

# ADDENDUM D



**RADIOLOGY DEPARTMENT**  
**PROFESSIONAL AND MEDICAL DIRECTOR SERVICES AGREEMENT**  
**by and between**  
**PALOMAR POMERADO HEALTH SYSTEM (“PPH”)**  
**and**  
**VALLEY RADIOLOGY CONSULTANTS MEDICAL GROUP, INC. (“Group”)**

## **RADIOLOGY DEPARTMENT**

### **PROFESSIONAL AND MEDICAL DIRECTOR SERVICES AGREEMENT**

THIS PROFESSIONAL AND MEDICAL DIRECTOR SERVICES AGREEMENT (this “**Agreement**”) is made and entered into as of [\_\_\_\_\_], 2006, by and between Palomar Pomerado Health System, a local health care district organized under Division 23 of the California Health and Safety Code (the “**PPH**”), and Valley Radiology Consultants Medical Group, Inc., a California professional corporation (“**Group**”). Hospital and Group are sometimes referred to herein as a “**Party**” or, collectively, as the “**Parties.**”

#### **RECITALS**

A. Hospital owns and operates Palomar Medical Center and Pomerado Hospital, two general acute care hospitals (collectively, the “**Hospital**”), in which it operates radiology departments under its general acute care hospital license (collectively, the “**Department**”).

B. Group employs and contracts with physicians who are duly licensed and qualified to practice medicine in the State of California, and experienced in the specialized field of radiology (the “**Specialty**”).

C. Hospital desires to retain Group on an exclusive basis to provide professional services and certain administrative services related to the development and operation of the Hospital, through qualified physician employees of Group (collectively, the “**Group Practitioners**” and each, a “**Group Practitioner**”). Hospital acknowledges that Group may also engage independent contractors (“**Non-Group Practitioners**”) to provide services in accordance with the terms of this Agreement.

D. Hospital has determined that an exclusive arrangement with Group for the provision of such services will:

1. Facilitate the administration of the Department, the supervision and training of Department personnel, the interrelationship between the Department and the rest of Hospital, and the efficient operation of other Hospital departments and services.
2. Ensure that Specialty professional services are available seven (7) days per week, twenty-four (24) hours per day to the Department and other departments of Hospital and that coverage of such departments is provided at night and on weekends, thereby reducing unnecessary delays in providing such services to Hospital patients.
3. Reduce disruptions in Hospital operations and relations between Hospital administration and Hospital’s medical staff (the “**Medical Staff**”) and among members of the Medical Staff.
4. Promote participation in Hospital’s educational programs.

5. Reduce inefficiencies resulting from having multiple practitioners and groups providing Specialty professional services in the Department.
6. Simplify scheduling problems, thereby improving coverage, economy and availability of services in the Department.
7. Facilitate efficient utilization of Hospital equipment and facilities by giving Hospital greater control over the operation of the Department.
8. Improve the quality of care furnished to Department patients by promoting standardization of procedures and improving monitoring by requiring active participation in Hospital and Medical Staff quality assurance activities.
9. Enhance Hospital's reputation and competitive position by enabling Hospital to attract highly qualified physicians to the community.
10. Reduce costs through standardization of procedures and centralized administration of the Department.
11. Improve the quality of care provided by Hospital by better ensuring that Department physicians perform a sufficient number of procedures to maintain and improve their proficiency.

## **AGREEMENT**

### **THE PARTIES AGREE AS FOLLOWS:**

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

**1.1 Professional Services.** Group shall provide the diagnostic and interventional radiology services described in Exhibit 1.1 (the "**Radiology Services**") to patients of the Department, upon the terms and subject to the conditions set forth in this Agreement.

#### **1.2 Group Practitioners.**

(a) Group shall ensure that Radiology Services are performed only by Group Practitioners who have been granted privileges to provide Radiology Services at the Hospital pursuant to the regular medical staff credentialing process, and have not been removed pursuant to Section 7.8 or 7.9 of this Agreement; provided however, that nothing in this Section 1.2(a) or otherwise in this Agreement, shall prevent Group from utilizing Non-Group practitioners to provide after-hours teleradiology Radiology Services, provided such Non-Group practitioners are granted privileges to provide Radiology Services at the Hospital pursuant to the regular medical staff credentialing process, and have not been removed pursuant to Section 7.8 or 7.9 of this Agreement. Prior to providing any services under this Agreement, each Group Practitioner shall execute, and Group shall deliver to Hospital, a letter acknowledging such Group Practitioner's agreement to be bound by the

terms of this Agreement, which letter shall be in the form attached as Exhibit 1.2(a)(1). Prior to providing any services under this Agreement, each Non-Group Practitioner shall execute, and Group shall deliver to Hospital, a letter acknowledging such Non-Group Practitioner's agreement to be bound by the terms of this Agreement, which letter shall be in the form attached as Exhibit 1.2(a)(2).

(b) Group has initially engaged those Group Practitioners listed on Exhibit 1.2(b) to provide Radiology Services, which Group Practitioners are hereby approved and accepted by Hospital. Group may from time to time engage additional Group Practitioners to furnish Radiology Services under this Agreement; provided, however, that each additional Group Practitioner satisfies the professional standards and qualifications set forth in Article II of this Agreement and is granted privileges to furnish Radiology Services pursuant to the regular medical staff credentialing process.

(c) Hospital prefers that all members of Group be radiologists. Hospital recognizes and accepts that Group currently includes one non-radiologist who is practicing on the Medical Staff at Hospital. In the future, if Group is contemplating adding any additional non-radiologist members, the Group shall make a proposal to the Medical Executive Committee regarding the addition of the non-radiologist. The Medical Executive Committee shall provide to Hospital a recommendation regarding whether it acknowledges a need for the non-radiologist, and whether it supports the non-radiologist joining the Group. This recommendation shall be arrived at through an anonymous vote of the Medical Executive Committee, carried by simple majority. Group agrees to comply with the Medical Executive Committee's recommendation. If Group does not comply with the Medical Executive Committee's recommendation, then Hospital shall have the right to immediately terminate this Agreement.

(d) Group shall ensure that any and all Group and Non-Group Practitioners furnishing Radiology Services continuously satisfy the applicable professional standards and qualifications set forth in Article II of this Agreement.

### **1.3 Department Staffing.**

(a) Interventional Radiology. Group shall ensure that an adequate number of Group Practitioners specializing in interventional radiology are physically present and available to provide interventional Radiology Services at Palomar Medical Center during the hours of 7 a.m. through 5 p.m., Monday through Friday. Group shall also provide Saturday, Sunday, and holiday coverage at Palomar Medical Center on an on-call basis, as agreed upon by Hospital and Group from time to time. Group shall also ensure that an adequate number of Group Practitioners specializing in interventional radiology are available to provide interventional Radiology Services at Pomerado Hospital during the hours of 8 a.m. through 5 p.m., Monday through Friday. Group shall also provide Saturday, Sunday, and holiday coverage on an on-call basis, as agreed upon by Hospital and Group from time to time. Hospital reserves the right to review coverage from time to time at the request of the medical staff and adjust within a reasonable amount of time as mutually agreed upon with Group to meet the needs of medical staff and patients. If Group and Hospital cannot agree upon the staffing needs of medical staff and patients,

Group or Hospital can request a review by the Medical Executive Committee. Group and Hospital will abide by the findings and recommendations of the Medical Executive Committee.

