations under such coverage, which in all cases shall be primary to the Indemnifying Party's obligations.

11. NOTICES

Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or three (3) days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Eden Medical Center
20103 Lake Chabot Road
Castro Valley, California 94546
Attn: George Bischalaney, Chief Executive Officer

With a copy to: Sutter Health Office of the General Counsel
633 Folsom Street, 7th Floor
San Francisco, California 94107
Attn: East Bay Regional Counsel

If to Group: Bay Area Surgical Specialists, Inc., A Medical Corporation
365 Lennon Lane, Suite 250
Walnut Creek, California 94598
Attn: Gregory Rhodes, M.D., President

12. MISCELLANEOUS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including Section 1654 of the California Civil Code or any other similar federal or state statute) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable, and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision.

d. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its respective successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all On-Call Invoices submitted to Hospital, and (ii) pay the subcontracting physician at the same rate specified in Section 3 (Compensation).

f. **Use of Names and Logos.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

g. **No Third Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a party to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by either party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and terminates and supersedes any prior written or oral agreement of the parties with respect to the subject matter.

j. **Amendments and Extensions.** Amendments and extensions to this Agreement shall be made only in a writing duly executed by both parties hereto.

k. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Group, or any physician employed by Group (or any immediate family member of any such physician), provides services to Hospital.

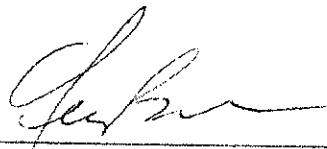
l. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Emergency Departments or Trauma Service, other than proceedings or disputes between the parties to this Agreement.

m. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

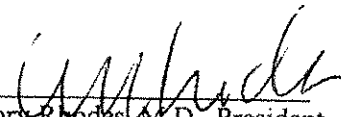
Eden Medical Center

By: 
George Bischalaney, Chief
Executive Officer

Date: 6/13/14

GROUP:

**Bay Area Surgical Specialists, Inc., A
Medical Corporation**

By: 
Gregory Rhodes, M.D., President

Date: 6/9/14

EXHIBIT A

On-Call Invoice

[Attached]

ON-CALL INVOICE

EDEN MEDICAL CENTER

Physician: _____ Group: Bay Area Surgical Specialists, Inc., A Medical Corporation Service Specialty: Thoracic Surgery		Month: _____
Address: 365 Lennon Lane, Suite 250 Walnut Creek, California 94598		Phone: (____) _____
Tax Id. Number: _____		
<i>For Hospital Use Only</i>		
Total Call Days: _____	Rate: \$850/shift	Total: \$ _____
Notes: _____		

<i>Please list the date on which you provided a shift of call coverage in each box.</i>								
	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Totals
Week 1								
Week 2								
Week 3								
Week 4								
Week 5								
TOTAL NUMBER OF SHIFTS								

I certify that this Time Report is a true and accurate record of the number of shifts of call I provided during this month.

Date: _____ Signature _____

Date: _____ Administrator Signature _____
 Name: _____
 Title: _____

Form **W-9**

(Rev. January 2002)

Department of the Treasury
Internal Revenue Service**Request for Taxpayer
Identification Number and Certification**Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2

Name _____

Business name, if different from above
Bay Area Surgical Specialists Inc

Check appropriate box: ☐ Individual/
Sole proprietor ☒ Corporation ☐ Partnership ☐ Other ▶ _____ ☐ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)
365 Lennon Lane Ste 250

City, state, and ZIP code
Walnut Creek, CA 94598

List account number(s) here (optional) _____

Requester's name and address (optional) _____

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number
| | | | | | | | | |
or
Employer identification number
5162605608

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here Signature of U.S. person ▶ [Signature] Date ▶ 6/9/11

Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 30% of such payments after December 31, 2001 (29% after December 31, 2003). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- You do not certify your TIN when required (see the Part II instructions on page 2 for details), or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions on page 2 and the separate **Instructions for the Requester of Form W-9**.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name. If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first and then circle the name of the person or entity whose number you enter in Part I of the form.

Sole proprietor. Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Exempt from backup withholding. If you are exempt, enter your name as described above, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. For more information on exempt payees, see the instructions for the Requester of Form W-9.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

Note: If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Part I—Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box.

If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are an LLC that is disregarded as an entity separate from its owner (see **Limited liability company (LLC)** above), and are owned by an individual, enter your SSN (or "pre-LLC" EIN, if desired). If the owner of a disregarded LLC is a corporation, partnership, etc., enter the owner's EIN.

Note: See the chart on this page for further clarification of name and TIN combinations. **How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office. Get Form W-7,

Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at www.irs.gov.

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II—Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see **Exempt from backup withholding** above.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA or Archer MSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to give your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws.

You must provide your TIN whether or not you are required to file a tax return. Payors must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship	The owner ¹
For this type of account:	Give name and EIN of:
6. Sole proprietorship	The owner ¹
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.



EXHIBIT 21-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.



Alta Bates Summit
Medical Center

A SURGICAL AREA

Suiter East Bay Hospitals dba Alta Bates Summit Medical Center

EMERGENCY DEPARTMENT ON-CALL TIME REPORT

Submit Form by FAX to: 510-869-8644

This time report is required in order to receive payment for services. Time Reports are to be submitted on a MONTHLY basis. Recorded hours on this time report must correspond directly with the responsibilities contained within the contractual agreement.

To receive payment in a timely manner, this form must be submitted by the 5th day of the month following service.

Specialty:	Vascular
Coverage Month/Year:	march 2014
Physician Name:	DRS Bay, Nagasethy, Obrial, Oko, Pandurangi
Group Name:	Bay Area Surgical Specialists
Address:	309 Lennon Lane Ste 200 Walnut Creek CA
Phone #:	925 932-0330 94598

APPROVAL SIGNATURES:

Certification by Physician/Group: By signing below I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of services and hours performed during the month indicated.

Physician Signature	Date
	4/1/14
Hospital Administrator	Date

Submit Form by FAX to:
510-869-8644

{00179377 v.1}

Total # Shifts Worked: 31		
Indicate days(s) and campus covered		
Day of Month	Campus	
	Alta Bates	Summit
1	Pandurangi	Oko
2	Pandurangi	Oko
3	Pandurangi	Oko
4	Pandurangi	Oko
5	Pandurangi	Oko
6	Pandurangi	Oko
7	Pandurangi	Oko
8	Bay	Pandurangi
9	Bay	Pandurangi
10	Bay	Pandurangi
11	Bay	Pandurangi
12	Bay	Pandurangi
13	Bay	Pandurangi
14	Bay	Pandurangi
15	Obrial	Nagasethy
16	Obrial	Nagasethy
17	Obrial	Nagasethy
18	Obrial	Nagasethy
19	Obrial	Nagasethy
20	Obrial	Nagasethy
21	Obrial	Nagasethy
22	Obrial	Bay
23	Obrial	Bay
24	Bay	Obrial
25	Bay	Obrial
26	Bay	Obrial
27	Bay	Obrial
28	Bay	Obrial
29	Bay	Obrial
30	Bay	Obrial
31	Bay	Obrial

Alta Bates = 31 shifts @ \$650
= \$20,150 -

Summit = 31 shifts @ \$650
= \$20,150 -

total = \$40,300 -



March 2014: Alta Bates Vascular Surgery (and Summit)

Printed Apr 08, 2014
 13:15

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
February 23	24	25	26	27	28	March 1
						AB Vascular 0700 - 0700 EAST BAY VASCULAR, M
2	3	4	5	6	7	8
AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0800 EAST BAY VASCULAR, M
9	10	11	12	13	14	15
AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M
16	17	18	19	20	21	22
AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M
23	24	25	26	27	28	29
AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M
30	31	April 1	2	3	4	5
AB Vascular 0700 - 0700 EAST BAY VASCULAR, M	AB Vascular 0700 - 0700 EAST BAY VASCULAR, M					

Contact Information

EAST BAY VASCULAR, MEDICAL GROUP: (510) 832-6131 Office Phone

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 MOVING HEALTHCARE FORWARD
 Logic - PRODUCTION Server

Nomura, June

From: Iverson, Cynthia
Sent: Wednesday, April 02, 2014 10:18 AM
To: Nomura, June
Subject: Re: March 2014 ED Call Coverage Schedules

Yes
Thank you,
Cynthia

Cynthia Iverson

On Apr 2, 2014, at 10:10 AM, "Nomura, June" <NomuraJ@sutterhealth.org> wrote:

Cynthia,

Have the March 2014 ED Call Coverage Schedules been reviewed and are they approved for use to validate the ED Call time reports submitted by the contracted physicians?

Thank you,

June T. Nomura

Sutter East Bay Region-Finance Department

3012 Summit Street, 3rd Flr

Oakland, CA 94609

Office: 510-869-8232, ext.3719

Fax: 510-869-8243

email: nomuraj@sutterhealth.org

EXHIBIT 21-2
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

SMCCV

CHECK REQUEST

Date Requested:


7/1/2014

Date Required:

ASAP

T O R	Name:	Bay Area Surgical Specialists, Inc	F O R	(Supporting documents MUST be attached to all requests)	
	C/O:			Michaela Straznicka	5,950.00
	Address			Wilson Tsai	-
	365 Lennon Lane , Ste 250			Shah	5,950.00
	City, State, Zip	Walnut Creek, CA 94598		June-14	
				TM# 69620.40526C	
				Contract Term: 9/1/12 - 8/31/14	
				Rate: \$850/shift	

Special Instructions:

FULL SIGNATURES, NO INITIALS	TITLE	DATE	ACCOUNT NO.	AMOUNT
Requested by:			207	
Mary Neves	Admin. Asst.	7/1/2014	607011-62000-0712	\$11,900.00
Approved by: Catherine Messman 	CFO	7/2/14		\$
Approved by: George Bischaney (see attached contract copy for approval)	President/CEO			\$

APPROVAL LIMITS FOR BUDGETED EXPENDITURE:

						For Accounting Use Only
	CEO	CFO	VP'S	DEPT MGRS		Vendor: 123270
Purch Svc/Pro Fees	NO LIMIT	\$50,000	\$25,000	\$5,000		Date Due:
Leases	NO LIMIT	\$50,000	\$0	\$0		
Other	NO LIMIT	\$50,000	\$25,000	\$5,000		Check by:

Please fax to:
Eden Medical Center
Finance Department
(510) 582-1730

ON-CALL INVOICE

EDEN MEDICAL CENTER

Physician: <u>NUMAN SMANJUKI</u>		Month: <u>June 2014</u>
Group: Bay Area Surgical Specialists, Inc., A Medical Corporation		
Service Specialty: Thoracic Surgery		
Address: 365 Lennon Lane, Suite 250 Walnut Creek, California 94598		Phone: <u>925 932-6330</u>
Tax Id. Number: <u>5621005008</u>		
<i>For Hospital Use Only</i>		
Total Call Days: <u>7</u>	Rate: \$850/shift	Total: \$ <u>5950.⁰⁰</u>
Notes:		

Please list the date on which you provided a shift of call coverage in each box.								
	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Totals
Week 1								
Week 2								
Week 3				<u>6/19</u>				<u>1</u>
Week 4	<u>6/23</u>	<u>6/24</u>		<u>6/24</u>	<u>6/27</u>	<u>6/28</u>	<u>6/29</u>	<u>6</u>
Week 5								
TOTAL NUMBER OF SHIFTS								<u>7</u>

I certify that this Time Report is a true and accurate record of the number of shifts of call I provided during this month.

Date: 7/1/14 _____
Signature

Date: _____
Administrator Signature
Name: _____
Title: _____

Call History
7/2/14

(09/142515 v.1)

ON-CALL INVOICE
EDEN MEDICAL CENTER

Physician: <u>Sauren Shah</u>		Month: <u>June 2014</u>
Group: Bay Area Surgical Specialists, Inc., A Medical Corporation		W-9/Tax Id. Number: <u>5026057008</u>
Service Specialty: Thoracic Surgery		
Address: 365 Lennon Lane, Suite 250 Walnut Creek, California 94598		Phone: <u>925, 932-6330</u>
<i>For Hospital Use Only</i>		
Total Call Days: <u>7</u>	Rate: \$850/ 24-hour shift	Total: \$ <u>5950.00</u>
Notes:		

Please list the date on which you provided a shift of call coverage in each box.

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Totals
Week 1								
Week 2								
Week 3	6/16	6/17	6/18		6/20	6/21	6/22	6
Week 4			6/25					1
Week 5								
TOTAL NUMBER OF SHIFTS								<u>7</u>

I certify that this On-Call Time Report is a true and accurate record of the number of shifts of call I provided during this month.