(b) Diagnostic Radiology. Group shall ensure that an adequate number of Group Practitioners are physically present and available to provide diagnostic Radiology Services at Palomar Medical Center during the hours of 7 a.m. to 10 p.m., Monday through Friday, and 7 a.m. to 7 p.m. on Saturdays, Sundays, and holidays. Group shall also ensure that an adequate number of Group Practitioners are physically present and available to provide diagnostic Radiology Services at Pomerado Hospital during the hours of 8 a.m. to 5 p.m., Monday through Friday, and 8 a.m. to 5 p.m. on Saturdays, Sundays, and holidays. Hospital reserves the right to review coverage from time to time at the request of the medical staff and adjust within a reasonable amount of time as mutually agreed upon with Group to meet the needs of medical staff and patients. If Group and Hospital cannot agree upon the staffing needs of medical staff and patients, Group or Hospital can request a review by the Medical Executive Committee. Group and Hospital will abide by the findings and recommendations of the Medical Executive Committee.

(c) Group shall provide vacation coverage and coverage in case of illness or unavailability of a scheduled Group Practitioner, to ensure staffing at the levels described in this Section 1.3. Group may engage Non-Group Practitioners to provide coverage during the times when Group Practitioners are not physically present in the Hospital as described in Section 1.3(b)

(d) No fewer than five (5) days prior to the beginning of each month during the term of this Agreement, Group shall provide Hospital with the monthly staffing schedule for the Department, along with the name, contact information and scheduled hours for each assigned Group Practitioner, and such other information as reasonably requested by Hospital from time to time.

(e) Group shall ensure that one (1) or more qualified Group Practitioners are available at reasonable times to consult with individual members of the Medical Staff, committees of the Medical Staff, and nursing and administrative employees of Hospital, regarding Radiology Services.

#### **1.4 Department Coverage.**

(a) Group shall ensure that, in addition to the Department staffing described in Section 1.3, one (1) or more Group Practitioners are available to provide Radiology Services in the Department on an on-call and back-up on-call basis, twenty-four (24) hours per day, seven (7) days per week, including all holidays, with a maximum on-site response time of thirty (30) minutes if an in-person response is required and fifteen (15) minutes if a response by phone is required; provided, that with respect to those Radiology Services which are excluded from the scope of services to be provided exclusively by Group pursuant to Section 1.14 and Exhibit 1.14 of this Agreement, Group shall not be required to provide call coverage exclusively, but shall be required to participate in an on-call panel with other physicians who have privileges to provide the same non-exclusive services.

Group shall be eligible to receive compensation for such on call coverage commensurate to that which is paid to other on call panel providers for the same services provided. Group shall arrange to provide for after hours coverage for Radiology Services by Non-Group Practitioners to provide prompt preliminary professional interpretations.

(b) Group shall, no later than five (5) days prior to the beginning of each month during the term of this Agreement, provide Hospital with the on-call and back-up on-call schedule for such month, along with the names, contact information and scheduled hours of coverage for each assigned Group Practitioner, and such other information as reasonably requested by Hospital from time to time. Any Group Practitioner on-call to Hospital shall not simultaneously be on-call to any other hospital or health care facility if such other on call obligation would interfere with Group Practitioners' ability to respond as stated in Section 1.4(a).

### **1.5 Medical Director Services.**

(a) Group shall provide and cause Gary Spoto, M.D. a Group Practitioner ("**Medical Director**"), to serve as medical director of the Department. Medical Director or his designee shall perform the duties set forth on Exhibit 1.5(a) (the "**Director Services**") and shall perform all Director Services in accordance with the bylaws, rules, regulations, protocols, guidelines and policies of Hospital and Medical Staff (collectively, the "Hospital Rules") (to the extent such Hospital Rules are not consistent with this Agreement) and upon the terms and subject to the conditions set forth in this Agreement.

(b) Group shall cause Medical Director or his designee to devote whatever time is necessary to effectively provide the Director Services. Medical Director shall allocate time to Director Services when and as needed and as reasonably requested by Hospital from time to time.

(c) Medical Director shall inform Hospital of Medical Director's schedule and availability to perform Director Services during that month. Medical Director shall use his or her best efforts to adjust such schedule of availability if reasonably requested by Hospital in order to meet Hospital's needs for Director Services.

(d) Medical Director shall inform Hospital of Medical Director absence or unavailability and identify his designee during those periods of absence or unavailability.

(e) Hospital has designated an individual with principal administrative responsibility for the Department (the "**Department Administrator**"). The Department Administrator is responsible and accountable to Hospital for the administrative and technical functions of the Department, including: supervision, selection, assignment, and evaluation of personnel; maintenance of equipment; development of all Department budgets; and acquisition of materials, supplies, and equipment. Group and Medical Director shall cooperate with the Department Administrator in administering the Department. Medical Director and Department Administrator shall meet regularly to set goals for the Department, assess progress and address issues in administering the Department. If Medical Director notifies Hospital that the Department Administrator is, in



the view of Medical Director, not properly performing his or her duties, Hospital shall meet and confer on a timely basis with Medical Director to address any such identified problems.

(f) Medical Director or his designee shall be solely responsible for performing the Director Services. If for any reason Medical Director: (i) fails to satisfy any of the professional standards and qualifications set forth in Article II of this Agreement; (ii) is no longer a Group Practitioner; (iii) is removed from service in accordance with Sections 7.7 or 7.8; (iv) is unable to provide the Director Services due to illness, disability, vacation or any other absence; (v) is otherwise unable to perform the Director Services; or (vi) is removed from the position of Department medical director for good cause at the written request of Hospital, then Group shall designate a replacement Group Practitioner to provide Director Services on behalf of Medical Director, subject to the prior written approval of Hospital, which approval shall not be unreasonably withheld or delayed. Group shall ensure that any designated replacement meets all qualifications and satisfies all obligations of Medical Director under this Agreement. Group shall be solely responsible for compensating any designated replacement providing Director Services pursuant to this Agreement.

**1.6 Additional Services.** Group shall provide to Hospital the additional services set forth in Exhibit 1.6 (the “**Additional Services**”), upon the terms and subject to the conditions set forth in this Agreement. The Radiology Services, the Director Services and the Additional Services are sometimes referred to collectively in this Agreement as the “**Services.**”

**1.7 Personal Services.** This Agreement is entered into by Hospital in reliance on the professional and administrative skills of Group and the approved Group Practitioners. Group shall be solely responsible for providing the Services and otherwise fulfilling the terms of this Agreement through the services of the approved Group Practitioners, except as specifically set forth in this Agreement.

**1.8 Coordination with Attending Physicians.** Group shall ensure that each Group Practitioner promptly reports the provision of Radiology Services rendered to a Department patient to such physician that ordered the Radiology Service within the time frames as agreed to in mutual consultation with the Medical Staff.

**1.9 Medical Records and Claims.**

(a) Group shall prepare complete, timely, accurate and legible medical and other records with respect to the services and treatment furnished by Group Practitioners to any Hospital patient, in accordance with the Hospital Rules, federal and state laws and regulations, and Joint Commission on Accreditation of Healthcare Organizations (“**JCAHO**”) standards and recommendations. All such information and records relating to any Hospital patient shall be: (i) prepared on forms developed, provided or approved by Hospital; (ii) the sole property of Hospital; and (iii) maintained at Hospital in accordance with the terms of this Agreement and for so long as is required by applicable laws and regulations.

(b) Group shall maintain and upon request provide to patients, Hospital, and to state and federal agencies, all financial books and records as may be necessary for Group and/or Hospital to comply with applicable state, federal, and local laws and regulations and with contracts between Hospital and third party payors. Group shall cooperate with Hospital in completing such claim forms for Department patients as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors. Group shall retain all such records and information for at least ten (10) years following the expiration or termination of this Agreement. This Section 1.9(b) shall survive the expiration or termination of this Agreement.

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

**1.11 Use of Space.** Neither Group nor any Group Practitioner shall use any part of the space that Hospital designates for the Department as an office for the private practice of medicine, except in an emergency or with Hospital's prior written consent.

**1.12 Locum Tenens.** Group shall, at its own expense, provide all *locum tenens* necessary for Group to fulfill its duties and obligations under this Agreement. Group shall ensure that all *locum tenens* shall, prior to commencement of Services at Hospital, satisfy all requirements for credentialing pursuant to the Medical Staff bylaws.

**1.13 New Technology.** Group shall ensure that Group Practitioners adopt and use any information management systems or other new technology as may be made available by Hospital and determined by Hospital, after consultation with Group, to be reasonably necessary and appropriate for the proper operation of the Department and/or Hospital.

**1.14 Competitive Services.** Except for those persons or entities described in Exhibit 1.14 and Group itself, during the term of this Agreement, neither Group nor any Group Practitioner shall own any interest in, manage, operate, or provide any professional, administrative, consulting, or medical director services to or on behalf of, any person or entity (whether as director, officer, employee, partner, shareholder, member, agent, representative, security holder, consultant or otherwise), that furnishes or intends to furnish or is preparing to furnish any services within the boundaries of the local health care district in which Palomar Hospital and Pomerado Hospital are located ("Health Care District") and that compete with the Radiology Services Group will be providing to Hospital or any Affiliate (as defined in Section 7.4(d)), on an exclusive basis pursuant to this Agreement, without the prior written consent of Hospital. Notwithstanding the foregoing, nothing in this Section shall prohibit Group or any Group Practitioner from owning securities in any publicly traded company that furnishes services

furnished by Hospital or any Affiliate. Hospital acknowledges that Group shall not be prohibited from continuing to provide professional services to physician's offices which they currently serve as of the Effective Date. Furthermore, nothing in this Section 1.14 shall prohibit Group from providing professional services to physician's offices which it does not serve as of the Effective Date, provided that Group affords Hospital thirty (30) days written notice prior to its commencement of those services. If the composition of the entities described in Exhibit 1.14 changes in a manner that may bring the entities in competition with Hospital and Group's ownership of the competing entity exceeds ten percent (10%), then Hospital shall have the right to request that Group divest its interest in the competing entity. If Group refuses to divest its interest, Hospital shall have the right to terminate this Agreement upon sixty (60) days after Hospital first gives written notice to Group.

**1.15 Exclusive Services.** During the term of this Agreement, Hospital shall not, except as otherwise set forth in Exhibit 1.15, without the prior written consent of Group, employ, contract with, or otherwise engage the services of any other physician, allied health professional, corporation, limited liability corporation, partnership, limited partnership, limited liability partnership or other person or entity to provide Radiology Services in the Hospital. Group shall also have first right of refusal to provide Radiology Services in any facility that Hospital establishes, controls, or owns in whole or in part, after the Effective Date within the boundaries of the healthcare district. However, if a third party objects to Group providing Radiology Services to its patients, this right of first refusal will not include the patients of the objecting party. Group shall also have first right of refusal, at the same terms that Hospital would propose to all other parties, to partner with Hospital in any joint ventures that Hospital seeks to create for the purpose of establishing facilities to provide imaging services.

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

(a) Group or any Group Practitioner becomes the subject of any investigation, proceeding, or disciplinary action by any Federal Health Care Program (as defined in Section 2.5), any state's medical board, any agency responsible for professional licensing, standards or behavior, or any medical staff;

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

(c) any event that materially interrupts or affects Group's, Group Practitioners' or Medical Director's ability to provide any Services;

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

(e) any event listed in Section 7.2.

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

**2.1 Licensure.** Group shall ensure that each Group Practitioner and Non-Group Practitioner performing Radiology Services is duly licensed and qualified to practice medicine in the State of California.

**2.2 DEA Registration.** Group shall ensure that each Group Practitioner performing Radiology Services has and maintains a valid United States Drug Enforcement Agency (“DEA”) registration if applicable to that Group Physician’s practice.

**2.3 Certification.** Group shall ensure that each Group Practitioner and Non-Group Practitioner providing Radiology Services in the Hospital is board certified in the Specialty by the American Board of Radiology (the “Board”). If a Group Practitioner or Non-Group Practitioner is not board certified in the Specialty by the Board as of the date such Group Practitioner or Non-Group Practitioner begins providing Radiology Services in the Department, such Group Practitioner or Non-Group Practitioner shall have a reasonable amount of time to obtain such board certified; provided, however, that such Group Practitioner or Non-Group Practitioner diligently pursues such board certification and exercises his or her best efforts to complete this process and become board certified by the Board at the earliest date reasonably possible.

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

**2.5 Participation in Governmental Programs.** Group and each Group Practitioner providing Radiology Services shall: be a participating provider in the Federal health care programs, as defined at 42 U.S.C. Section 1320(a)-7b(f) (“**Federal Health Care Programs**”), in which Hospital is a provider, which programs include, but are not limited to, Medicare and Medi-Cal; accept and perform Services for Federal Health Care Program patients; and participate in any Medicare and/or Medi-Cal managed care efforts and programs of Hospital pursuant to Section 4.2 of this Agreement.

**2.6 Continuing Education.** Group shall ensure that each Group Practitioner and Non-Group Practitioner providing Services participates in continuing medical education, as necessary to maintain his or her licensure, professional competence and skills, commensurate with the standards of the medical community and the American College of Radiology. Group Practitioners and Non-Group Practitioners will be deemed to have satisfied this Section 2.6 if they have completed sufficient medical education to maintain licensure.

**2.7 Performance Standards.** Group shall comply, and shall ensure that each Group Practitioner providing Services complies, with the Hospital Rules, the performance standards set forth in Exhibit 2.7 (the “**Performance Standards**”) (to the extent such Hospital Rules are not inconsistent with this Agreement) and the terms and conditions of this Agreement.

**2.8 Code of Conduct.** Group hereby acknowledges receipt of Hospital’s Code of Conduct for Physician Arrangements, attached to this Agreement as Exhibit 2.8 (the “**Code**”). Group, Group Practitioners and Non-Group Practitioners shall comply with the Code to the extent consistent with the terms of this Agreement.

**2.9 Quality Assurance and Peer Review.** Group shall, as reasonably requested by Hospital, assist Hospital in establishing policies, procedures and committees for utilization management, quality assurance and peer review applicable to the Radiology Services provided by Group Practitioner and Non-Group Practitioners. Group shall comply and cooperate with, and shall ensure that Group Practitioners comply and cooperate with, Hospital’s utilization management, quality assurance, risk management, peer review and credentialing committees, programs and procedures as amended from time to time by Hospital.

**2.10 Representation and Warranties by Group.** Group represents and warrants that, except as set forth in Exhibit 2.10: (i) to its actual knowledge no Group Practitioner or Non-Group Practitioner’s license to practice medicine in any state has ever been suspended, revoked or restricted; (ii) to its actual knowledge neither Group nor any Group Practitioner or Non-Group Practitioner has ever been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board; (iii) neither Group nor any Group Practitioner or Non-Group Practitioner has ever been debarred, excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program; (iv) to its actual knowledge no Group Practitioner or Non-Group Practitioner has ever been denied membership and/or reappointment to the medical staff of any hospital or health care facility; and (v) to its actual knowledge no Group Practitioner or Non-Group Practitioner’s medical staff membership or clinical privileges at any hospital have ever been suspended for more than thirty consecutive (30) days or more than sixty (60) consecutive or non-consecutive days in a calendar year, limited or revoked for a medical disciplinary cause or reason.