Date: 7/1/14

Sauren Shah
Physician Signature

Date: _____

Administrator Signature

Submit to: Sutter Medical Center, Castro Valley dba Eden Medical Center
Attn CFO, Finance Department
20103 Lake Chabot Road
Castro Valley CA 94546
FAX: (510) 582-1730

Date Submitted: _____

For questions please call: (510) 727-8291

{00255236 v.1}

#37011.62000

Neurosurgeons	shifts per 24 hrs	Back-up	Callback	Payment Due	Rate per 24 hrs
<u>Pacific Brain & Spine</u>					
Dickinson, Larry, MD...PB&S	7.00			26,474	\$3,782
Sheinberg, Michael MD...PB&S	4.00			15,128	
Randall, Jeffrey, MD...PB&S	7.00			26,474	
Zusman, MD...PB&S	8.00			30,256	
Mimran, MD...PB&S	4.00			15,128	
Subtotal	30.00			\$ 113,460	
Trauma Surgeons (24hr Shift) @\$2,150./shift					
Azimi	3.00			6,450	\$2,150
Phillips	3.00			6,450	
Jamnani	5.00			10,750	
Mojaddidi	2.00			4,300	
Karam	4.00			8,600	
Sawyer	3.00			6,450	
Sasaki	4.00			8,600	
Subtotal	24.00			\$ 51,600	
Trauma Surgeons (12hr Shift) @\$1,075./shift					
Azimi	2.00			2,150	\$1,075
Phillips	2.00			2,150	
Jamnani	4.00			4,300	
Mojaddidi	2.00			2,150	
Sasaki	2.00			2,150	
Subtotal	12.00			\$ 12,900	
Trauma Backup (24hr Shift) @\$1,100./shift					
Azimi	4.00			4,400	\$1,100
Phillips	5.00			5,500	
Jamnani	2.00			2,200	
Mojaddidi	5.00			5,500	
Karam	2.00			2,200	
Sawyer	5.00			5,500	
Sasaki	6.00			6,600	
Subtotal	29.00			\$ 31,900	
Trauma Backup (12hr Shift) @\$550./shift					
Azimi	1.00			550	\$550
Sasaki	1.00			550	
Subtotal	2.00			\$ 1,100	
Thoracic Surgeon-Bay Area Surgical Specialists, Inc					
Straznicka	7.00			5,950	\$850
Tsai	0.00			0	
Shah	7.00			5,950	
East Bay Cardiac Surgery Medical Group, Inc					
Kahn	9.00			7,650	\$11,900.00
Stanten	7.00			5,950	\$13,600.00
Subtotal	30.00			\$ 25,500	\$25,500.00
Orthopedic Surgeons					
Boyd, Clarence, MD	19.00			31,350	\$1,650
Stuffmann, Eric, MD	0.00			-	
Hayes, Daryl, MD	11.00			18,150	
Subtotal	30.00			\$ 49,500	
Anesthesiologists (payable to: Alameda Anesthesia Assn Med. Gr)					
Black, David, MD	1.50			-	
Bui, Penna MD	1.50			-	
Choi, M.D.	2.00			-	
Do, Jeffrey, MD	1.50			-	
Gee, Warren MD	2.50			-	
Holm, Larry, MD	0.50			-	
Neiheisal, MD	1.00			-	
Lopez, Charles MD	2.50			-	
Mandelberg, Steven, MD	1.00			-	
Rhee, MD	2.00			-	
Shu, MD	1.50			-	
Stark, MD	0.50			-	
Swee, Marina, MD	0.50			-	
Tidyman, MD	2.50			-	
Vo, M.D.	0.50			-	
Wang, F MD	2.00			-	
Wang, M MD	3.50			-	
Romero, MD	0.50			-	
Zhou, Stan MD	2.50			-	
Subtotal	30.00			-	

Total Alameda Anesthesia Payment

\$279,166.66

Total Payment

\$565,126.66

Reviewed & Approved:

Christopher Ruckman, Directory Emergency/Trauma

EDEN MEDICAL CENTER
TRAUMA SERVICES PHYSICIAN SCHEDULE
JUNE 2014

DATE	DAY	TRAUMA CALL	TRAUMA BACKUP	ANESTHESIA	ORTHO CALL	ORTHO BACKUP	NEURO SURGEON	THORACIC SURGEON
1	SUNDAY	JAMNANI	SAWYER	M.WANG/F.WANG	BOYD	HAYES	ZUSMAN	KHAN
2	MONDAY	AZIMI	SASAKI	SHU/ZHOU	HAYES	BOYD	ZUSMAN	STANTEN
3	TUESDAY	SASAKI	AZIMI	GEE/DO	HAYES	BOYD	DICKINSON	STANTEN
4	WEDNESDAY	AZIMI/JAMNANI	SASAKI/AZIMI	NEIHEISAL/BUI	HAYES	BOYD	DICKINSON	KHAN
5	THURSDAY	SASAKI/MOJADDIDI	AZIMI	F.WANG/STARK	HAYES	BOYD	DICKINSON	KHAN
6	FRIDAY	KARAM	SASAKI	BLACK/LOPEZ	HAYES	BOYD	SHEINBERG	STANTEN
7	SATURDAY	SASAKI	KARAM	SHU	BOYD	HAYES	SHEINBERG	STANTEN
8	SUNDAY	KARAM	SASAKI	ZHOU	BOYD	HAYES	SHEINBERG	STANTEN
9	MONDAY	PHILLIPS	AZIMI	CHOI/RHEE	BOYD	HAYES	SHEINBERG	KHAN
10	TUESDAY	AZIMI	PHILLIPS	LOPEZ/NEIHEISAL	BOYD	HAYES	RANDALL	STANTEN
11	WEDNESDAY	PHILLIPS/JAMNANI	AZIMI	TIDYMAN/M.WANG	BOYD	HAYES	RANDALL	KHAN
12	THURSDAY	SASAKI	PHILLIPS	BLACK/ZHOU	BOYD	HAYES	RANDALL	STANTEN
13	FRIDAY	JAMNANI	MOJADDIDI	DO/LOPEZ	BOYD	HAYES	DICKINSON	KHAN
14	SATURDAY	MOJADDIDI	JAMNANI	CHOI	BOYD	HAYES	DICKINSON	KHAN
15	SUNDAY	JAMNANI	MOJADDIDI	RHEE	BOYD	HAYES	DICKINSON	KHAN
16	MONDAY	SASAKI	PHILLIPS	TIDYMAN/VO	BOYD	HAYES	DICKINSON	SHAH
17	TUESDAY	PHILLIPS/MOJADDIDI	SASAKI	GEE/HOLM	HAYES	BOYD	ZUSMAN	SHAH
18	WEDNESDAY	SASAKI/JAMNANI	PHILLIPS	ZHOU/MANDELBERG	HAYES	BOYD	ZUSMAN	SHAH
19	THURSDAY	PHILLIPS	SASAKI	RHEE/CHOI	HAYES	BOYD	ZUSMAN	STRAZNICKA
20	FRIDAY	JAMNANI	MOJADDIDI	SWEE/ROMERO	HAYES	BOYD	MIMRAN	SHAH
21	SATURDAY	MOJADDIDI	JAMNANI	M.WANG	HAYES	BOYD	MIMRAN	SHAH
22	SUNDAY	JAMNANI	MOJADDIDI	TIDYMAN	HAYES	BOYD	MIMRAN	SHAH
23	MONDAY	SAWYER	PHILLIPS	F.WANG/GEE	BOYD	HAYES	MIMRAN	STRAZNICKA
24	TUESDAY	PHILLIPS	SAWYER	M.WANG/BLACK	BOYD	HAYES	ZUSMAN	STRAZNICKA
25	WEDNESDAY	SAWYER	MOJADDIDI	LOPEZ/DO	BOYD	HAYES	ZUSMAN	SHAH
26	THURSDAY	AZIMI/JAMNANI	SAWYER	TIDYMAN/M.WANG	BOYD	HAYES	ZUSMAN	STRAZNICKA
27	FRIDAY	KARAM	SAWYER	MANDELBERG/F.WANG	BOYD	HAYES	RANDALL	STRAZNICKA
28	SATURDAY	SAWYER	KARAM	BUI	BOYD	HAYES	RANDALL	STRAZNICKA
29	SUNDAY	KARAM	SAWYER	GEE	BOYD	HAYES	RANDALL	STRAZNICKA
30	MONDAY	AZIMI	SASAKI	LOPEZ/M.WANG	BOYD	HAYES	RANDALL	KHAN

Trauma Surgeon Pager: 784-9287 Trauma Surgeon Cell: 898-6805 Trauma Room Ext. 73224 Trauma Anesthesia Pager: 784-9367 IR: 925-975-3161

EXHIBIT 22-1
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER HEALTH SACRAMENTO SIERRA REGION
dba SUTTER MEDICAL CENTER SACRAMENTO**

**CALL COVERAGE AGREEMENT
Cardiothoracic Surgery**

Sacramento Cardiovascular Surgeons Medical Group, Inc.

This Call Coverage Agreement ("Agreement") is entered into as of November 17, 2012, (the "Effective Date") between Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation doing business as Sutter Medical Center Sacramento ("Hospital"), and Sacramento Cardiovascular Surgeons Medical Group, Inc., a California professional corporation ("Medical Group").

RECITALS

A. Hospital operates two acute care hospitals located in Sacramento, California, and offers the community a twenty-four (24) hour comprehensive emergency service.

B. Hospital wishes to maintain adequate physician on-call coverage in its emergency departments in both hospitals (collectively referred to as the "Emergency Department") and to ensure physicians are available to consult for hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Medical Group is composed of physicians (each a "Physician," collectively "Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Cardiothoracic Surgery including Cardiac Surgery Transplant and VAD Program ("Specialty"). Medical Group's Physicians are willing to participate on Hospital's Emergency Department on-call panel pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties agree as follows:

1. MEDICAL GROUP'S RESPONSIBILITIES

a. **On-Call Coverage.** Medical Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts with two Physicians concurrently on-call, one as primary and one as back-up, for each such coverage shift (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's Emergency Department physicians. As a member of the Hospital's Emergency Department on-call panel, at all times during Physicians' Coverage Shifts (and as necessary for completion of services or follow-up care), Medical

Group agrees that Physicians will provide consultation or assistance within the scope of Physicians' Medical Staff privileges to Emergency Department physicians and other Medical Staff members who call for Specialty consults for their patients who are in the hospital.

b. **Response Time.** Medical Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities; responding without delay when notified; and being physically present in the Emergency Department to provide services within thirty (30) minutes of a request for services.

c. **Consultations and Transfers.** During Coverage Shifts, Medical Group will ensure that Physicians take inpatient consultations in the Specialty and accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient.

d. **Non-Discrimination.** Physicians will not discriminate against any person presenting to Hospital's Emergency Department by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, national or ethnic origin, political opinion, sex, or disability. Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

e. **Qualifications.** During the term of this Agreement, Physicians must be duly qualified and licensed physicians and surgeons in the State of California, practicing in the Specialty. Physicians will also maintain an appointment to the Medical Staff in accordance with Hospital's Medical Staff bylaws, with privileges in the Specialty and must not be excluded from participation in the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

f. **Compliance.** Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon Physician's professional medical judgment and will be made in the best interests of Physician's patients.

g. **Insurance.** Medical Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional negligence with limits of liability for Medical Group and each Physician of

no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. If coverage is provided on a claims-made policy, Medical Group further agrees to maintain continuous coverage, by either obtaining "tail" insurance from the preceding carrier, or "nose" coverage from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than seven (7) years. Medical Group agrees to provide proof of current insurance and will, in the event of modification, termination, expiration or cancellation of any of the required policies of insurance give Hospital written notice within five (5) business days.

h. **Billing and Collection.** Physicians will separately bill and collect charges at their own expense for any professional services rendered.

i. **Reporting of Payments.** To ensure that payments under Section 3 (Compensation) of this Agreement are properly reported, Medical Group will complete, execute and deliver to Hospital an IRS Form W-9 (**Exhibit A**).

2. HOSPITAL'S RESPONSIBILITIES

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

b. **Tax Reporting.** To the extent required by law, Hospital will report all payments to Medical Group under this Agreement on IRS Form 1099 and its state law counterpart.

3. COMPENSATION

In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, upon presentation of a signed call invoice (**Exhibit B**), Hospital will pay to Medical Group the sum of **Two Thousand Five Hundred Dollars (\$2500) for each twenty-four (24) hour Coverage Shift.**

4. TERM

This Agreement will have an effective term of **twenty-four (24) months** commencing on the Effective Date (the "Initial Term"), and will automatically renew for an additional ninety (90) days upon the expiration of the Initial Term unless (a) the parties enter into a new replacement agreement upon the expiration of the Initial Term, or (b) either party gives the other party advance written notice of its intent not to renew the Agreement at least thirty (30) days prior to the expiration of the Initial Term. Notwithstanding the foregoing, either party may terminate this Agreement at any time with or without cause by giving the other party at least ninety (90) days' advance written

notice. If so terminated, the parties will not enter into another agreement for the same or similar services until the expiration of one (1) year from the Effective Date.

5. INDEPENDENT CONTRACTOR

In performing the responsibilities and services described in this Agreement, Medical Group is acting as an independent contractor, and will not be considered a joint venturer or partner of Hospital for any purpose whatsoever. Hospital will not control or direct the methods by which Medical Group performs services provided pursuant to this Agreement. The sole interest and responsibility of the Hospital is to assure that services are performed in a competent, efficient and satisfactory manner. Physicians will have no claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Under no circumstances will Hospital: withhold FICA (Social Security) from payments to Medical Group; make state or federal unemployment insurance contributions on behalf of Physicians; withhold state and federal income tax from payments to Medical Group; make disability insurance contributions on behalf of Medical Group; or obtain workers' compensation insurance on behalf of Medical Group. Medical Group will be solely responsible for, and will indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to, any and all income tax withholding, estimated income tax, Social Security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Medical Group under this Agreement.

6. ACCESS TO BOOKS AND RECORDS

Medical Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Medical Group agrees as follows:

a. Until the expiration of four (4) years after the furnishing of services under this Agreement, Medical Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of such services; and

b. If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Medical Group will enforce, a clause to the same effect as subparagraph (a) immediately above.

The availability of Medical Group's Agreement, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

7. CONFIDENTIALITY

a. **Hospital Information.** Medical Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Medical Group may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Medical Group agrees that it will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's written consent, except pursuant to duties pursuant to this Agreement, any confidential or proprietary information of Hospital, including but not limited to information that concerns Hospital's patients, costs, prices and treatment protocols at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Medical Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Medical Group will not disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Medical Group shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by SSR in writing, any patient or medical record information regarding SSR patients ("Patient Information"), and Medical Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of SSR and its Hospital's medical staffs, regarding the confidentiality of such information, including, but not limited to, the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

8. ARBITRATION

a. In the event that any dispute arises between Hospital and Medical Group arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the

authority to negotiate and bind that party to a resolution. At the meeting, the parties will attempt in good faith to resolve the dispute.

b. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute will be submitted to binding arbitration in accordance with the Commercial Rules of the American Arbitration Association or JAMS/Endispute, which service will be selected by Hospital at its sole discretion. The decision of the arbitrator will be final and binding and will be fully enforceable in any court having jurisdiction and venue over the parties. The arbitrator will have no power to alter, modify, ignore or otherwise deviate from the express terms of this Agreement, and the arbitrator will be bound by controlling law. The arbitrator's decision will be provided to the parties in writing and will succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The cost of arbitration will be shared equally by Hospital and Medical Group, provided that each party will pay its own legal expenses.

9. INDEMNIFICATION

Both parties to this Agreement will indemnify and hold the other harmless from and against any and all claims, losses, suits, actions, damages, costs or liabilities of any kind whatsoever incurred or resulting from the acts or omissions of the indemnifying party.

10. MISCELLANEOUS

a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

b. **Other Service Agreements.** Hospital represents that its TractManager databases include copies of all other agreements under which Medical Group, or any physician employed by Medical Group (or any immediate family member of any such physician), provides services to Hospital.

c. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart will be deemed an original.

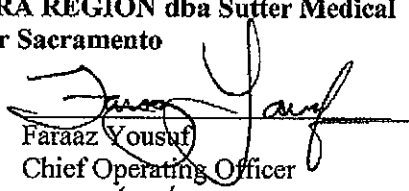
Signature Page follows

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

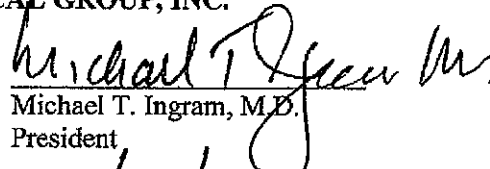
HOSPITAL:

**SUTTER HEALTH SACRAMENTO
SIERRA REGION dba Sutter Medical
Center Sacramento**

By: 
Name: Faraaz Yousuf
Title: Chief Operating Officer
Date: 11/12/12

MEDICAL GROUP:

**SACRAMENTO
CARDIOVASCULAR SURGEONS
MEDICAL GROUP, INC.**

By: 
Name: Michael T. Ingram, M.D.
Title: President
Date: 11/12/12

Address for notices:

Sutter Medical Center Sacramento
5151 F Street
Sacramento, CA 95819
Attn: Margaret Mette, Assistant
Administrator

Address for notices:

Sacramento Cardiovascular Surgeons
Medical Group, Inc.
5301 F Street, Suite 111
Sacramento, CA 95819
Attn: Michael T. Ingram, M.D., President

With copy to:

Sutter Health
Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
Attn: Penny G. Westfall, Esq.,
VP and Regional Counsel

Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Name (as shown on your income tax return)
Sacramento Cardiovascular Surgeons Medical Group, Inc

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ ☐ Exempt payee
☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.)
5301 F Street, Suite 111

City, state, and ZIP code
sacramento, CA 95819

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

			-			-			
--	--	--	---	--	--	---	--	--	--

Employer identification number

[REDACTED]									
------------	--	--	--	--	--	--	--	--	--

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person** *Michael T. [Signature]* **Date** *11/7/12*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

EXHIBIT A

IRS FORM W-9

[Attach Form]

EXHIBIT B

CALL INVOICE

[Attach Call Invoice]

SUTTER MEDICAL CENTER SACRAMENTO**Payable to:**

Name:

Address:

City/State/Zip:

Billable to:

Name:

Address:

City/State/Zip:

Medical Group:	Month:
Service Specialty:	
Address:	TractManager:
Phone: ()	

Mark the days of the month below that Medical Group provided a Coverage Shift pursuant to the Agreement by indicating which Physician provided the coverage each day:

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

Medical Group Certification: By my signature below, I certify that **Sacramento Cardiovascular Surgeons Medical Group, Inc.** provided the above-indicated coverage.

Date: _____

By: _____

Name: _____

Title: _____

FOR HOSPITAL USE ONLY:		
Cost Center:	Account Number:	Tax Id #:
Days: Total Days Call Covered in Month: _____	Rate: \$ _____ / per day	Compensation: Total Due: \$ _____

Hospital Authorization:

Date: _____

Hospital Administrator _____

**PHYSICIAN SERVICES AGREEMENT
INTERVENTIONAL RADIOLOGY**

THIS PHYSICIAN SERVICES AGREEMENT ("Agreement") is made and entered into as of September 1, 2008, by and between Memorial Hospitals Association, a California nonprofit public benefit corporation ("Hospital") and Stephen K. Liu, M.D., Professional Corporation ("Group").

RECITALS:

A. Hospital operates an acute care hospital in Modesto, California ("Facility") which maintains a Radiology Department (the "Department") on the Facility's premises, and Hospital is in need of experienced, qualified physicians to provide interventional radiology services (the "Services").

B. Group employs or otherwise contracts with physicians duly licensed in the State of California ("State") and qualified as doctors of medicine with experience in furnishing the Services (individually "Physician", collectively "Physicians").

C. Group and Hospital agree that it is in the best interest of Hospital's ability to provide quality patient care in a cost-effective and efficient manner for Hospital to contract with an entity to be the exclusive provider of the Services

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions contained herein, Hospital and Group agree as follows:

1. GROUP'S OBLIGATIONS.

a. **Services.** While this Agreement is in effect, Group shall be the exclusive provider of the specific interventional radiology Services set forth at Exhibit A, attached hereto. Group shall cause Physicians to provide the Services in accordance with Group's obligations hereunder. Group shall ensure that each Physician complies with all terms and conditions contained herein. Physicians shall also: (a) attend any and all meetings within the Facility that Physicians are asked to attend by Facility's Chief Executive Officer (the "CEO"); and (b) perform such other duties as may from time to time be requested by Facility, Facility's Governing Board, Facility's Medical Staff, and/or the CEO.

b. **Coverage.** While this Agreement is in effect, Group shall provide Physicians to provide the Services on a twenty-four (24) hour per day basis every day of the calendar year, with a sufficient number of Physicians to provide the Services at all times. On or before the first day of each calendar month, to ensure the timely and appropriate availability and performance of Services, Group shall post within the Department a schedule of Physicians assigned to provide the Services in the Department during the next calendar month.

c. **Other Physicians.** The Services to be rendered hereunder shall be performed by Physicians as may be under contract with Group. Any provision of this Agreement to the contrary notwithstanding, the Hospital Chief Executive Officer shall have the right to request removal of any Physician, if in the Chief Executive Officer's exercise of sole discretion, such removal is in the best interests of Hospital. Group hereby agrees to remove immediately any such Physician upon such a request made in compliance with this subsection.

d. **Physician Qualifications.** Each Physician who provides Services in the Department shall be duly licensed and qualified as a doctor of medicine to practice medicine in the State, and shall be approved for membership and/or clinical privileges on the Medical Staff of Facility in accordance with Facility's Medical Staff Bylaws and Rules and Regulations. Each Physician shall be Board Certified prior to performing services hereunder or, if not already certified, shall apply for and obtain Board certification no later than ninety (90) days from the date he/she first provides services hereunder. Group shall provide proof of such certification to Hospital upon Hospital's request.

e. **Applicable Standards.** Group agrees that all Services provided pursuant to this Agreement shall be performed in compliance with all applicable standards set forth by law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association or other pertinent governing, accrediting, or advisory body, including The Joint Commission, having authority to set standards for health care facilities. Also, each Physician shall perform all Services in accordance with all Facility rules, regulations, procedures, policies and bylaws and all Facility Medical Staff rules, regulations, procedures, policies and bylaws.

f. **Records and Reports.** Group shall provide or cause to be provided to Hospital all records and reports requested by Hospital, including, but not limited to, a daily written memorandum of all Services performed pursuant to this Agreement and all applicable Facility charges, in accordance with Facility's schedule of such charges, incurred in connection with such Services. Group's records of billings and receipts relating to Services performed hereunder shall be available to Hospital upon request. Group shall also require the prompt submittal to Facility's medical records administrator and/or the patient's private physician of written reports of all examinations, treatments and procedures performed pursuant to this Agreement. Group shall use the medical records and report forms provided by the Department and Facility. Group agrees that all records and reports required by this Subparagraph shall be the exclusive personal property of Hospital.

g. **Use of Premises.** No Physician shall use, or knowingly permit any other person who is under their direction to use, any part of Facility's premises for any purpose other than the performance of Services for Facility, its patients and their private physicians pursuant to this Agreement.

h. **Representations and Warranties.** Group represents and warrants to Hospital, upon execution and while this Agreement is in effect, as follows:

(1) Neither Group nor any Physician is bound by any agreement or arrangement which would preclude Group or any Physician from entering into, or from fully performing the Services required under, this Agreement;

(2) No Physician's license to practice medicine in the State or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(3) No Physician's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(4) Neither Group nor any Physician has in the past conducted, and is not presently conducting, its or his/her medical practice in such a manner as to cause Group or any Physician to be suspended, excluded, barred or sanctioned under the Medicare or Medicaid Programs, or any government licensing agency, nor have they ever been convicted of a criminal offense related to health care, or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation; and

(5) Each Physician has, and shall maintain throughout this Agreement, an unrestricted license to practice medicine in the State and Medical Staff privileges at the Facility.

i. **Hospital Employees; Physicians' Obligations.** Group shall not solicit the services of, employ or procure on behalf of another the employment of, any individual currently employed by Hospital or under a service contract with Hospital; nor shall Group or any of the Physicians engage in any other activity which would be in conflict with their respective obligations hereunder. Group shall cause each Physician to comply with the terms and conditions of this Agreement.

2. **HOSPITAL'S OBLIGATIONS.**

a. **Equipment, Facilities, Supplies, Utilities and Services.** Hospital shall, at no cost to Group, provide all equipment, facilities, supplies, utilities, including telephone service, and other services, including laundry, linen and janitorial services, as the Hospital shall, in its sole discretion, determine from time to time to be necessary for the performance of the Services and the proper operation of the Department. The parties expressly agree that all items supplied by Hospital pursuant to this subparagraph 2a. shall remain the exclusive personal property of Hospital.

b. **Personnel.** Hospital shall employ such non-physician personnel as Hospital deems necessary for the proper operation of the Department and the performance of the Services or any other Group obligation set forth in this Agreement. The parties hereby agree that all such personnel shall be subject to the direction and control of each Physician in the performance of professional services to patients.

c. **Responsibility for Service.** To the extent required by applicable laws and regulations, Hospital shall retain professional and administrative responsibility for the services rendered to patients in the Service.

3. **GROUP'S COMPENSATION.**

a. **Payments.** Hospital shall pay Group the amount of Five Hundred Dollars (\$500.00) for each twenty-four hour day of coverage of the Department. All amounts shall be due and payable by the fifteenth (15th) day of the month following the month in which Services were performed, and upon Hospital's receipt of an accurate invoice itemizing the Services provided.

b. **Billing and Collection.** Hospital shall be responsible for billing for all Hospital services pursuant to this Agreement, and Hospital shall have the exclusive right to collections therefrom. Group shall separately bill patients for Physicians' professional services rendered pursuant to this Agreement and shall have the exclusive right to collections therefrom. Hospital does not guarantee the collectability of any of Group's billings.

4. **TERM AND TERMINATION.**

a. **Term.** The term of this Agreement shall be two (2) years commencing on September 1, 2008, and terminating on August 31, 2010, unless terminated earlier pursuant to Section 4.b. hereof.

b. **Early Termination.**

(1) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) the occurrence of an event causing or likely to cause a failure by Physicians to meet the professional qualification requirements in Section 1.c. hereof;

(b) the inaccuracy of any representation of Group in Section 1.g. hereof; and

(c) closure of the Department or sale or closure of the hospital at which the Department is located.

(2) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.(1), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for 15 days after receipt by the breaching party of written notice of such breach from the non-breaching party.

(3) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be

challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty days of their meeting, this Agreement shall automatically terminate.

(4) **Termination for Good Cause.** At any time during the term of this Agreement, either party may terminate this Agreement for "Good Cause" (as hereinafter defined) by giving the other party at least ninety (90) days' prior written notice. "Good Cause" for purposes of this Agreement shall mean the arrangement reflected by this Agreement has become unsatisfactory to the terminating party as determined in its sole discretion.

(5) **Effect of Termination.** As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except: (a) as otherwise provided herein; (b) for rights and obligations accruing prior to such effective date of termination; or (c) arising as a result of any breach of this Agreement.

c. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without necessity of a hearing before the Hospital's Board of Trustees, a committee of the Medical Staff, or any other body. Group represents and warrants that each Physician providing services is aware of and accepts this condition.

d. **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services prior to the first anniversary of the Effective Date of this Agreement.

5. **GROUP'S STATUS.** Group and each Physician shall act at all times under this Agreement as independent contractors. The parties agree that Hospital shall not have and shall not exercise any control or direction over the manner or method by which each Physician provides the Services. However, Group shall require each Physician to perform at all times in accordance with currently approved methods and standards of practice for Services in the medical community. The provisions of this Paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

6. **INSURANCE.** Group shall maintain for each Physician, or require that each Physician maintain professional liability insurance in the minimum amounts of \$1,000,000 per occurrence/\$3,000,000 annual aggregate from an insurance company acceptable to Hospital. If such insurance is on a "claims-made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage (or vice versa), Group shall also acquire, or require that each Physician

acquire, "prior acts" or "tail" coverage (as applicable), in the above amounts, covering all periods that this Agreement is or has been in force. Group shall provide Hospital with written evidence of such insurance upon Hospital's request.

7. ACCESS TO BOOKS AND RECORDS.

a. If the value or cost of Services rendered to Hospital pursuant to this Agreement is Ten Thousand Dollars (\$10,000) or more over a twelve-month period, Group agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of such Services, Group shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and

(2) If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000) or more over a twelve-month period, such subcontract shall contain, and Group shall enforce, a clause to the same effect as Subparagraph 10.a. (1) immediately above.

b. The availability of Group's books, documents, and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of Subparagraphs 10.a. and 10.b. shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

8. CONFIDENTIALITY.

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Group and each Physician may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that neither Group nor any Physician will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Group's and each Physician's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information which concerns Facility's patients, costs, or treatment methods developed by Hospital for the Facility, and which is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's or any Physician's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Physician shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented

to by Hospital. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide Hospital with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with Subparagraph 6.c. or 6.d. hereof.

c. **HIPAA Compliance.** Group and each Physician agree to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8 ("HIPAA"), and the requirements of any regulations promulgated thereunder including without limitation the Federal Privacy Regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Neither Group nor any Physician shall use or further disclose any Protected Health Information, as defined in 45 CFR 164.504, or individually identifiable health information, as defined in 42 U.S.C. § 1320d (collectively, the "Protected Health Information"), concerning a patient other than as permitted by this agreement and the requirements of HIPAA or regulations promulgated under HIPAA including without limitation the Federal Privacy Regulations and the Federal Security Regulations. Group and each Physician will implement appropriate safeguards to prevent the use or disclosure of a patient's Protected Health Information other than as provided for by this Agreement. Group and each Physician will promptly report to Hospital any use or disclosure of a patient's Protected Health Information not provided for by this Agreement or in violation of HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of which Group or any Physician becomes aware. In the event group, with Hospital's approval, contracts with any agents to whom Group provides a patient's Protected Health Information, Group shall include provisions in such agreements whereby the Group and agent agree to the same restrictions and conditions that apply to Group and each Physician with respect to such patient's Protected Health Information. Group will make its internal practices, books, and records relating to the use and disclosure of a patient's Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by Group, any Physician, or Hospital by virtue of this subparagraph.

d. **Survival.** The provisions of this Paragraph 8 shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

9. **REQUIRED DISCLOSURES.** Group shall notify Hospital in writing within three (3) days after any of the following events occurs:

a. Any Physician's license to practice medicine in the State or any other jurisdiction lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction;

b. Any Physician's medical staff membership and/or privileges at any health care facility are denied, suspended, revoked, terminated, voluntarily relinquished (under threat of disciplinary action), or made subject to terms of probation or other restriction;

c. Group or any Physician is required to pay damages in any malpractice action by way of judgment or settlement;

d. Group or any Physician becomes the subject of an investigatory, disciplinary, or other proceeding before any governmental, professional, licensing board, medical staff, or peer review body;

e. Any Physician's Drug Enforcement Agency number is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way;

f. An event occurs that substantially interrupts all or a portion of Group's or any Physician's professional practice or that materially adversely affects Group's or any Physician's ability to perform Group's obligations hereunder; or

g. Group's or any Physician's conviction of a criminal offense related to health care or Group's or any Physician's listing by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation.