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

**ARTICLE III.**  
**HOSPITAL'S OBLIGATIONS**

**3.1 Staff.** Hospital shall, at its own expense, provide the services of licensed, registered and vocational nurses, and licensed and registered, radiology, ultrasound, mammography, MRI, CT, and fluoroscopy technologists, and other non-physician technicians and assistants necessary for the cost-efficient operation of the Department. Hospital shall, after consultation with Group, have sole discretion with regard to selection and retention of these personnel and to determine levels of staffing, provided that Group and Department Administrator shall meet at least quarterly to discuss the staffing needs of Hospital. Control and direction of these personnel for medical matters shall rest with Group. Salaries and personnel policies for persons within personnel classifications used in the Department shall be uniform with other Hospital personnel in the same classification insofar as may be consistent with the recognized hazards of the work. Hospital shall ensure that all personnel it provides maintain all licenses, certifications, permits and/or registrations necessary to perform their duties at the Hospital. Hospital will make available to the Medical Director, administrative assistant support in connection with his Director services.

**3.2 Support Services.** Hospital shall, at its own expense, provide to the Department services such as heat, water, electricity, telephone, laundry, housekeeping, transcription, clerical support, necessary patient transportation within Hospital and other support services during those hours when Group is required to be physically present at the Department.

**3.3 Space.** Hospital shall make available for the use of Group the space that is now or may hereafter be occupied by the Department. In addition, and solely for the purpose of providing the professional and administrative services pursuant to this Agreement, Hospital shall use its best effort to provide an office for the use of the Medical Director, a lounge and sleeping area for Group Practitioners at both of its hospital locations, suitable space for consulting with other physicians and suitable space for the examination of patients. Notwithstanding the forgoing, Hospital acknowledges that Group may use a portion of the space provided under this Agreement for non-Hospital interpretations, provided that such use shall not exceed five percent (5%) of Group's total time in the space provided.

**3.4 Equipment and Supplies.** Hospital shall, at its own expense, provide all expendable and non-expendable equipment, drugs, supplies, furniture and fixtures for the use of Group as are necessary for the cost-efficient operation of the Department. This equipment shall meet all electrical, engineering, and other safety standards required by law and/or relevant Hospital policies. Hospital shall, at its own expense, keep and maintain this equipment in good order and repair and replace this equipment or any part of it which becomes worn out or is mutually determined to be obsolete.

**3.5 Budget Restraints.** The obligations of Hospital under this Article III shall be subject to Hospital regulatory and reasonable budget restraints to the extent such restraints do not effect Group's ability to provide Radiology Services.

**ARTICLE IV.**  
**BILLING AND COMPENSATION**

#### **4.1 Professional Services Billing and Collection.**

(a) **Professional Services Fee Schedule.** Group shall have discretion in establishing its professional fees for Radiology Services furnished pursuant to this Agreement; provided, however, that all professional fees shall be competitive with customary local fees for comparable services and shall be billed in accordance with a uniform schedule of Group's fees for Radiology Services provided under this Agreement, and further provided that such fee schedule, and any amendments thereto, shall be delivered to Hospital.

(b) **Group Billing.** Group shall be solely responsible for billing and collecting for Radiology Services furnished pursuant to this Agreement. All billing shall be in compliance with applicable laws, customary professional practice, the Federal Health Care Programs and other third party payor programs, whether public or private. Hospital shall have reasonable access to Group's records in order to ensure Group's compliance with this Agreement. Group shall promptly correct any billing errors documented by Hospital. Group shall accept assignment with respect to services provided to Federal Health Care Program beneficiaries, to the extent permissible under applicable rules and regulations.

(c) **Billing Compliance.** Group shall ensure that all billing and coding for Radiology Services is in compliance with applicable laws and regulations, customary professional practice, the Federal Health Care Programs, and other third party payor programs, whether public or private. Group shall adopt and maintain billing and coding compliance policies and procedures to ensure Group's compliance with applicable laws and regulations, including laws and regulations under the Federal Health Care Programs.

(d) **Patient Information.** Hospital shall take all necessary and reasonable steps to provide Group sufficient patient information as requested by Group to facilitate Group's billing and collecting for Radiology Services furnished pursuant to this Agreement. Such patient information shall include, but not be limited to, electronic transmission of patient demographics and billing information as well as paper copies of radiology reports limited by Department's available information technology and clerical support.

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

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

#### **4.2 Third Party Payor Arrangements.**

(a) Group shall make all reasonable efforts to cooperate as necessary to facilitate Hospital's entry into or maintenance of any third-party payor arrangements.

(b) Third party payor arrangements are defined as arrangements for the provision of services under Medicare, Medi-Cal or other public or private managed care, health, and/or hospital care programs. Group shall, in good faith upon Hospital's request, negotiate with third-party payors for the purpose of entering into an express contractual agreement with said third-party payor, or any intermediate organization including any independent practice association, if required for said enrollment, ("Payor"), at fair market rates for radiology services. Both Parties agree that negotiations must be fair and reasonable.

(c) Upon communication to Hospital from any Payor of failed negotiation with Group, if Hospital in good faith determines (i) that the Payor has been negotiating with Group in good faith and (ii) that such negotiations have been active long enough for a reasonable chance of resolution, Hospital shall immediately notify Group. Thereupon, Group agrees to proceed as follows:

(i) Group and Hospital agree to proceed immediately to have a Special Meeting and Payor will be invited to join and participate in the Special Meeting.

(ii) The parties will mutually discuss the failed negotiation in order to reach a mutual resolution including the discussion over the process for resolution that Hospital and Group have agreed to ("The Process") as defined in Section 4.2(d). If Group and Payor agree to enter into The Process then both Group and Payor will enter into an agreement to delineate, (i) the equal sharing of cost associated with The Process and (ii) selection of a mediator ("Mediator") to facilitate The Process. The Mediator selected shall have expertise required to survey and determine prevailing rates for radiology services in Southern California.

(iii) If Payor does not agree to enter into The Process, or a mutually agreed upon modified process, with Group, then Section 4.2(e) shall apply.

(d) The Process

(i) Group and Payor shall each submit its most recent rate schedule proposal made to each other in their negotiation process and the rationale used to substantiate the proposal. The Mediator and all parties shall in the Special Meeting seek in good faith to reach consensus on reimbursement rates and establishment of a contractual agreement with Payor



within thirty (30) days of the initial Special Meeting, or such extended time as Group and Hospital agree upon.

(ii) If Group does not reach agreement with Payor within such thirty (30) day or extended period, then Mediator shall determine a rate schedule based on the median prevailing rates for the geographic service area of Hospital which is the northern portion of San Diego County ("Geographic Area"). In determining prevailing rates for the Geographic Area, the Mediator may take into account to the extent Mediator deems relevant prevailing rates for radiology services, of comparable scope and scale, in San Diego County, Orange County, Riverside County, and Los Angeles County. If the rate schedule proposed by the Group in the aggregate is within five percent (5%) of the rate schedule determined by the Mediator, then Group agrees to contract with Payor at the rate schedule proposed. If the rate schedule proposed by Group in the aggregate is not within five percent (5%) of the rate schedule determined by the Mediator, then Group shall adjust its rate schedule proposal to be within five percent (5%) of the rate schedule determined by the Mediator. If Payor does not agree to consummate a contract with Group under such circumstances, then Section 4.2(e) shall apply.