10. **ARBITRATION.** Any dispute or controversy arising under, out of or in connection with, or in relation to this Agreement, or any amendment hereof, or the breach hereof shall be determined and settled by arbitration in Stanislaus County, California, in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration and applying the laws of the State. Any award rendered by the arbitrator shall be final and binding upon each of the parties, and judgment thereon may be entered in any court having jurisdiction thereof. The costs shall be borne equally by both parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall remain in full force and effect unless otherwise terminated as provided hereunder. The provisions of this Paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

11. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement.

12. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State. The provisions of this Paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

13. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which together shall constitute only one Agreement.

14. **NOTICES.** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier, addressed as follows:

If to Hospital: Memorial Hospitals Association
1700 Coffee Road
Modesto, CA 95355
Attn: Administrator

Copy to: Sutter Health
1316 Celeste Drive, Suite 120
Modesto, California 95355
Attn: Assistant General Counsel

If to Group: Stephen K. Liu, M.D., Professional Corporation
1552 Coffee Road, Suite 201
Modesto, CA 95355
Attn: Stephen K. Liu, M.D.

or to such other persons or places as either party may from time to time designate by notice pursuant to this Paragraph.

15. **WAIVER.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

16. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

17. **SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

18. **NO THIRD PARTY RIGHTS.** The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

19. **USE OF NAMES AND LOGOS.** Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used

20. **ASSIGNMENT; BINDING EFFECT.** Group shall not assign or transfer, in whole or in part, this Agreement or any of Group's rights, duties or obligations under this Agreement without the prior written consent of Hospital, and any assignment or transfer by Group without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and permitted assigns. This Agreement is assignable by Hospital without consent, provided that Hospital provides prompt written notice of the assignment.

21. **REFERRALS.** The parties acknowledge that none of the benefits granted Group or any Physician hereunder are conditioned on any requirement that Group or any Physician make referrals to, be in a position to make or influence referrals to, or otherwise generate business for Facility or Hospital. The parties further acknowledge that no Physician is restricted from establishing staff privileges at, referring any patient to, or otherwise generating any business for, any other facility of his/her choosing.

22. **FINANCIAL OBLIGATION.** Neither Group nor any Physician shall incur any financial obligation on behalf of Hospital or Facility without the prior written approval of Hospital.

23. **LITIGATION COOPERATION.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the Service, other than proceedings or disputes between the parties to this Agreement

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

HOSPITAL:

MEMORIAL HOSPITALS ASSOCIATION

By: 
Name: Steve Mitchell
Title: Chief Operating Officer

GROUP:

STEPHEN K. LIU, M.D., PROFESSIONAL CORPORATION

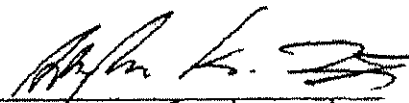
By: 
Name: Stephen K. Liu
Title: M.D.

EXHIBIT A

EXCLUSIVE INTERVENTIONAL RADIOLOGY PROCEDURES

Group shall be the exclusive provider of the following interventional radiology procedures at Hospital:

Abscess Drainage

Biliary Drainage

Dialysis Graft Decлот/Fistulogram

Imaging Guided Biopsy

Infusion Catheter with Port

Intracranial Embolization

Intracranial PTA

Intracranial Thrombolysis

R/F Ablations

TIPS

Tunneled Hemodialysis Access

Venograms⁵

EXHIBIT 44/4
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**SUTTER CENTRAL VALLEY HOSPITALS
dba MEMORIAL MEDICAL CENTER**

CALL COVERAGE AGREEMENT
Interventional Radiology

This Call Coverage Agreement (this "Agreement") is entered into and effective as of **April 4, 2014** (the "**Effective Date**") by and between **Sutter Central Valley Hospitals**, a California nonprofit public benefit corporation **doing business as Memorial Medical Center** ("Hospital"), and **Stephen K. Liu, M.D., Professional Corporation**, a California professional corporation ("Group").

RECITALS

A. Hospital operates an acute care hospital located in Modesto, California, and offers the community a twenty-four (24) hour comprehensive emergency service. Additionally, Hospital has been designated as a Level II Trauma Center (the "Trauma Center"). The emergency service and the Trauma Center shall be referred to herein collectively as the "Emergency Department."

B. Hospital wishes to maintain adequate physician on-call coverage in its Emergency Department and to ensure physicians are available to consult for Hospital inpatients in order to provide high quality emergency medical services to all patients, including patients who have no insurance or ability to pay, and to comply with the requirements of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. §1395dd.

C. Group employs or contracts with physicians (each a "Physician," collectively "Physicians") who are duly qualified and licensed to practice medicine in the State of California and who specialize in Interventional Radiology ("Specialty"). Group's Physicians are willing to participate on the Emergency Department on-call panel pursuant to the terms and conditions set forth herein. All Physicians who are employed by or who contract with Group and who meet the qualifications under Section 1.h. (Professional Qualifications) may perform services under this Agreement. In addition, Physicians added to Group during the term of this Agreement shall be considered part of Group and may perform services under this Agreement without a specific amendment to this Agreement.

D. Recognizing that Physicians' obligation to render medically necessary professional medical services to Hospital patients in the Emergency Department, even if patients have no insurance, are ineligible for government sponsored health care for physician services and otherwise lack any ability to pay for those services, imposes a significant financial burden on Group and Physicians, Hospital also wishes to provide reimbursement to Group for medical services provided by Physicians to Indigent Patients (as defined below in Section 1.d.) while Physicians are providing on-call coverage services at Hospital.

E. Hospital wishes to contract with Group to provide Physician(s) to participate on the Emergency Department on-call panel, and Group wishes to so contract with Hospital.

NOW THEREFORE, the parties agree as follows:

1. **DUTIES OF GROUP AND PHYSICIANS**

a. **On-Call Coverage.** Group will ensure that Physicians serve as on-call physicians in the Specialty for twenty-four (24) hour coverage shifts (each a "Coverage Shift") pursuant to a rotation on-call schedule ("Specialty Call Schedule") established and amended from time to time by Hospital in conjunction with Hospital's Emergency Department physicians. As a member of the Hospital's Emergency Department on-call panel, at all times during Physicians' Coverage Shifts (and as necessary for completion of services or follow-up care), Group agrees that Physicians will provide (i) consultation or assistance within the scope of Physicians' Medical Staff privileges to physicians in the Emergency Department; (ii) consultation or assistance within the scope of Physicians' Medical Staff privileges to other Medical Staff members who call for Specialty consults for their patients who are in the Hospital; and (iii) direct treatment to all patients who present in the Emergency Department and who are in need of medical care within the Specialty as required in accordance with Hospital's Medical Staff Bylaws, policies and procedures. A refusal by a Physician or the back-up Physician to appear as requested by an Emergency Department physician, if confirmed in writing by the requesting Emergency Department Physician, shall result in a permanent withhold of the on-call stipend for the applicable Coverage Shift.

b. **Response Time.** Group will ensure that Physicians will be immediately available to Hospital on a scheduled and pre-assigned basis in accordance with the Specialty Call Schedule to provide Specialty services. For purposes of this Agreement, "immediately available" means unencumbered by conflicting duties or responsibilities; responding by telephone within fifteen (15) minutes of being notified; and being physically present in the Emergency Department when necessary to provide services within sixty (60) minutes of a request for services. If a Physician, for any reason, becomes encumbered by a conflicting duty during a Coverage Shift, Group shall, at its own expense, arrange for back-up coverage by a physician who meets the professional qualifications set forth in Section 1.h. (Professional Qualifications) of this Agreement.

c. **Transfers and Consultations.** During Coverage Shifts, Group will ensure that Physicians accept transfers of all appropriate patients requiring the Specialty services who are transferred from another hospital that does not have the capacity or capability to see that patient, and Hospital has the capacity to treat such patient(s). In addition, Group shall ensure that Physicians take inpatient consultations in the Specialty during Coverage Shifts.

d. **Indigent Care Services.** As requested by Hospital, and during Coverage Shifts, each Physician shall render necessary and appropriate non-elective Specialty medical services to specific Indigent Patients, either in the Emergency Department or on the floor if Physician is called for a consultation ("Indigent Care Services"). For purposes of this Agreement, an "Indigent Patient" is a Hospital patient who has no health insurance, is ineligible for government

sponsored health care, and otherwise lacks any ability to pay for medical services. The parties agree that the compensation for Indigent Care Services shall be as provided in Section 3 (Compensation) regardless of the number of Indigent Patients to whom Physicians provide services or the amount of professional medical services provided to Indigent Patients.]

e. **On-Call Invoice.** Each Physician shall contemporaneously record the actual number of coverage shifts provided on a monthly invoice (the "On-Call Invoice") in the form attached hereto as **Exhibit A**, as modified from time to time by Hospital. On a monthly basis, Group and/or Physicians shall deliver to Hospital's Assistant Administrator or his/her designee completed and signed copies of the On-Call Invoice within five (5) days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Group and/or Physicians shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements. On-Call Invoices submitted by Group and/or Physicians shall be the basis upon which Hospital shall compensate Group for services under this Agreement.

f. **Medical Records and Reports.** Group shall cause Physicians to prepare complete, timely and accurate medical and other records with respect to the services and treatment provided by Physicians under this Agreement. All such medical and other records shall be prepared in accordance with Hospital and Medical Staff bylaws, rules, policies and procedures and in accordance with all applicable laws and Joint Commission standards and recommendations. Physicians shall use the medical records and report forms (paper or electronic) provided by the Emergency Department. Group and Physicians agree that all records and reports required by this Section 1.f. shall be the exclusive personal property of Hospital.

g. **Non-Discrimination.** Physicians will not discriminate against any Hospital patient by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, ancestry, national or ethnic origin, political opinion, sex, disability, marital status, sexual orientation, citizenship, medical condition, insurance status, economic status, ability to pay for medical services or any other basis protected by law. Physicians will treat all patients, including those patients who have no insurance and are deemed by the Hospital to be unable to pay for medical services provided.

h. **Professional Qualifications.** Each Physician shall at all times:

- (1) Hold an unrestricted license to practice medicine in the State of California, and be board certified or board eligible to practice in the Specialty; and
- (2) Be permitted to prescribe medications and hold a valid Drug Enforcement Administration permit; and
- (3) Be a member in good standing of Hospital's Medical Staff in accordance with Hospital's Medical Staff bylaws with privileges in the Specialty; and

(4) Be eligible to provide services to beneficiaries under the Medicare, Medi-Cal or Tri-Care programs or any other federal healthcare reimbursement program.

i. **Representations and Warranties.** Group represents and warrants to Hospital that:

(1) Neither Group nor any Physician is bound by any agreement or arrangement that would preclude Group from entering into, or Group or Physicians from fully performing the services required under, this Agreement;

(2) Each Physician's license to practice medicine in the State of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

(3) Each Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

(4) No Physician, or any other employee of Group, has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as excluded or otherwise ineligible for federal or state program participation; and

(5) Group has no information that would reasonably indicate that a Physician is not able to perform the services required under this Agreement

j. **Notice of Failure to Meet Professional Qualifications.** Group shall promptly notify Hospital of any event causing or likely to cause a failure by any Physician to meet the requirements set forth in Section 1.h. (Professional Qualifications) and Section 1.i. (Representations and Warranties) hereof, and any of the following:

(6) Any investigation of any Physician or disciplinary proceeding against any Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(7) Any malpractice action against any Physician or other action against any Physician in connection with such Physician's administrative or professional services;

(8) Any investigation of any Physician or disciplinary action against any Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by such Physician; or

(9) Any other material breach of the terms of this Agreement.

k. **Working Cooperatively with Others.** Physicians shall at all times work cooperatively with others toward enhancing the quality of patient care. Physicians shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to the hospital or workplace setting.

l. **Compliance.** Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental, semi-governmental or private authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Group and Physicians also agree to adhere to and comply with Hospital's utilization management, quality assurance, risk management, peer review and credentialing activities, programs, policies and procedures. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon such Physician's professional medical judgment and will be made in the best interests of such Physician's patients.

m. **Compliance Program.** Group and Physicians shall comply with Hospital's corporate compliance program. Group and Physicians shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group and/or any Physician and/or any of the services provided by Group and Physicians under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all documents and/or information related to Group and/or any Physician(s), their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physicians shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

n. **Insurance.** Group agrees to maintain, at its sole expense, a policy or policies of professional liability insurance that covers any acts of Physicians' professional negligence with limits of liability for Group and each Physician of no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. If coverage is provided on a claims-made policy, Group further agrees to maintain continuous coverage, by either obtaining "tail" insurance from the preceding carrier, or "nose" coverage from the subsequent carrier, through the term of this Agreement, as well as any extensions or renewals, and for a period thereafter of not less than seven (7) years. In addition, with respect to any Physician who terminates employment or other association with Group for any reason, Group shall secure tail coverage for a period of not less than seven (7) years for claims and losses in connection with services rendered by any such Physician prior to such termination. Group may satisfy this requirement by assuring that the terminating Physician maintains insurance with a retroactive date prior to or coinciding with the first date of employment or other association with Group; provided, however, that upon termination of any such insurance for any reason, Group shall procure its own tail coverage. Hospital shall not have any responsibility to pay, or reimburse Group for, such tail insurance coverage that is the obligation of Group or the departing Physician. Group agrees to provide proof of current insurance and will, in the event of

modification, termination, expiration or cancellation of any of the required policies of insurance, give Hospital written notice within five (5) business days.

o. **Use of Hospital Facilities.** Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Physicians solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. This Agreement shall not be construed as a lease to Group or any Physician of any portion of Hospital's facilities. No part of Hospital's premises shall be used at any time by Group or any Physician for personal purposes or as an office for the general practice of medicine.

p. **Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business for Hospital. This Agreement is not intended to influence Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or in any way restrict Physicians from establishing medical staff membership or clinical privileges at any other healthcare facility.

q. **Billing and Collection.** Group or Physicians, as the case may be, will separately bill and collect charges at its/their own expense for any professional services rendered by Physicians, and Hospital does not guarantee the amount or collection for such services.

r. **Non-Exclusivity and Call Schedules.** Group acknowledges and agrees that Hospital may contract with other medical groups and/or physicians to provide Specialty call coverage services. Group shall cooperate with all others under contract with Hospital to provide the Specialty call coverage services in developing and performing under all on-call schedules related to the Specialty call coverage services.

2. DUTIES OF HOSPITAL

a. **Responsibility for Services.** To the extent required by the laws and regulations governing the operation of hospitals, Hospital retains professional and administrative responsibility for the services provided herein.

3. COMPENSATION

a. In exchange for the performance of responsibilities and services described in this Agreement, and to assure the availability of professional services in Specialty, Hospital will pay to Group the sum of **Two Thousand Dollars (\$2,000.00) for each full Coverage Shift covered by a Physician.** For all other coverage shifts where a Physician provides less than twenty-four (24) hours of on-call coverage, Hospital will pay to Group Eighty Three Dollars and Thirty Three (\$83.33) per hour of on-call coverage provided for that coverage shift. Compensation shall be payable within thirty (30) days of Hospital's receipt of the completed and signed On-Call Invoice.

b. Neither Group nor any Physician shall receive compensation for providing call coverage services to Hospital in a specialty other than the Specialty for the same twenty-four (24) hour Coverage Shift for which Group receives compensation pursuant to this Agreement.

c. Compensation under this Section includes compensation for Indigent Care Services, and neither Group nor any Physician shall be eligible to receive or shall receive separate payments from Hospital for such Indigent Care Services under this Agreement, under any other agreement between Group, Physicians and Hospital or under Hospital's indigent care policy or any other policy related to the payment of services for Indigent Patients.

4. TERM AND TERMINATION

a. **Term.** Unless terminated earlier pursuant to Section 4.b. below, this Agreement will have an effective term of **two (2) years** commencing on the Effective Date.

b. **Termination.**

1. **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

(a) Failure of Group to remove a Physician after requested by Hospital pursuant to Section 5 (Removal of a Physician);

(b) The inaccuracy of any representation of Group in Section 1.i. (Representations and Warranties) hereof;

(c) Group's failure to obtain or maintain professional liability insurance for Physicians, as required in Section 1.n. (Insurance);

(d) Group's unauthorized disclosure of Patient Information or Hospital Information, as defined in Section 8 (Confidentiality);

(e) Either party becomes insolvent or declares bankruptcy; or

(f) Closure of the Emergency Department or sale or closure of Hospital.

2. **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.b.1., either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure of a Physician to respond to calls as provided in Section 1.b. (Response Time); (ii) failure to satisfy the requirements of Section 8 (Confidentiality); or (iii) any act or omission by any Physician(s) that jeopardizes the quality of care provided to Hospital's patients.

3. Legal Jeopardy. If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or resulting in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of its tax-exempt status under state or federal law or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within ten (10) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within twenty (20) days of their meeting, this Agreement shall automatically terminate.

4. Without Cause Termination. Either party may elect to terminate this Agreement, without cause, upon ninety (90) days' written notice to the other party.

5. Termination by Mutual Agreement. This Agreement may be terminated at any time upon the written concurrence of the parties.

c. Effect of Expiration or Termination.

1. Termination of Obligations. Except as otherwise provided in this Section 4.c., upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

2. Pre-Termination Services. Hospital shall pay Group any unpaid amount due for services rendered prior to the termination date.

3. Liability for Breach. A termination by either party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity.

d. Survival. The provisions of Sections 1.m. (Compliance Program), 1.m. (Insurance), 4.c. (Effect of Expiration or Termination), 4.e. (No Procedural Rights), 4.f. (Renewal, Extensions, New Agreements), 6 (Independent Contractor Relationship), 7 (Access to Books and Records), 8 (Confidentiality), 9 (Dispute Resolution), 10 (Indemnification), 11 (Notices) and 12 (General Provisions) shall survive termination of this Agreement.

e. No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated in accordance with this Section 4 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body. Group represents and warrants that Physicians and all other physicians providing services on behalf of any Physician are aware of and accept this condition.

f. Renewal, Extensions, New Agreements. Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new

agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Physicians prior to the first anniversary of the Effective Date of this Agreement.

5. REMOVAL OF A PHYSICIAN

a. **Cause for Removal.** Hospital may require the immediate cessation of services by any Physician and/or require Group to immediately remove from providing services under this Agreement any Physician for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

1. Failure of Physician to meet any of the requirements of Section 1.h. (Professional Qualifications);

2. The death or disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician, that prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for an indefinite period, or if otherwise an undue hardship to Hospital);

3. Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;

4. Failure of any Physician(s) to comply with Section 1.k. (Working Cooperatively with Others);

5. After notice and opportunity to cure, any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to the Medical Staff bylaws; or

6. Failure to abide by any of the terms and conditions of this Agreement applicable to Physicians.

b. **No Procedural Rights.** Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated with respect to individual Physicians in accordance with this Section 5 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body. Group represents and warrants that all Physicians are aware of and accept this condition.

6. INDEPENDENT CONTRACTOR RELATIONSHIP

In performing the services described in this Agreement, Physicians and Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physicians shall perform the services required under this

Agreement. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Neither Group nor Physicians shall have any claim under this Agreement or otherwise against Hospital for workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group agrees that it shall do the following: withhold FICA (Social Security) from payments to Physicians; make state or federal unemployment insurance contributions on Physicians' behalf; withhold state and federal income tax from payments to Physicians; make disability insurance contributions on behalf of Physicians; and obtain workers' compensation insurance on behalf of Physicians. Group and/or Physicians, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to Physicians or any other physician employed or engaged by Group.

7. ACCESS TO BOOKS AND RECORDS

a. **Access.** Group will maintain and make available all necessary written agreements, books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including but not limited to matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. Group agrees as follows:

1. Until the expiration of four (4) years after the furnishing of services under this Agreement, Group will, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly authorized representative, the Comptroller General, or the Comptroller General's duly authorized representative, this Agreement, and such books, documents and records as may be necessary to certify the nature and extent of the costs of such services; and

2. If any such services are performed by way of subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract will contain, and Group will enforce, a clause to the same effect as subparagraph 1. immediately above.

b. **Limits.** The availability of Group's Agreement, books, documents and records will be subject at all times to all applicable legal requirements, including without limitation such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

8. CONFIDENTIALITY

a. **Hospital Information.** Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital, Group and Physicians may have

access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital ("Hospital Information"). Group agrees that it will not at any time, and will ensure that no Physician will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to duties hereunder, any confidential or proprietary information of Hospital. Confidential and proprietary information shall include, but not limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

b. **Terms of this Agreement.** Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom will be associated in any way with Hospital or any of its affiliates), Group will not disclose, and will ensure that no Physician will disclose, the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

c. **Patient Information.** Group will not disclose, and will ensure that no Physician will disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Group will comply, and will ensure that Physicians will comply, with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the Federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

d. **Remedy.** Unauthorized disclosure of Patient Information or Hospital Information shall be a material breach of this Agreement and in the event of such unauthorized disclosure, Hospital will have the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to Group. Notwithstanding any other remedy that may be available in law or equity, the parties stipulate and agree that the aggrieved party may obtain preliminary or permanent injunctive relief to prevent disclosures of confidential information or further disclosures, along with such mandatory relief as may be appropriate to limit the effect of any prior disclosure, without the need of showing irreparable harm, as it may be difficult or impossible to establish an imminent threat of irreparable harm.

9. **DISPUTE RESOLUTION**

a. **Meet and Confer.** In the event of any dispute between Group (including Physicians) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding

such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with Section 9.b. (Agreement to Arbitrate).

b. **Agreement to Arbitrate.** The parties agree that if they are unable to resolve any dispute within the scope of this Agreement informally pursuant to Section 9.a. (Meet and Confer), then the dispute shall be submitted for resolution exclusively through arbitration. The dispute shall be submitted in accordance with the Streamlined Arbitration Rules and Procedures of JAMS, which service shall be selected by Hospital at its sole discretion.

c. **Initiating Arbitration.** To initiate arbitration, a party must serve a written Demand for Arbitration in accordance with the notice provisions set forth in Section 11 (Notices), below, as well as any additional consistent rules of arbitration. The written notice shall identify and describe the nature of all claims asserted and detail the facts upon which such claims are based.

d. **Powers of Arbitrator.** The arbitrator shall have authority to interpret and apply this Agreement. The arbitrator shall apply the applicable substantive law and may award any remedy authorized by law, except that the arbitrator shall have no power to: (i) award any punitive damages or exemplary damages; (ii) ignore, add to, modify, or otherwise vary the terms of this Agreement; (iii) require Hospital to adopt new policies and procedures; or (iv) hear or decide any matter that was not processed in accordance with this Agreement, absent the written consent of both parties. To the extent permitted by law, the arbitrator shall have the authority to award a party's legal expenses, including attorneys' fees and costs, and experts' fees and costs, to the prevailing party upon a finding that the other party acted in bad faith by initiating arbitration. The arbitrator shall be bound by controlling law. The arbitrator shall resolve any controversy as to whether a dispute is arbitrable, construing the scope of this Agreement broadly in favor of final and binding arbitration, to the extent permitted by law. The decision of the arbitrator shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any.

e. **Attorneys' Fees and Costs.** The cost of arbitration shall be shared equally by Hospital and Group, provided that each party shall bear its own legal expenses, including attorneys' and experts' fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any arbitration or legal action, except as ordered by the arbitrator as part of his/her damages award pursuant to an applicable fee-shifting statute or upon a finding by the arbitrator that the arbitration was initiated in bad faith as described in Section 9.d. (Powers of Arbitrator).

f. **Venue.** Venue for the arbitration shall be the county in which the contract was executed or the County of Sacramento.

10. INDEMNIFICATION

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

11. NOTICES

All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W9 tax form to Hospital. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection. Except for notification regarding termination, initiation of a dispute resolution process, indemnification obligations or breach of or failure to comply with any provision of this Agreement, written notification shall be sufficient if sent via email (together with acknowledgment of receipt) or by facsimile (together with proof of transmission) provided that the email addresses or facsimile numbers for the parties are provided below. Email addresses and facsimile numbers may be changed by either party from time to time if notification of such change is delivered in compliance with this Section.

If to Hospital:	Sutter Central Valley Hospitals dba Memorial Medical Center 1700 Coffee Road Modesto, CA 95355 Attn: Chief Executive Officer
With a copy to:	Sutter Health Office of the General Counsel 1316 Celeste Drive, Suite 120 Modesto, CA 95355 Attn: Vice President and Regional Counsel
If to Group:	Stephen K. Liu, M.D., Professional Corporation 1552 Coffee Road Modesto, CA 95355 Attn: Stephen K. Liu, M.D., President

12. GENERAL PROVISIONS

a. **Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein and any Statements of Work between the parties that refer to this Agreement, are hereby incorporated into this Agreement by reference.

b. **Ambiguities.** This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law (including California Civil Code Section 1654 or any other similar applicable federal or state law or statute) or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

c. **No Waiver.** No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

d. **Severability.** Except as provided in Section 4.b.(3) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the Term and Termination provisions of this Agreement.

e. **Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party. If Hospital gives written consent for Group to assign or subcontract any of its services to a third party, Group agrees to (i) identify the subcontracting physician and the services provided by that physician on all On-Call Invoices submitted to Hospital, and (ii) pay the subcontracting physician at the same rate, or a pro-rated rate if the subcontracting physician did not cover an entire Coverage Shift, specified in Section 3 (Compensation). Notwithstanding the foregoing, Hospital may assign its rights and obligations under this Agreement to another Sutter Health affiliate without the other party's consent.

f. **Use of Name.** Group shall not use the name of Hospital or any affiliated entity of Hospital, or any of their trademarks, service marks, or trade names for any purpose without the prior written consent of Hospital.

g. **No Third Party Rights.** Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

h. **Governing Law.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the State of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

i. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

j. **Other Service Agreements.** Hospital's TractManager databases include copies of all other agreements under which Group, any Group physician (or any immediate family member of Group physician), provides services to Hospital.

k. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement.

l. **Excess Payment.** If Hospital makes a payment or payments to Group in excess of the amount(s) due and payable under this Agreement (the "Excess Payment"), Hospital may offset the Excess Payment from future payments owed to Group under this Agreement, any other existing agreement between the parties, or any future agreement entered into between the parties. In the event that there are no future payments owed under this Agreement or other existing agreements between the parties, or that future payments are not sufficient to cover the Excess Payment, Hospital may seek repayment of the Excess Payment or the remaining Excess Payment from Group and Group shall repay within ninety (90) days. If Group cannot repay the entire Excess Payment within ninety (90) days, the parties may agree upon a reasonable repayment plan, in which case Group shall execute a promissory note. Interest shall accrue on any repayment plan agreed upon pursuant to this Section at a per annum rate equal to the prime rate reported in The Wall Street Journal on the date the first repayment payment is made plus two (2) percentage points, but in no event in excess of the maximum rate of interest Hospital is permitted to charge from time to time under applicable law.

m. **No Referrals/Non-Exclusivity.** Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party.

n. **Tax Reporting.** To ensure proper tax reporting of the compensation paid under this Agreement, Group shall complete, execute and deliver to Hospital an IRS Form W 9 and California Form FTB-590 (if requested by Hospital) which sets forth the correct taxpayer identification number for Group. To the extent required by law, Hospital shall report all payments to Group on IRS form 1099 and its state law counterpart.

o. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

p. **Execution.** By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

[Signature Page Follows]

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates set forth below, to be effective as of the Effective Date.

HOSPITAL:

**SUTTER CENTRAL VALLEY HOSPITALS,
dba MEMORIAL MEDICAL CENTER**

Date: 4-APR-14

By: [Signature]

Name: Daryn J. Kumar

Title: Chief Executive Officer

GROUP:

**STEPHEN K. LIU, M.D., PROFESSIONAL
CORPORATION**

Date: 4-4-2014

By: [Signature]

Name: Stephen K. Liu, M.D.

Title: President

EXHIBIT A

CALL INVOICE

[See Attached]

EMERGENCY DEPARTMENT ON-CALL TIME REPORT

MEMORIAL MEDICAL CENTER

Physician: _____		Month: _____
Service Specialty: Interventional Radiology		
Address: _____		Phone: (____) _____
(If Applicable) Group Name: Stephen K. Liu, M.D., Professional Corporation		Tax Id. Number: _____
<i>For Hospital Use Only</i>		
Total Call Days: _____	Rate: \$2,000/shift	Total: \$ _____
Notes: _____		

Please list the date on which you provided a shift of call coverage in each box.								
	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	Totals
Week 1								
Week 2								
Week 3								
Week 4								
Week 5								
TOTAL NUMBER OF SHIFTS								

I certify that this Time Report is a true and accurate record of the number of shifts of call I provided during this month.