(e) If Group and Payor fail to enter into a contractual agreement based on the method described in Section 4.2(d), then Group shall have no further obligation to enter into a contractual agreement with Payor, and shall be entitled to bill Payor directly at Group's full rate schedule. If Payor defaults in payment of all or a portion of the billing, then Group may balance bill the patient (if not prohibited by law). Provided that, in this case in no event shall the total collection from Payor and patient exceed one hundred percent (100%) of Group's full rate schedule.

(f) Under no circumstance shall Hospital or mediator be allowed to disclose any rates or contract terms of Group with any other third party payor to the third party payor involved in this mediation. Further, it is the understanding of all parties, that any information brought forth in this mediation, including, but not limited to rates and contract terms of Group with any third party payor is proprietary and confidential information and will not be disclosed to any other party outside of this mediation.

**4.3 No Compensation for Director Services.** In recognition of the mutual obligations of the Parties hereunder, Hospital and Group acknowledge that there shall be no monetary compensation to Group for the Director Services furnished by Group hereunder.

## **ARTICLE V.**

### **INSURANCE AND INDEMNITY**

**5.1 Malpractice Liability Insurance.** Group shall obtain and continuously maintain professional malpractice liability insurance coverage or mutual protection trust, issued by an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State of California, in the amount of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate for the acts and omissions of Group and Group Practitioners. Such coverage shall provide for a date of placement preceding or coinciding with the Effective Date (as defined in Section 7.1) of this Agreement.

**5.2 Certificate of Insurance.** On or before the Effective Date (as defined in Section 7.1), Group shall provide Hospital with an original certificate evidencing professional malpractice liability insurance coverage, and shall provide Hospital with proof of continued professional malpractice liability insurance coverage on an annual basis (or as periodically requested by Hospital). Group shall provide Hospital with no less than thirty (30) calendar days' prior written notice of cancellation or any material change in such professional malpractice liability insurance coverage.

**5.3 Tail Coverage.** If Group's professional malpractice liability insurance is provided on a claims-made basis, upon the expiration or termination of this Agreement for any reason, Group shall continuously maintain such insurance or purchase from an insurance company licensed or otherwise qualified to issue professional liability insurance policies or coverage in the State of California, and reasonably acceptable to Hospital, extended reporting period (*i.e.*, "tail") coverage or prior acts (*i.e.*, "nose") coverage for a five (5) year reporting period.

**5.4 Cooperation between the Parties.**

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

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

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

**ARTICLE VI.**  
**RELATIONSHIP BETWEEN THE PARTIES**

**6.1 Independent Contractors.** Group and each Group Practitioner are and shall at all times be independent contractors with respect to Hospital in meeting their respective responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a partnership, employer-employee or joint venture relationship between Hospital and either Group or any Group Practitioner.

**6.2 Limitation on Control.** Hospital shall neither have nor exercise any control or direction over Group's or any Group Practitioner's professional medical judgment or the methods by which Group or any Group Practitioner performs professional medical services; provided, however, that Group and each Group Practitioner providing Services shall be subject to and shall at all times comply with the Hospital Rules to the extent such Hospital Rules are not inconsistent with this Agreement.

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

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

**6.5 Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall solicit for employment any employee of the other Party, or interfere with any relationship, contractual or otherwise, between the other Party and any of its employees.

**6.6 Referrals.** Group and each Group Practitioner shall be entitled to refer patients to any hospital or other health care facility or provider deemed by Group or such Group Practitioner best qualified to deliver medical services to any particular patient; provided, however, that neither Group nor any Group Practitioner shall refer any Hospital patient to any provider of health care services which either Group or such Group Practitioner knows or should have known is excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program. No term of this Agreement shall be construed as requiring or inducing either Group or



(e) Group makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy (unless such bankruptcy is dismissed within thirty (30) days of its commencement), reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or other similar law of any jurisdiction;

(f) the insurance required to be maintained by Group hereunder is terminated, reduced below the minimum coverage requirements set forth in Section 5.1, not renewed or cancelled (whether by action of the insurance company or Group) for any reason, and Group has not obtained replacement coverage prior to the effective date of such termination, reduction, non-renewal or cancellation;

(g) Group is indicted for or convicted of a felony or any crime relevant to the provision of the Services, or Group's or any Group Practitioner's practice of medicine;

(h) Medical Director and his designee become unable to furnish Director Services for a period of thirty (30) days in the aggregate over any three (3) month period, and a replacement Medical Director is not designated by Group and approved by Hospital in accordance with Section 1.5(f) of this Agreement;

(i) Group or any Group Practitioner acts, or causes another person to act, in a manner which violates the Code and has not resolved the violation or the situation that caused the violation within sixty (60) days; or

(j) Group is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program in which the Hospital participates.

**7.4 Termination by Group.** Group shall have the right to terminate this Agreement upon breach of this Agreement by Hospital where the breach is not cured within sixty (60) calendar days after Group gives written notice of the breach to Hospital.

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

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

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

(c) For the purposes of this Section, “**Government Action**” shall mean any legislation, statute, law, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to either Party, as a result or consequence, in whole or in part, of the arrangement between the Parties set forth in this Agreement, if or when implemented, could reasonably be expected to result in or present a material risk of any one or more of the following:

- (i) revocation or threat of revocation of the status of any license, certification or accreditation granted to Hospital or any Affiliate;
- (ii) revocation or threat of revocation of the federal, state or local tax-exempt status of Hospital, or any Affiliate, or their respective tax-exempt financial obligations;
- (iii) prohibit or restrict the ability of Hospital or any Affiliate to issue tax-exempt bonds, certificates of participation or other tax-exempt financial obligations;
- (iv) prevent Group or any Group Practitioner from being able to access and use the facilities of Hospital or any Affiliate of Hospital;
- (v) violation of or threat of prosecution under 42 U.S.C. Section 1320a-7b(b) (commonly referred to as the “Anti-Kickback law”), 42 U.S.C. Section 1395nn (commonly referred to as the “Stark law”) or any comparable state law governing kickbacks, bribes, rebates or patient referrals if either Group or any Group Practitioner referred patients to Hospital or any Affiliate;
- (vi) violation by Hospital of, or threat of prosecution of Hospital under, any law, regulation, rule or procedure applicable to Hospital;
- (vii) prohibit Group, any Group Practitioner, Hospital or any Affiliate from submitting claims or materially reducing the reimbursement received by Hospital or any Affiliate for services provided to patients referred by Group or any Group Practitioner; [or]
- (viii) subject Hospital, Group, any Group Practitioner, any Affiliate, or any of their respective officers, directors, employees or agents, to civil action or criminal prosecution by any governmental authority or other person or entity or the imposition of any sanction (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their approval of or participation in this Agreement or performing their respective obligations under this Agreement[.]; [or]

(ix) revocation or loss of Hospital's status as a provider of Medi-Cal services under the Selective Provider Contracting Program established pursuant to Section 14081 et seq. of the California Welfare & Institutions Code as a result in whole or in part, of the exclusive rights of Group under Section 1.15 of this Agreement.

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

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

(a) all rights and obligations of the Parties shall cease except: (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement; (ii) those rights and obligations which expressly survive termination or expiration of this Agreement; and (iii) Group's obligation to continue to provide services to patients under its care in the Department at the time of expiration or termination of this Agreement, until the patient's course of treatment is completed or the patient is transferred to the care of another physician;

(b) upon Hospital's request, Group and the Group Practitioners shall immediately vacate the Department premises, removing any and all of their personal property, and Hospital may remove and store, at Group's expense, any personal property not so removed;

(c) Group and the Group Practitioners shall immediately return to Hospital all of Hospital's property, including Hospital's equipment, supplies, furniture, furnishings and patient records, in their possession or under their control; and

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

(e) This Section 7.6 shall survive the expiration or termination of this Agreement for any reason.

**7.7 Effect of Termination or Expiration on Medical Staff Status.**

(a) The termination or expiration of this Agreement shall not have any independent effect upon the Medical Staff membership or clinical privileges of any Group Practitioner.

(b) Notwithstanding the foregoing, upon the termination or expiration of this Agreement, the right of Group and each Group Practitioner to provide those Radiology Services in the Department that the Group has the exclusive right under this Agreement to

provide shall immediately terminate, without any action on the part of Hospital and/or the Medical Staff and without the right to a “fair hearing” or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that the termination of such right is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California. Upon termination or expiration of this Agreement, neither Group nor any Group Practitioner shall seek to exercise those clinical privileges which have been terminated pursuant to this Section 7.6.

(c) Group shall provide in any agreement it has with a Group Practitioner and/or with a Non-Group Practitioner providing Radiology Services under this Agreement that upon the earlier of the termination or expiration of this Agreement or the termination of the employment or other affiliation between Group and such Group Practitioner or Non-Group Practitioner, the right of such Group Practitioner or Non-Group Practitioner to provide Radiology Services in the Department shall immediately terminate, without any action on the part of Hospital and/or the Medical Staff and without the right to a “fair hearing” or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California; provided, however, that Group’s failure to include such provision shall not affect Hospital’s right to so terminate the right of such Group Practitioner or Non-Group Practitioner to provide Radiology Services in the Department.

**7.8 Immediate Removal of Group Practitioners.** Group shall immediately remove any Group Practitioner, including Medical Director, from furnishing Radiology Services under this Agreement who:

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

(b) has his or her license to practice medicine in the State of California, board certification or DEA registration (subject to Section 2.2) denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) is indicted for or convicted of a felony or any crime relevant to Radiology Services or the practice of medicine;

(d) is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program in which the Hospital participates;

(e) fails to satisfy any of the standards and qualifications set forth in Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, or 2.7 of this Agreement; or



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

**7.9 Removal of Group Practitioners upon Hospital Request.** Upon written request by Hospital, Group shall immediately remove any Group Practitioner, including Medical Director, from furnishing Radiology Services under this Agreement who:

(a) engages in conduct that, in Hospital's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Hospital. Upon the occurrence of such conduct, Hospital shall immediately meet and confer in good faith with Medical Director to discuss the conduct at issue. However, Hospital, in its sole discretion, shall have the right to demand that Group immediately remove any Group Practitioner that engages in the conduct that in Hospital's good faith determination is governed by this Section 7.9(a).

(b) fails to satisfy any of the standards and qualifications set forth in Section 2.7 of this Agreement;

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

(d) within a twelve (12) month period, has two (2) or more Medical Board reportable malpractice judgments against him or her as a result of actions within the previous two (2) year period, or he or she becomes the subject of two (2) or more disciplinary proceedings by the Medical Staff regarding the performance of professional medical services.

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

(a) No Group Practitioner removed from furnishing Radiology Services pursuant to Section 7.8 or Section 7.9 of this Agreement, shall be entitled to any "fair hearing" or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that such removal is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California.

(b) Upon the removal of a Group Practitioner pursuant to Section 7.8 or Section 7.9 of this Agreement, Group shall employ, contract with, or otherwise engage, at its cost and expense, a qualified substitute for the removed Group Practitioner, or shall demonstrate to Hospital's satisfaction Group's ability to continuously perform the Radiology Services without such a substitute. Failure to take such action shall constitute a material breach of this Agreement, subject to Section 7.2. Nothing herein shall be construed to limit Hospital's rights under Section 7.2 or any other provision of this Agreement.

(c) A Group Practitioner that has been removed from furnishing Radiology Services pursuant to Section 7.8 or Section 7.9 of this Agreement may be reinstated as a

Group Practitioner eligible to furnish Radiology Services upon the prior written approval by Hospital. Hospital shall in good faith meet and confer with the Group to discuss potential reinstatements. However, Hospital shall have the right to withhold its approval of any reinstatement of a Group Practitioner in its sole discretion and without the need for compliance with any provision of the Medical Staff bylaws or with any other term of this Agreement, except to the extent Hospital reasonably determines that withholding of approval is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California. Notwithstanding anything to the contrary in this Section 7.10, if a Group Practitioner was removed because of a loss of Medical Staff privileges, Group Practitioner shall be automatically reinstated upon the reinstatement of privileges by the Medical Staff.

## **ARTICLE VIII.** **GENERAL PROVISIONS**

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

**8.2 Assignment.** Neither party may assign any of its rights, interests, duties, or obligations under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any attempted or purported assignment by a party in violation of this Section shall be void. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, assigns and representatives.

**8.3 Attorneys' Fees.** If either Party brings an action or proceeding, arising out of or relating to this Agreement, the non-prevailing Party shall pay to the prevailing Party reasonable attorneys' fees and costs incurred in bringing such action, including, without limitation, fees incurred in post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation, arbitration, trial, and any appeal or review, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered shall contain a provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The prevailing Party shall be the Party who is identified in any judgment or order entered as the Party entitled to recover its costs of suit, whether or not the action or proceeding proceeds to final judgment or award.

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

**8.5 Compliance with HIPAA.** Group and each Group Practitioner shall comply with the HIPAA Obligations as defined and set forth in Exhibit 8.5. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason. Hospital shall also comply with all of its obligations under HIPAA.

**8.6 Compliance with Laws.** Group and each Group Practitioner shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including without limitation laws that require Group and each Group Practitioner to disclose any economic interest or relationship with Hospital, and the policies, standards, requirements, guidelines and recommendations of JCAHO, all as in effect and amended from time to time.

**8.7 Compliance with Medicare Rules.** To the extent required by law or regulation, Group shall make available, upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any duly authorized agent or representative of the foregoing, a copy of this Agreement and Group's books, documents and records to the extent necessary to certify the nature and extent of Hospital's costs for services provided by Group. Group shall preserve and make available such books, documents and records for a period which is the longer of ten (10) years after the end of the term of this Agreement or the length of time required by state or federal law. If Group is requested to disclose books, documents or records pursuant to this Section for any purpose, Group shall notify Hospital of the nature and scope of such request, and Group shall make available, upon written request of Hospital, all such books, documents or records. Group shall indemnify and hold harmless Hospital if any amount of reimbursement is denied or disallowed because of Group's failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. This Section 8.7 shall survive the expiration or termination of this Agreement for any reason.

**8.8 Confidentiality.** Unless permitted by applicable law, neither Party shall disclose any of the provisions of this Agreement to any person or entity, other than their respective attorneys or accountants, without the prior written consent of the other Party; provided, however, that either Party may disclose the provisions of this Agreement to any person or entity without the prior written consent of the other Party to the extent such disclosure is (a) required by such Party's contracts existing as of the date of this Agreement; or (b) requested by fiscal intermediaries, public agencies or commissions with governmental powers and duties related to disclosure of information which have the right to compel disclosure of such information. Hospital may also disclose the provisions of this Agreement to any person or entity without the prior written consent of Group to the extent such disclosure is requested or required by Hospital's representatives or others in connection with any tax-exempt bond or other financing transactions of Hospital or any Affiliates.