Date: _____
Physician Signature

Date: _____
Administrator Signature
Name: _____
Title: _____

EXHIBIT 23
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

Hanvey, Laurie

From: RFAX Compliance Officers
Sent: Monday, April 14, 2014 12:14 PM
To: *S3 - Physician Invoices - (Hyland)
Cc: Ortiz, Renee; RFAX Compliance Officers
Subject: Approved: MMC Call Payment Liu March
Attachments: Liu Mar.pdf

V#125307

Vendor - STEPHEN K LIU MD PROF CORP

CC- 200-10-107010-62000

Amount \$37,200.00

From: Ortiz, Renee
Sent: Friday, April 11, 2014 12:31 PM
To: RFAX Compliance Officers
Subject: MMC Call Payment



CHECK REQUEST FORM – PHYSICIAN PAYMENTS

Special Mailing Instructions:

- Coders: Please fill out the form in its entirety. When complete, forward to the appropriate Approver to review.
- When complete, scan and e-mail to: RFaxCompliance@sutterhealth.org

Payer Information					
Date:	4/11/14	Requester's Name:	Renee Ortiz	Phone #:	209-569-7360
Company Name: Sutter Central Valley Hospitals dba Memorial Medical Center					
Lawson Company #:	200	Accounting Unit (Process Level & Department):	107010		
Account#:	62000	Sub Acct#:	0000	Activity #:	N/A

Payee Information					
Contract #	69566.28302	Vendor #	125307		
Name	Stephen K. Liu, M.D., Professional Corp	City	Modesto	State/Zip	CA 95355
Address	1552 Coffee Rd Ste 201	FAX (if applicable)		Remit to address (AP#) if applicable	
Phone #					

Check Information	
Check Request Reason	Call Coverage Services
Check Amount	\$37,200
Invoice # (if applicable)	March 2014 - Interventional Radiology

Approval		
Approved by	Jon Felton, Asst Administrator	Date: 4/10/14

MMCM

INTERVENTIONAL RADIOLOGY SERVICES ON-CALL LOG
Mar-14

Stephen K. Liu, M.D., Professional Corporation, 1552 Coffee Road, Suite 201, Modesto, CA 95355

Vendor #: 125307	I.R. Services - ED Call per Agreement	31 10701062000	\$37,200.00
		TOTAL:	\$37,200.00

Effec. 4/1/12: new daily rate of \$1,200.00 payable in May 2012

I ATTEST THAT INTER. RADIOLOGY SERVICES WERE AVAILABLE OR PERFORMED FOR DAYS CHECKED FOR MAR. 2013

March 2014**SIGNED:****APPROVED:****DATE:**

March 2014		March 2014							April 2014						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
2	3	4	5	6	7	8	1	2	3	4	5	6	7		
9	10	11	12	13	14	15	8	9	10	11	12	13	14		
16	17	18	19	20	21	22	15	16	17	18	19	20	21		
23	24	25	26	27	28	29	22	23	24	25	26	27	28		
30	31	1	2	3	4	5	29	30	1	2	3	4	5		

O'Leary, Renee

1

4/4/2014 9:02 AM

EXHIBIT 24
to Complaint

U.S. ex rel. Hanvey v. Sutter Health System, et. al.

**EMERGENCY DEPARTMENT COVERAGE SERVICES
AND MEDICAL DIRECTOR AGREEMENT**

This Emergency Department Coverage Services and Medical Director Agreement ("Agreement") is effective as of April 1, 2011 (the "Effective Date"), between Sutter Central Valley Hospitals, a California nonprofit public benefit corporation doing business as Memorial Hospital Los Banos ("Hospital") and California Emergency Physicians Medical Group, a California general partnership ("Group").

RECITALS

A. Hospital operates an acute care general hospital located in Los Banos, California ("Facility") and operates an Emergency Department (the "Department") for the provision of 24-hour Emergency services. Hospital desires to ensure the availability of experienced physicians specializing in Emergency Medicine to meet the needs of Hospital, its medical staff, and its patients for these services.

B. Hospital is also in need of an experienced, qualified physician to serve as medical director for the Department, to provide customary medical direction and certain administrative services to the Department, to act as a liaison between the Department, the Medical Staff and other departments within the Hospital.

C. Group is a general partnership which includes physician partners and/or other contracted physicians who are experienced in the practice of Emergency Medicine, duly licensed to practice medicine in California in the specialty of Emergency Medicine (the "Specialty"), and who are qualified to provide the services required under this Agreement (each, a "Physician," collectively, the "Physicians").

D. Group employs, will employ or otherwise contracts with physician assistants (PA's) and Nurse Practitioners (NP's) (collectively "Mid-Level Practitioners"), duly licensed in the State of California ("State") and qualified with experience in furnishing emergency room medical services, and Group desires to provide such Mid-Level Practitioners for full-time coverage of the Department. Except as noted to the contrary in the remainder of the Agreement, the word "Physicians" shall include Physicians and Mid-Level Practitioners.

E. Hospital wishes to contract with Group, and Group wishes to contract with Hospital, to provide a physician to serve as medical director of the Department (as defined below) and to provide Physicians to provide coverage services upon the terms and conditions set forth in this Agreement.

F. Hospital has considered various means of providing quality patient care at a reasonable cost in the Department and has determined that the exclusivity of the arrangement provided for in this Agreement will best accomplish these goals and is warranted by the continuity, accountability, quality, efficiency and availability provided for in this Agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. GROUP'S SERVICES

1.1 Coverage Services. Group shall provide a sufficient number of Physicians to provide professional medical services in the Specialty required for patient care and operation of the Department 24 hours per day, 7 days per week, 365 days a year, as described at Exhibit A, attached hereto ("Coverage Services"). On or before the first day of each calendar month, Group shall provide to Hospital's Chief Executive Officer or designee (the "Administrator"), and following approval by the Administrator, shall post within the Department a schedule of Physicians assigned to provide coverage in the Department during the next calendar month. Group agrees that at no Physician assigned to provide services to Hospital shall also be assigned at any time throughout this Agreement to provide services to Doctors Medical Center in Modesto, California. In addition, no Physician assigned to provide services to Doctors Medical Center in Modesto, California shall also be assigned to provide services to Hospital.

1.2 Other Physicians. The emergency medical services to be rendered hereunder shall be performed by Medical Director and such other Physicians as may be in partnership with, employed by or under contract with Group. Group acknowledges the necessity of scheduling Physicians who are cooperative and compatible in an emergency department setting. At the direct request of Hospital, Group agrees to take such remedial action, including reassignment or removal of a Physician, to achieve this goal, provided that the foregoing is in compliance with Group's partnership agreements and policies and procedures on Standards of Behavior.

1.3 Medical Director Services.

(a) **Services.** Group shall appoint, subject to the prior approval of Hospital's Chief Executive Officer (the "Administrator"), a Physician or Physicians to serve as Medical Director of the Department ("Medical Director"). The Medical Director shall be responsible for carrying out Group's administrative responsibilities described in Exhibit B (Medical Director for Emergency/Prompt Care Duties and Responsibilities) and for the overall supervision of the Department, to act as a liaison between the Department, the Medical Staff and other departments within the Hospital and to oversee Group's performance of this Agreement (collectively, "Administrative Services"). To the extent allowed by law, the Medical Director shall be responsible to Hospital's Administrator for performance of services under the Agreement. Group may, subject to prior approval of Hospital, assign any of the duties of Medical Director listed at Exhibit B to Physicians as deemed necessary by Group for efficient operations.

(b) **Minimum Time Requirements.** Medical Director shall devote a minimum average of seven (7) hours per month performing the services described in this Agreement. The parties recognize that the actual time required to perform such services may vary from month to month, but the parties agree that Medical Director shall in no event devote less than three (3) times the minimum average monthly hours during any quarter during the term of this Agreement.

(c) **Time Reports.** Medical Director shall contemporaneously record the actual number of hours and a description of the Administrative Services provided on a monthly time report (the "Time Report") in the form attached hereto as Exhibit C, as modified from time to time by Hospital. Group shall deliver to the Administrator completed and signed copies of the

applicable Time Reports within fifteen (15) days after the end of each calendar month during the term of this Agreement. Upon request of Hospital, Medical Director shall from time to time complete and execute such other time reports or allocation statements on forms provided by Hospital as may be required to comply with applicable Medicare and other legal requirements.

(d) **Coordination of Services.** Hospital and Medical Director shall coordinate their activities in connection with Group's provision of services in the Department. Group shall cause Medical Director to inform the Administrator of any extended periods (i.e., one week or more) during which Medical Director will be unavailable due to vacation, professional meetings, or other personal or professional commitments. During all periods of Medical Director's unavailability, after obtaining Hospital's prior written approval, Group shall engage and provide a substitute Physician to serve as medical director ("Substitute Medical Director"), who shall be a member of Group, to perform the Administrative Services required of Medical Director under this Agreement.

1.4 Professional Qualifications. Each Physician providing Administrative or Coverage Services shall at all times:

- (a) Hold an unrestricted license to practice medicine in the State of California;
- (b) Be permitted to prescribe medications and hold a valid Drug Enforcement Agency permit;
- (c) Be a member in good standing of Hospital's medical staff (the "Medical Staff") and be subject to all of the attendant privileges, responsibilities and conditions of such membership; and
- (d) Be eligible to provide services to beneficiaries under the Medicare and Medi-Cal programs as a participating provider.

1.5 Representations and Warranties. Group represents and warrants to Hospital that:

- (a) Neither Group nor any Physician is bound by any agreement or arrangement which would preclude Group from entering into this Agreement, or Group or any Physician from fully performing the Coverage Services or the Administrative Services;
- (b) No Physician's license to practice medicine in the State of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
- (c) No Physician's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
- (d) No Physician has ever been convicted of an offense related to health care, or listed by the Medicare or Medi-Cal programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation; and

(e) Group has no information that would reasonably indicate that any Physician is not able to perform the services required under this Agreement.

1.6 Notice of Failure to Meet Professional Qualifications. Group shall promptly notify Hospital of any event causing or likely to cause a failure by any Physician to meet the professional qualifications set forth in Section 1.4 or any other breach of the terms of this Agreement by Group or any Physician.

1.7 Compliance with Rules and Laws. Group shall comply, and shall ensure that Physicians comply, with all policies, bylaws, rules and regulations of Hospital and the Medical Staff and applicable standards and recommendations of the Joint Commission. Group also shall comply, and shall ensure that Physicians comply, with all applicable provisions of federal, state and local laws, rules and regulations, as well as rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the Hospital; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payors whose members/beneficiaries receive care from Hospital. This shall specifically include compliance with applicable provisions of Title 22 of the California Code of Regulations.

1.8 Corporate Compliance Program. Group and each Physician shall comply with Hospital's corporate compliance program. Group and Physicians shall cooperate with any corporate compliance audits, reviews and investigations that relate to Group or any Physician and/or any of the services provided by Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Group or Physician, their personnel, and their activities including the provision of services under this Agreement. In addition, as requested by Hospital, Group and Physicians shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital.

1.9 Quality Improvement and Risk Management. Group and the Physicians shall participate in the quality improvement, utilization review and risk management programs of Hospital, and shall cooperate with any related audits, reviews or investigations.

1.10 System-wide Clinical Integration. Group and the Physicians shall promote and participate in Sutter Health system-wide clinical integration efforts, as reasonably requested by Hospital.

1.11 Use of Hospital Facilities. Any facilities, equipment, supplies, or personnel provided by Hospital shall be used by Group and Physicians solely to provide services under this Agreement and shall not be used for any other purpose whatsoever. No part of Hospital's premises shall be used at any time by Group or any Physician for their own purposes or as an office for the general practice of medicine.

1.12 Expenses. Neither Group nor any Physician shall incur any financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Group and Physicians shall be solely responsible for the following: (a) Physician compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings;

(d) professional liability insurance; and (e) all compensation attributable to any employees, subcontractors, or back-up physicians engaged by Group or a Physician.

1.13 Expert Witness Conflict of Interest. Group shall use its best efforts to ensure that Physicians providing services under this Agreement shall not accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of (i) Hospital, (ii) any other hospital or health care facility owned or operated by, or affiliated with, Sutter Health, or (iii) any employee of Hospital or such other Sutter Health hospital or health care facility, if the claim relates to the acts or omissions of such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing shall prevent any Physician from testifying as a factual witness in an action in which both Physician and Hospital or Group and Hospital (or any other Hospital or health care facility owned or operated by or affiliated with Sutter Health, or any employee of Hospital or such other Hospital or health care facility) are defendants.

1.14 Anti-Referral Laws. Nothing in this Agreement, or any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Group or any Physician and Hospital. This Agreement is not intended to influence Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

1.15 Best Efforts. Group shall devote its best efforts toward carrying out the terms of this Agreement and shall cause Physicians to devote sufficient time to support the efficient and effective operation of the Department.

1.16 Quality Initiatives Commitment. Group, along with Hospital, shall lead the Department efforts to enhance patient satisfaction and to meet or exceed Hospital's established quality initiatives, as set forth at Exhibit D, attached hereto. Further, the dedication of all Physicians toward the achievement of these goals is a key indicator of success for Hospital and an essential element of this Agreement. Group and Physicians shall participate fully and provide leadership in quality initiatives and other service excellence efforts focused on Emergency services.

1.17 Non-Discrimination. Group and each of its Physicians shall provide services under this Agreement without regard to any patient's race, color, creed, ethnicity, religion, national origin, ancestry, citizenship, marital status, age, sex, sexual orientation, pre-existing medical condition, physical or mental handicap, financial status, insurance status, economic status, or ability to pay for medical services.

1.18 Cost Control. Group shall use its best efforts to monitor and control the expenses of the Department in order to provide clinically appropriate, high quality, cost-effective service in the Department.

1.19 Failure to Provide Coverage Services. In the event Group fails to provide any of the Coverage Services as required in this Agreement, Hospital, in its discretion, shall have the right to terminate this agreement and contract with another provider to render such Coverage Services.

Section 2. HOSPITAL FACILITIES AND SERVICES

2.1 Equipment, Supplies, Etc. Hospital shall operate the Department with all customary and necessary equipment, furniture, computers, supplies, maintenance, utilities and personnel reasonably required for operation of the Department. The selection, deletion and purchasing of additional or replacement equipment and the selection, removal and retention of personnel shall be the exclusive function of Hospital, with input from Medical Director as requested by the Administrator. Notwithstanding any other provision of this Agreement, if Group should ever allege that Hospital has materially breached its obligations under this Section 2.1, Group's sole and exclusive remedy shall be termination of this Agreement.

2.2 Insurance for Administrative Services. With respect to Administrative Services provided under this Agreement, Medical Director shall be included in Hospital's standard policy of insurance or self-insurance in amounts of One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate. This insurance shall be applicable only to the Medical Director's Administrative Services and not to any Coverage Services nor any professional services provided to patients.

2.3 Responsibility for Department. To the extent required by applicable laws and regulations, Hospital shall retain administrative responsibility for the services rendered to patients in the Department.

Section 3. BILLING AND COMPENSATION

3.1 Compensation. As payment in full for Group's, Physicians', and Medical Director's services provided pursuant to this Agreement, Hospital shall pay to Group the following compensation:

(a) **Administrative Services.** As compensation for Medical Director's performance of the Administrative Services set forth in the Agreement that are documented in completed and signed Time Reports, including directing and managing the Emergency Department, Hospital shall pay Group the amount of One Thousand Dollars (\$1,000.00) per month, up to a maximum of Twelve Thousand Dollars (\$12,000.00) per year. Neither Group nor any Physician shall bill or assert any claim for payment against any patient or payor for Administrative Services performed by Medical Director under this Agreement.

(b) **Disproportionate Share Subsidy.** Any provision of this Agreement to the contrary notwithstanding, during the term of this Agreement, Hospital shall also pay to Group the annual sum of Three Hundred Thousand Dollars (\$300,000.00), payable in twelve (12) equal monthly installments of Twenty-Five Thousand Dollars (\$25,000.00) on or before the 15th day of each calendar month. The purpose of this payment is to compensate Group fairly for its treatment of a disproportionate number of Hospital patients who either lack a third-party

payment source or whose third-party payor reimbursement is insufficient to cover Group's costs of providing services hereunder.

(c) Midlevel Practitioner Services. Hospital shall pay Group at the rate of Sixty Dollars and Thirty-Three Cents (\$60.33) for each hour worked by Group's Mid-Level Practitioners in the Department, payable within fifteen (15) days of Hospital's receipt of an accurate invoice summarizing the hours worked by such Mid-Level Practitioners during the previous month.

(d) Quality Initiatives. Hospital shall compensate Group on a quarterly basis for its achievement of the eight (8) established quality initiatives in accordance with the guidelines set forth at Exhibit D.

3.2 Billing for Professional Services

(a) Hospital Billing. Hospital shall bill and collect for the technical component of medical services delivered to all Department patients.

(b) Group Billing. Group shall be solely responsible for the billing and collection of all charges for the professional component of medical services delivered to all patients by Group or any Physician. All such billings shall be billed under a single group provider number assigned to Group and shall comply with all applicable federal and state laws, regulations, rules, and guidelines. Hospital shall have no liability for bad debts or uncollectible accounts billed by Group or Group's billing agent.

(c) Billing Information. Hospital shall provide Group with any information reasonably available to Hospital necessary for Group to bill patients or payors for services rendered by Group and its Physicians pursuant to this Agreement. Hospital shall assist Group in obtaining patients' signatures on assignment of insurance benefits and other reasonably appropriate forms supplied to Hospital by Group.

(d) Billing Records. Hospital and Group shall each make, keep and maintain, complete and accurate records of all charges and billings, and each party shall have the right to examine, inspect or make copies of the records of the other party pertaining to such charges and billings, at its own expense if such access is necessary to comply with any laws, rules or regulations.

(e) Assignment. Group shall accept Medicare and Medi-Cal assignment with respect to services provided to Medicare and Medi-Cal beneficiaries as payment in full for the respective services rendered, and further agrees not to bill said patients for any deductibles or co-payments except where permitted by law.

3.3 Fair Market Value Compensation. The compensation provided under Sections 3.1 and 3.2 represents the parties' good faith determination of the reasonable fair market value compensation for the Administrative and Coverage Services to be provided by Group under this Agreement, taking into account the number of hours of service required and an estimate of the professional fees that Group will be able to collect for patient services.

3.4 Tax Reporting. To ensure proper tax reporting of the compensation paid under this Agreement, Group shall complete, execute and deliver to Hospital an IRS Form W-9 and California Form FTB-590 (if requested by Hospital) which sets forth the correct taxpayer identification number for Group. To the extent required by law, Hospital shall report all payments to Group on IRS form 1099 and its state law counterpart.

3.5 Discount and Prospective Payment Arrangements. Group and Hospital, through its agents and affiliated corporations, shall separately enter into healthcare contracts with third-party payors on a discount basis. Group shall submit to Hospital and Hospital shall submit to Group, upon request, a list of payors with which it has contracted to provide services. If Hospital deems it advisable for Group to contract with a payor (including government payors, health maintenance organizations, prepaid health plans, preferred provider groups and the like) with which Hospital has a contract ("Hospital-Contracted Plans"), Group agrees in good faith to negotiate and to use its best efforts to enter into a contractual agreement equal to the reasonable prevailing reimbursement rates for Emergency physician specialists within the area. For purposes of this Section, good faith shall be evaluated in each instance by Group's willingness to negotiate and offer acceptable rates. This evaluation shall be made if Group and a third party payor have not been able to reach agreement on rates.

3.6 SutterSelect. Hospital and its affiliates provide medical benefits to their employees through an ERISA self-funded plan administered by SutterSelect. Group recognizes the importance to Hospital that hospital-based providers such as Group are contracted with SutterSelect and available to provide professional services to the employees of Hospital and its affiliates. Therefore, Group will enter into a Network Provider Agreement, pursuant to which Group will provide services to SutterSelect enrollees at rates set by SutterSelect from time to time. The term of the SutterSelect Network Provider Agreement will run concurrently with the term of this Agreement.

3.7 Nondiscrimination Based on Payor Status. "Member" means a person who is enrolled with a third-party payor as a subscriber, beneficiary, employee or dependent, or a person who is enrolled with a payor under the Medicare Risk Program or Medicare+Choice Program Plan as a subscriber, beneficiary, employee or dependent, and who is eligible to receive professional services at the Hospital. Group shall not impose any limitations on the acceptance of Members for care or treatment unless such limitations are applied generally to all Members. Group shall not differentiate or discriminate in the provision of professional services to Members and shall render professional services to such Members in the same manner and in accordance with the same standards, and within the same time availability, as offered to non-Members consistent with existing medical, ethical, or legal requirements for providing continuity of care to any patient. Group and all Physicians and subcontractors under the Agreement, (if any), shall not request, demand, require or otherwise seek, directly or indirectly, the transfer of, or termination from any health care service plan of any Member based upon the Member's need for or utilization of professional services or in order to gain financially or otherwise from such termination.

3.8 Cooperation with Payor Medical Directors. Medical Director and Group understand that payors may place certain obligations upon Hospital regarding the quality of care received by and utilization of professional services provided to Hospital patients and that

payors, in certain instances, will have the right to oversee and review the quality of care and utilization of professional services provided to Members. Medical Director and Group agree to cooperate with the Medical Director of the various payors in the review of the quality of care and utilization of professional services provided to Members.

3.9 Group's Compensation Of Individual Physicians. Group shall be solely responsible for developing and implementing its own system for compensating Physicians, whether employees, partners or subcontractors of Group; provided, however, that Group represents, warrants and covenants that its compensation system shall at all times be structured in a manner that complies with all federal and state physician self-referral laws (including section 1877 of the Social Security Act known as the Stark Law), anti-kickback and other applicable laws as they may apply to the direct and indirect relationships created under this Agreement among Hospital, Group and individual Physicians. Without limiting the generality of the foregoing, Group represents, warrants, and covenants that compensation paid to each Physician shall be fair market value compensation for the service provided by that Physician and shall not take into account the value or volume of referrals of "designated health services" (as defined under the Stark Law) or other business generated by the Physician for Hospital.

Section 4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be three (3) years, commencing on the Effective Date, unless terminated earlier pursuant to this Section. Notwithstanding the foregoing, this Agreement may be terminated by Hospital without penalty or cause at the end of the second year upon ninety (90) days or less written notice.

4.2 Early Termination. This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Group upon the occurrence of any of the following events:

- (1) The inaccuracy of any representation of Group in Section 1.4;
- (2) Failure of Group to remove a Physician after requested by Hospital pursuant to Section 5;
- (3) Loss or restriction of Hospital's license or accreditation, or destruction of the Hospital or the portion(s) thereof dedicated to the operation of the Department, such that Hospital is not able to continue the uninterrupted operation of the Department;
- (4) Either party becomes insolvent or declares bankruptcy;
- (5) If professional liability insurance is not available for Physicians performing Group's staffing obligations under this Agreement;
- (6) The dissolution or discontinuance of the operations of Group; and

(b) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 4.2(a), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for 15 days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: failure to provide the Coverage Services described in Section 1.1; or failure to address any act or omission by a Physician that jeopardizes the quality of care provided to Hospital's patients.

(c) **Legal Jeopardy.** If either party obtains a written opinion of legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medi-Cal programs, or in the case of Hospital, loss of tax-exempt status or its ability to obtain tax-exempt financing, that party may terminate this Agreement by providing written notice, including a copy of such opinion, to the other party. Within 10 days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within 20 days of their meeting, this Agreement shall automatically terminate.

(d) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon not less than ninety (90) days' advance written notice to the other party.

4.3 **Effect of Expiration or Termination.**

(a) **Termination of Obligations.** Except as otherwise provided in this Section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement.

(b) **Continuation of Patient Services.** Except for termination due to legal jeopardy, illegality or risk to patient welfare, Group shall continue to be obligated under this Agreement, until the effective date of its termination, to continue to provide professional services to Hospital's patients, in full cooperation with Hospital. In addition, if circumstances applicable to particular patients require the continuation of such services after the effective date of this Agreement's termination, Group shall continue to provide for a reasonable period Emergency services to any patient for whom Group had professional responsibility.

(c) **Liability for Breach.** With the exception of Section 2.1, a termination by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 12 of this Agreement.

(d) **Vacating Premises and Removing Property.** Upon expiration or termination of this Agreement and upon the request of Hospital, Group shall cause all Physicians to immediately vacate Hospital premises and remove all of their personal property. Any personal property that is not removed shall be removed by Hospital at Group's expense.

(e) **Survival.** The provisions of Sections 1.1(c) (Time Reports), 1.7 (Corporate Compliance Program), 3.2(d) (Billing Records), 4 (Termination), 6 (Insurance), 7 (Medical Records), 8 (Access to Books and Records), 10 (Confidentiality), 11 (Dispute Resolution), 12 (Notices), and 13 (Miscellaneous) shall survive termination of Agreement.

(f) **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, or to negotiate a renewal or extension of, this Agreement or enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of the Group prior to the first anniversary of the Effective Date of this Agreement.

Section 5. REMOVAL OF A PHYSICIAN

5.1 Cause for Removal. Hospital may require the immediate cessation of services by any Physician and/or require Group to immediately remove from the coverage schedule under this Agreement any Physician for cause upon written notice to Group specifying the reasons thereof. Cause shall mean:

(a) The disability of Physician (for purposes of this Agreement, "disability" shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician's position, with or without reasonable accommodation, for a continuous period of 90 days);

(b) Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty, unless in accordance with a physician's prescription;

(c) Any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to Medical Staff bylaws; or

(d) Failure to abide by any of the terms and conditions of this Agreement applicable to Physicians.

5.2 No Procedural Rights. Continuation of this Agreement is not a condition of Medical Staff membership. Therefore, this Agreement may be terminated with respect to individual Physicians in accordance with Section 5 without the necessity of a hearing before the Hospital's Board of Directors, a committee of the Medical Staff, or any other body.

Section 6. INSURANCE

6.1 Professional Liability Insurance. Group at its sole cost and expense shall maintain professional liability insurance for services rendered by Group and each Physician in the Department in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate from an insurance company which is acceptable to Hospital. Upon Hospital's request, Group shall provide to Hospital a copy of the Certificates of Insurance evidencing the insurance coverage required under this Section. Such insurance policy or policies shall also

provide for not less than 30 days notice to Hospital of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this Section. If Group's professional liability coverage is on a "claims made" rather than an "occurrence" basis, and such coverage is later terminated, or converted to an occurrence coverage (or vice versa), Group shall at its expense obtain prior acts or tail coverage (as applicable) with the same liability limits required above covering all periods that this Agreement is or has been in force.

Section 7. MEDICAL RECORDS

7.1 Creation of Medical Records. Group and Physicians shall cause a complete medical record to be created and maintained for each patient evaluated and/or treated by Group. Group and Physicians shall complete these medical records within 24 hours of a patient visit. All medical records shall be kept current and complete and prepared in compliance with all state and federal regulations, the regulations of all accreditation institutions in which Hospital participates, the Medical Staff bylaws, and Hospital's rules and regulations.

7.2 Patient Records. Any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the sole property of Hospital. Both during and after the term of this Agreement, Group shall be permitted to inspect and/or duplicate, at Group's expense, any individual chart or record to the extent necessary to meet professional responsibilities to such patient(s) and/or to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent; provided, however, that such inspection or duplication shall be 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 obtained by Group pursuant to this Section 7.2. This provision shall survive the expiration or termination of this Agreement for any reason.

7.3 Record Requirements. Each party agrees in connection with the subject matter of this Agreement to cooperate fully with the other party in order to assure that each party will be able to meet all requirements for record keeping associated with public or private third-party payment programs.

Section 8. ACCESS TO BOOKS AND RECORDS

8.1 Access. Group shall maintain and make available all necessary books, documents and records in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public and private third party payment programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended. With respect to Section 1861(v)(1)(I), it is agreed:

(a) Until expiration of 4 years after furnishing services pursuant to this Agreement, Group shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or any of their duly authorized representatives, this Agreement, books, documents, and records of Group that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Group carries out any of the duties of this Agreement with a value of \$10,000 or more over a 12 month period through a subcontract with a related organization, such agreement must contain a clause to the effect that until the expiration of 4 years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents and records of the related organization that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

8.2 Limits. The availability of Group's books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

Section 9. **INDEPENDENT CONTRACTOR RELATIONSHIP**

In the performance of all Administrative and Coverage Services, and all duties and other obligations under this Agreement, Group (and each Physician) shall be and at all times is, acting and performing as an independent contractor, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Group (and its Physicians) shall look only to Group for setting and administering the terms and conditions of their partnership, employment or other business relationship. Except as required by law, Hospital shall neither have nor exercise any control or direction over the methods by which Group or any Physician shall perform services required under this Agreement. The standards of medical practice and professional duties of Group (and its Physicians) shall be determined by Group. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient, and satisfactory manner. Group shall remain the sole partner, employer or contractor of each Physician, and neither Group nor any Physician shall have a claim under this Agreement or otherwise against Hospital for compensation of any kind, workers' compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Group shall do the following to the extent required by law: withhold FICA (Social Security) from payments to Physicians; make state or federal unemployment insurance contributions on Physicians' behalf; withhold state and federal income tax from payments to Physicians; make disability insurance contributions on behalf of Physicians; and obtain workers' compensation insurance on behalf of Physicians. Group, and/or each Physician, as the case may be, shall be solely responsible for, and shall indemnify, defend and hold Hospital harmless from and against any claim, liability or expense related to any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Hospital to Group under this Agreement and the compensation payable by Group to any Physician employed, in partnership with, contracted or engaged by Group.

Section 10. **CONFIDENTIALITY**

11.1 Hospital Information. Group recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Hospital hereunder, Physician and Group

may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Group agrees that neither Group nor any Physician will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Group's or a Physician's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information that concerns Hospital's patients, costs, prices and treatment methods at any time used, developed or made by Hospital, and that is not otherwise available to the public.