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

**8.10 Dispute Resolution.** In the event of any controversy or dispute related to or arising out of this Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the Parties are unable to resolve the controversy or dispute after meeting and conferring, they shall submit the matter to non-binding mediation. The Parties shall select a mediator within fifteen (15) days, and the mediation shall be held within thirty (30) days thereafter. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within five (5) business days of the mediation,

the Parties agree to waive their rights, if any, to a jury trial and pre-trial discovery, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 et seq. of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. The Parties agree that the only proper venue for the submission of claims is the County of San Diego, California, and that the hearing before the referee shall be concluded within nine (9) months of the filing and service of the complaint. The Parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

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

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

**8.13 Force Majeure.** Neither Party shall be liable for nonperformance or defective performance or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, or strikes (or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors).

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

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

**8.16 Litigation Consultation.** Neither Group nor any Group Practitioner shall accept consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named as a defendant. Neither Group nor any Group Practitioner shall accept similar consulting assignments if (a) the defendants or anticipated defendants include a member of the medical staff of Hospital or any Affiliate, and (b) the matter

relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which any Group Practitioner or any shareholder, physician or employee of Group served as a treating physician.

**8.17 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified, “days” shall be considered “calendar days” and “months” shall be considered “calendar months” in this Agreement and its exhibits and attachments.

**8.18 No Conflicting Obligations.** Group shall immediately inform Hospital of any other agreements to which Group or any Group Practitioner is a party that may present a conflict of interest or materially interfere with performance of either Group’s or a Group Practitioner’s duties under this Agreement.

**8.19 Non-Discrimination.** Neither Group nor any Group Practitioner shall differentiate or discriminate in the provision of medical services on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or Hospital Rules, including, without limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time. Group, each Group Practitioner, and Hospital shall be in full compliance with Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the 1964 Civil Rights Act, and all regulations issued pursuant thereto and as may be amended from time to time.

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

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

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

**8.23 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties’ agents, employees, representatives or attorneys; (b) this Agreement is

not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

**8.24 Severability.** Subject to Section 7.4, if any provision of this Agreement, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Agreement, including the remainder of such provision not determined to be illegal, invalid or unenforceable. If Section 7.4 is applicable, this Section 8.24 shall not be enforced.

**8.25 Trade Secrets.** During the term of this Agreement, each Party will have access to and become acquainted with confidential information and trade secrets of the other Party, including information and data relating to payor contracts and accounts, clients, patients, patient groups, patient lists, billing practices and procedures, business techniques and methods, strategic plans, operations and related data (collectively, "**Trade Secrets**"). All Trade Secrets shall be proprietary information protected under the Uniform Trade Secrets Act. Neither Party shall disclose to any person or entity, directly or indirectly, either during the term of this Agreement or at any time thereafter, any Trade Secrets of the other Party, or use any Trade Secrets of the other Party other than in the course of providing Services under this Agreement. All documents that Group or any Group Practitioner prepares, or Trade Secrets that might be given to Group or any Group Practitioner in the course of providing Services under this Agreement, are the exclusive property of Hospital, and, without the prior written consent of Hospital, shall not be removed from Hospital's premises.

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

**8.27 Waiver of Injunctive or Similar Relief.** In the event that a court or an arbitrator determines that a Party has improperly breached or terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief, to the exclusion of any specific performance, or injunctive or similar equitable relief.

*[signature page follows]*

The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

**HOSPITAL**

Palomar Pomerado Health System, a local health care district organized under Division 23 of the California Health and Safety Code

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

Address of Hospital:  
Palomar Pomerado Health System  
\_\_\_\_\_  
\_\_\_\_\_

**GROUP**

Valley Radiology Medical Group, Inc.,  
a California professional medical corporation

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

Address of Group:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Exhibit 1.1**

### **RADIOLOGY SERVICES**

Radiology Services encompasses all diagnostic imaging services including general radiography, ultrasound, nuclear medicine, computed topography, magnetic resonance imaging, other diagnostic imaging procedures (other than radiation oncology), performed in the Hospital, and angiography and interventional radiology performed in the Department. The preceding services are provided on an exclusive basis with the exception of those services listed in Exhibit 1.15.



**Exhibit 1.2(a)(1)**

**LETTER OF ACKNOWLEDGEMENT**

Hospital President  
[Name of Hospital]  
[Address of Hospital]

Ladies and Gentlemen:

I acknowledge that Palomar Pomerado Health System, a local health care district organized under Division 23 of the California Health and Safety Code (the “**Hospital**”) and [name of Group] (“Group”) have entered into a Professional and Medical Director Services Agreement (“Agreement”) under which Group shall perform specified Radiology Services and Director Services (as defined in the Agreement), and that I have been engaged by Group to provide Radiology Services, [and Director Services] as a “Group Practitioner” (as defined in the Agreement). In consideration of Hospital’s approval of me as a Group Practitioner eligible to furnish Radiology Services [and Director Services], I expressly:

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

5. acknowledge that upon the termination of my employment or other affiliation with Group, notwithstanding the fact that such termination will not have any independent effect on my Medical Staff membership or clinical privileges, my right to continue to provide Radiology Services in the Department which Group has an exclusive right to provide will immediately terminate, without any action on the part of Hospital and/or the Medical Staff and without the right to a “fair hearing” or any other similar hearing or appellate review as may be set forth in the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California;

6. with regard to all of the foregoing, I expressly waive any right to assert that any termination of my status as a Group Practitioner requires Hospital to comply with any procedures whatsoever under the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California[.]; *and*]

***[Add the following if undersigned is to serve as Medical Director:]***

7. [acknowledge that my status as Medical Director is subject to automatic termination upon termination or expiration of the Agreement, also without any right on my part to require compliance with any rules or procedures of the Medical Staff bylaws, except to the extent Hospital reasonably determines that such termination is reportable to the Medical Board of California pursuant to the reporting requirements of the State of California.]

Sincerely,

---

[Name of Group Practitioner], [M.D.][D.O.]

**Exhibit 1.2(a)(2)**

***[Insert Letter of acknowledgment for Non-Group Practitioners]***

**Exhibit 1.2(b)**

**GROUP PRACTITIONERS**

*[List approved Group Practitioners here]*

**Exhibit 1.3(c)**

**STAFFING PATTERNS**

Exhibit 1.3(c)

**Exhibit 1.5(a)**

**DIRECTOR SERVICES**

Group, through Medical Director, shall:

1. provide medical direction for the day-to-day operations of the Department;
2. implement those Hospital policies and procedures regarding the Department that are reasonable and not inconsistent with the rights and obligations of the Parties under this Agreement and the Medical Staff Bylaws. In instances where there is a disagreement between the Parties as to what is reasonable and not inconsistent with this Agreement and the Medical Staff Bylaws, the Parties agree to meet and confer on a timely basis to address the disagreement;
3. ensure Group Practitioner staffing and coverage of the Department;
4. schedule, coordinate and supervise the provision of physician services within the Department;
5. be responsible to Hospital Administration for the professional services and medical management of the Department and participate in management development programs;
6. ensure the provision of consistently high quality service, and advise Hospital in the development and implementation of an appropriate quality assessment and improvement program with respect to the Department and participate in such program;
7. participate in such Hospital and Medical Staff committees as Hospital or the Medical Staff may request to fulfill the obligations of this Agreement;
8. work with Hospital Administration in the timely planning of activities, including the annual development of Department objectives, operations budget and a capital equipment budget, and provide Hospital with ongoing appraisals of the strengths, weaknesses and overall quality of the Department;
9. cooperate with Hospital personnel assigned general administrative responsibilities for operation of the Department;
10. advise and assist in the organization and implementation of an effective utilization review program for the Department and Hospital and assist Department in utilization review services;
11. assist in developing and review of on-going training and continuing education programs for the Medical Staff, the nursing staff and other support personnel;