11.2 Terms of this Agreement. Except for disclosure to Group's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with Hospital or any of its affiliates), neither Group nor any Physician shall disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to in writing by Hospital.

10.3 Patient Information. Group shall not disclose, and shall ensure that the Physicians not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Group shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. Part 160, et seq.), the Health Information Technology for Economic and Clinical Health Act (HITECH) and regulations promulgated under these laws, and the Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 C.F.R. Part 2), as amended from time to time.

Section 11. DISPUTE RESOLUTION

In the event that any dispute relating to this Agreement arises between Group (or any Physician) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if any party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator(s) shall be a final and binding determination of the dispute (including injunctive relief) and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over the parties. The arbitrator(s) shall have no power to award any punitive damages or exemplary damages or to ignore or vary the terms of this Agreement and shall be bound by controlling law. The arbitrator's decision shall be provided to the parties in writing and shall succinctly set forth the arbitrator's findings of fact, conclusions of law, and remedy, if any. The costs of such arbitration shall be shared equally by both Hospital and Group; provided that each party shall pay its own legal expenses.

Section 12. NOTICES

12.1 Notices. Any notices or other communications permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or 3 days after mailed by certified mail (or first class mail), postage prepaid, to the other party at the address set forth below or to such other persons and addresses as either party may designate in writing:

If to Hospital: Sutter Central Valley Hospitals, doing business as
Memorial Hospital Los Banos
520 West I Street
Los Banos, CA 93635
Attn: Chief Executive Officer

With a copy to: Sutter Health Office of the General Counsel
1316 Celeste Drive, Suite 120
Modesto, CA 95355
Attn: Vice President, Regional Counsel

If to Group: California Emergency Physicians Medical Group, a
California General Partnership
2100 Powell Street, Suite 920
Emeryville, CA 94608
Attn: President and Chief Operating Officer

12.2 Notice to Physicians. All obligations and prohibitions imposed on Group pursuant to this Agreement are equally applicable to each Physician engaged by Group to provide services in the Department. Group shall obtain from each Physician a written acknowledgment and agreement to be bound by the terms and conditions of this Agreement in the form set forth at Exhibit E, attached hereto.

Section 13. MISCELLANEOUS PROVISIONS

13.1 Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California.

13.2 Waiver/Modification/Amendment. No waiver of any obligation under this Agreement shall be enforceable unless set forth in a writing signed by the party against which enforcement is sought. No amendment or modification of this Agreement shall be enforceable unless set forth in a writing signed by both parties.

13.3 Interruption of Service. Either party shall be excused from any delay or failure in performance under this Agreement caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, labor disputes, riots, earthquakes, or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. In the event the interruption of the excused party's obligations continues

for period in excess of 30 days, the other party shall have the right to terminate this Agreement upon 10 days' prior written notice to the excused party.

13.4 Assignment/Subcontracting. Neither party shall assign or subcontract their rights, duties, or obligations, under this Agreement, either in whole or in part, without the prior written consent of the other; provided that, Hospital may assign the Agreement or subcontract its duties to any Sutter Health affiliate without Group's consent.

13.5 Severability. Subject to Section 4.2(c), should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, the remaining portions or provisions shall be unaffected.

13.6 Entire Agreement. This Agreement and the Exhibits attached contain all the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement, and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

13.7 Litigation Cooperation. Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties in this Agreement.

13.8 Other Agreements. A list of all agreements or arrangements under which Group provides services to Hospital is maintained in Hospital's Tract Manager system.

13.9 Use of Names and Logos. Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is to be used.

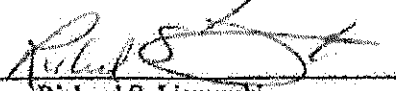
13.10 No Third Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. Notwithstanding anything contained herein, or any conduct or course of conduct by any party to this Agreement, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

13.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

Sutter Central Valley Hospitals, a
California nonprofit public benefit
corporation doing business as Memorial
Hospital Los Banos

California Emergency Physicians Medical
Group, a California general partnership

By: 
Name: Richard S. Liszewski
Title: Chief Executive Officer
Date: 3/31/11

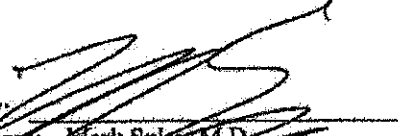
By: 
Name: Mark Spiro, M.D.
Title: President and Chief Operating Officer
Date: 3/30/11

EXHIBIT A

COVERAGE REQUIREMENTS

While this Agreement is in effect, Group shall provide Physicians to perform the following services and shall ensure that each Physician complies with all terms and conditions contained herein:

1. Physicians on duty in the Department shall be responsible for examining and/or treating all persons who present themselves for care and/or treatment at the Department and providing, or causing to be provided to such persons, medical treatment which may be necessary in accordance with sound medical practice. Notwithstanding any other provision herein to the contrary, Physicians shall, in accordance with sound medical practice, assure that the immediate medical needs of each person are provided for when necessary to preserve life or health or to protect against permanent disability. Physicians shall further assure that the medical needs of said persons are not jeopardized by a delay in administering necessary medical treatment.

2. A person presenting to the Department for medical treatment shall be attended by Physicians with the following limitations:

a. The traditional right and responsibility of any Facility Medical Staff physician to treat his/her own patients when they come to the Department shall be respected when possible and where doing so, in the judgment of the emergency physician, would not delay the medical screening exam, needed treatment or jeopardize the life or health of the patient.

b. If the patient is to be admitted, and has a private physician on the Facility's Medical Staff, all reasonable efforts shall be made to reach that physician by telephone. If the patient's private physician cannot be located, and if said patient is in agreement, Physicians shall place the responsibility for the medical treatment of the patient with another physician member of Facility's Medical Staff according to Facility's call schedule.

c. If the patient does not have a private physician on the Facility Medical Staff, the patient shall be referred to a physician member of Facility's Medical Staff, according to Facility's call schedule.

d. If a patient's private physician refers his patient to one of the Physicians then on duty, said Physician may make the diagnosis and provide medical treatment on the same basis as set forth in Subparagraph 1.a.(1).

3. Whenever follow-up care is indicated, the patient shall be encouraged to return to his/her private physician. A patient who does not have a private physician, or whose private physician is not a member of Facility's Medical Staff shall be referred to a physician on Facility's Medical Staff, according to Facility's call schedule, who shall then be responsible for all follow-up care for the patient. Physicians may provide minor follow-up care, when follow up care in the ED is medically appropriate, such as the removal of sutures, checking of casts, and removal of dressings.

4. Physicians shall call in consultants or specialists on Facility's Medical Staff under Facility's call schedule when in their opinion it is in the best interest of the patient being treated.

5. To the extent that Physicians' responsibility to examine and treat persons who present themselves to the Department is not compromised, Physicians shall respond on a twenty-four (24) hour a day basis to calls initiated by the nursing supervisor of any service in the Facility. It is contemplated that such calls shall include, without limitation, responding to codes on critically ill patients, cardiac arrest cases, responding to floor nursing requests to assist with deteriorating patients, examining patients thought to be deceased and pronouncing deceased patients to be dead, and handling other in-house emergencies confronting nursing personnel.

6. Physicians shall attend to any persons who are injured on Facility premises.

7. Group will provide first aid services to Hospital employees with minor injuries free of charge. For other injuries, including needle sticks, cases involving X-ray and other diagnostic studies, and cases involving hospitalization, Hospital shall compensate Group at the rate equal to the current Workers Compensation Medical Fee Schedule.

8. Physicians shall cooperate with Facility's employee health program and the designated health employee nurse in providing, reviewing and developing health services for employees who work at Facility.

9. Physicians shall attend any and all meetings within the Facility that Physicians are asked to attend by Facility's Chief Executive Officer, or designee (the "CEO").

10. Physicians shall perform such other duties, as it relates to emergency medicine, as may from time to time be requested by Facility, Facility's Governing Board, Facility's Medical Staff, and/or the CEO.

EXHIBIT B

MEDICAL DIRECTOR FOR EMERGENCY DEPARTMENT/PROMPT CARE

DUTIES AND RESPONSIBILITIES

Medical Director shall be responsible for the overall coordination of the patient care services rendered in the Emergency Department to promote the efficient delivery of quality patient care.

Medical Director is a physician licensed in the State of California, with privileges on the active staff of Hospital, and is in good standing. The Medical Director shall be present in the Emergency Department for sufficient periods of time, at least once in every week (except in extraordinary circumstances), to provide the medical direction, medical care services, consultation, and supervision described below. Medical Director will also be available on an ongoing basis through telecommunication for consultation, assistance with medical emergencies, or patient referral. The amount of time required to carry out the following responsibilities. Medical Director, along with the Emergency Services Committee shall direct and be responsible for the following:

1. The professional medical care rendered in the Emergency Department and the including the Nurse Practitioners.
2. Be available for consultation with the Hospital Administrator and other members of the Medical Staff.
3. Assist in formulating and enforcing policies and procedures.
4. Develop and enforce medical policies and procedures in conjunction with the Governing Board.
5. Respond to patient complaints involving medical care provided
6. Evaluate equipment needs and purchases
7. Assist the Hospital Administrator in assuring that the Emergency Department is in compliance with all state, federal and accrediting body standards.
8. Assist in providing and coordinating educational opportunities for the disciplines to be provided by the Emergency Department.
9. Ensure the appropriate consultation and referrals are obtained on Emergency Department patients.
10. Act as a clinical consultant to the staff and all other professional disciplines.

11. Coordinate the medical quality assessment and improvement program in the Emergency Department.
12. Timely signing of physicians' charts
13. Be an active participant of quality assessment and improvement and review the Emergency Department medical care.

EXHIBIT C

TIME REPORT

[Form Attached]

PHYSICIAN TIME REPORT

Physician: _____ Month: _____ Year: _____

ADMINISTRATIVE SERVICES	Week One	Week Two	Week Three	Week Four	Week Five	Monthly Totals
Management/Staff Meeting						
Committee Meeting						
Utilization Management						
Quality Review						
Supervision/Education of Interns, Residents						
Supervision/Education of Nurses, Technicians, Staff						
Physician Education/Consultation						
Community Presentation						
Protocol/Policy Development						
Program Development						
Other, describe:						
Other, describe:						
TOTAL DAILY HOURS						

Certification By Physician: By signing below or transmitting this time report electronically, I am certifying that I have reviewed all of the information contained in this Time Report and it is a true and accurate record of my services and hours performed during the month indicated.

Signature

Title

Date

Printed Name

Telephone No.

Fax No.

Administrator Signature

Title

Date

Printed Name

Telephone No.

Fax No.

EXHIBIT D

QUALITY INITIATIVES

Group shall work with Hospital to ensure that Hospital achieves top decile status in the following core measures for 2011:

a. AMI

- Door-to-Drug for Thrombolysis received within 30 minutes of arrival

b. Pneumonia

- Antibiotic within six (6) hours of arrival
- Antibiotic selection for ICU/non-ICU patients

Group shall work with Hospital to ensure that Hospital achieves quality performance thresholds for the following measures: (Data source: SHREDD (Sutter Health Rapid Electronic Discrete Data) as reported by eICU.

a. Sepsis

- Broad spectrum antibiotic within one hour of presentation for each month in the payment period Goal: 90%
- Serum Lactate measured when sepsis is suspected for each month in the payment period Goal: 95%
- CVP line insertion for sepsis eligible patients for each month in the payment period Goal: 95%

Group shall work with Hospital to improve patient satisfaction scores in the Department in 2011:

a. Patient Satisfaction compared to "All" Press Ganey Data Base

- Overall composite ED score @ 50th percentile
- Doctor ED Score @ 50th percentile

Hospital shall pay Group the amount of One Hundred and Twenty-Five Dollars (\$125.00) per month for each of the eight (8) goals described above in which Hospital achieves top decile status. The payments will be calculated monthly but paid quarterly.

During the term of this Agreement, it is understood by the parties that Hospital shall establish new Quality Initiatives on an annual basis, consistent with the CMS regulations and guidelines, and other healthcare initiatives.

EXHIBIT E

WAIVER AND AGREEMENT

I, _____, am a member, associate, partner or employee of or an independent contractor under contract with California Emergency Medical Group, A Professional Corporation ("Group"). I understand that I am bound by all terms and conditions of the Agreement for Emergency Department Coverage dated April 1, 2011 (the "Agreement") between Hospital and Group. In consideration of my relationship with or employment by Group, and in consideration of my approval by Hospital to provide services at Facility, pursuant to the Agreement, I knowingly and voluntarily agree to the following.

I understand, acknowledge and agree that upon the expiration or earlier termination of the Agreement, with or without cause, Hospital shall have the right to grant an exclusive contract for the provision of professional emergency department services to any person or entity, and shall have the right to exclude me from the practice of medicine at the Facility based upon such exclusive contract.

I understand, acknowledge and agree that the termination of my employment by, or relationship with, Group will cause the immediate and automatic loss of my membership on Facility's Medical Staff and the clinical privileges I hold to practice medicine at Facility, without the necessity of notice or any right to a hearing and/or appeal under the bylaws, rules or regulations of Facility or its Medical Staff. I understand, acknowledge and agree, however, that unless and until such loss of membership occurs, I am bound by and subject to all provisions of the Bylaws, Rules and Regulations of Facility and/or its Medical Staff.

I hereby knowingly and voluntarily resign my Medical Staff membership and relinquish my clinical privileges to practice medicine at Facility, and knowingly and voluntarily waive any and all rights that I may have under the bylaws, rules and regulations of Facility and/or its Medical Staff, or under any applicable law, statute, ordinance or regulation, to any notice, review, appearance, hearing and/or appeal for loss of such membership and/or clinical privileges, effective immediately and automatically upon the occurrence of any of the following events: (i) the expiration or earlier termination of the Agreement, with or without cause; (ii) the termination of my employment by or relationship with Group; or (iii) Group permanently removes me from, or otherwise takes action against me that in whole or in part restricts me from, the provision of services at Facility.

I agree that if any one or more of the provisions contained herein shall be held to be invalid, illegal or unenforceable for any reason, whether in whole or in part, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Waiver and Agreement shall be construed as if such provision had never been contained herein.

BY MY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE CAREFULLY READ AND UNDERSTOOD THE ABOVE WAIVER AND AGREEMENT, AND I HAVE CAREFULLY READ AND UNDERSTOOD THE AGREEMENT REFERRED TO ABOVE AND THAT I KNOWINGLY AND VOLUNTARILY AGREE TO THEIR TERMS.

Date: _____

By: _____

General Information

Court	United States District Court for the Northern District of California; United States District Court for the Northern District of California
Federal Nature of Suit	False Claims Act[375]
Docket Number	4:14-cv-04100