12. facilitate the Department's operation in accordance with all requirements of JCAHO, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state, or local agency;
13. recommend to appropriate committees of the Medical Staff and/or Hospital Administration new or revised policies as needed;
14. participate in developing and presenting programs pertinent to the Department for the community and as needed for Hospital/community relations; provided, however, that Medical Director shall not be required to participate in any advertising or commercials related to the Department's services;
15. assist in the design and development of patient information forms, medical record forms, and consent forms for use within the Department;
16. engage in and cooperate in the furtherance of teaching, research, and educational activities of Hospital;
17. be responsible for proper and efficient use of equipment and materials, and make recommendations as to appropriate repair or replacement;
18. be responsible for keeping abreast of equipment developments and make recommendations with respect to procurement of new equipment;
19. provide advice regarding adoption and implementation of information management systems and other new technology for the operation of the Department and/or Hospital;
20. work with Hospital in the development of a policy to assure timely proactive communication of abnormal findings directly with the referring physician. Group shall establish acceptable response times with medical staff departments and assist in implementing formal monitoring of response times for reporting of abnormal findings to demonstrate compliance.
21. assure timely, accurate, complete and legible medical record entries as appropriate for services provided in accordance with Medical Staff By Laws/Rules and Regulations.
22. actively participate in department, hospital and organizational performance improvement efforts to achieve defined service and outcomes targets. Group will participate in medical staff department meetings of key customers and cooperatively develop criteria and initiate ongoing monitoring to assure service and outcomes targets are achieved.
23. review and respond to Quality Utilization and Performance data in a timely manner. Assist in establishing formal service level standards for the Department and all modalities and monitor standards taking proactive action in cooperation with Department's leadership to assure levels are maintained or exceeded.

24. coordinate with Department leadership to assure appropriate revenue capture through establishment of correct billing codes for new and existing services.
25. ensure appropriate case-mix index through appropriate coding and documentation.
26. ensure appropriate throughput through timely discharge and proper discharge planning.
27. proactively solicit feedback from medical staff and hospital to assure adequate coverage, address needs and concerns, and identify opportunities to enhance the range and scope of the Departments/Groups services. Group will participate in medical staff department meetings of key customers to provide immediate contact and interaction to address issues, concerns and opportunities.
28. assure that issues raised are responded to and address in a timely manner to resolve the issue.
29. participate in the evaluation of departmental staff competency and the development of training programs to assure optimal delivery of Departments services.
30. perform such other reasonable duties as may be assigned from time to time by the Hospital President, the Board of Directors, Community Board, or the Chief of the Medical Staff.
31. actively participate in the leadership of the Department



**Exhibit 1.6**

**ADDITIONAL SERVICES**

Group shall:

(a) work with Hospital to monitor and review the clinical performance of Group Practitioners who provide services to Hospital's patients. Group shall assist Hospital in monitoring the performance in the Department of those Group Practitioners who are not meeting Hospital quality and/or Performance Standards, and in disciplining (in accordance with the terms of this Agreement) any Group Practitioner(s) who continues poor performance, recognizing that the Board is ultimately responsible for maintaining the standards of care provided to patients;

(b) assist Hospital management with preparation for, and conduct of, any inspections and on-site surveys of Hospital conducted by governmental agencies or accrediting organizations;

(c) cooperate and comply with Hospital's policies and procedures which are pertinent to patient relations, quality assurance, scheduling, billing, collections, insurance verification and enrollment and other administrative matters to the extent not inconsistent with the terms of this Agreement;

**Exhibit 1.14**

1. Escondido Imaging Center
2. Fully Open MRI of Rancho Bernardo
3. Ramona Medical Diagnostic Services
4. Open-Air MRI of Golden Triangle
5. Open-Air MRI of Tri-City

**Exhibit 1.15**

**NON-EXCLUSIVE RADIOLOGY SERVICES**

**Group shall provide Radiology Services on an exclusive basis with the exception of the following services:**

1. Cardiac angiography and related cardiac procedures performed in the Cardiac Catheterization Laboratory by cardiologists.
2. Echo-cardiography services provided in Cardiology Services at Palomar Medical Center and Radiology at Pomerado Hospital by cardiologists.
3. Non-Invasive vascular and cardiac ultrasound performed in Cardiology Services at Palomar Medical Center and Radiology at Pomerado Hospital by cardiologists.
4. C-arm fluoroscopy performed by any clinician, assuming state guidelines are met and the clinician maintains a current operator's permit.
5. Obstetrical sonography performed outside the Radiology department by obstetricians.
6. Stereotaxic ultrasound guided localizations performed in the operating room.
7. Ultrasound guided prostate implants performed by Radiation Oncologists.
8. Ultrasound performed by physicians to aid in performing interventional procedures.
9. Radiosurgery performed by Neurosurgeons and Radiation Oncologists in the Radiation Therapy Department.
10. Procedures that (a) are proposed by non-radiologists as a result of new technology, and (b) are determined by the Medical Staff's credentialing committee and the medical executive committee, based upon nationally recognized criteria, can be competently performed by qualifying non-radiologists.
11. OB ultrasound performed within Women's Services by perinatologists.

## Exhibit 2.7

### **PERFORMANCE STANDARDS**

In addition to the requirements and standards set forth in the Agreement, Group and as applicable Group Practitioners, shall meet the following minimum standards in performing Radiology Services under this Agreement:

1. Hospital, and Medical Director, may develop a survey to measure the satisfaction of professional users of the Department (other members of the Medical Staff, *etc.*) with the quality of professional radiology services in the Department. If the overall rating of the services is less four (4.0) on a five (5.0) point scale, Medical Director shall institute a plan of correction to increase satisfaction of the professional users. A resurvey shall be conducted no more than six (6) months after the initial survey, and if the overall satisfaction rating has not increased to four (4.0) or better, and if Group objects to the results of the second survey, Group or Hospital can request a review by the Medical Executive Committee. Group and Hospital will abide by the findings and recommendations of the Medical Executive Committee. If the Medical Executive Committee determines that Group's performance is unacceptable, then Group shall be deemed in breach of these Performance Standards.
2. There shall be no more than one (1) successful employee grievance per year relating to any Group Practitioner. A successful employee grievance is an EEOC, DFEH, or labor department complaint which results in a finding of fault of any Group Practitioner in a judicial or administrative decision, or a settlement involving a payment by any Group Practitioner in excess of Ten Thousand Dollars (\$10,000).
3. Each Group Practitioner shall cooperate with Hospital in the accomplishment of Hospital's reasonable goals, share information with Hospital appropriately and in a timely manner, and not engage in a pattern of repeated lack of cooperation or negative interpersonal relations.
4. As and to the extent requested to fulfill the obligations of this Agreement, each Group Practitioner shall, without compensation, serve on, participate in and cooperate fully with any and all credentialing, quality assurance, peer review and utilization review procedures, programs and committee applicable to the performance of Radiology Services.

**Exhibit 2.8**  
**Code of Conduct for Physician Agreements**

1. I will perform my duties faithfully and to the best of my ability, and in the interest of PPH as it relates to services provided under this agreement.
2. I will not lie, cheat, steal, or violate any law in connection with my practice at any PPH facility.
3. I will not pay or arrange for PPH to pay any person or entity for the referral of patients to PPH, nor will I accept any payment or arrange for PPH to accept any payment for referrals from PPH.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts with interest of PPH, as it relates to services provided under this agreement.
6. I will not improperly use PPH's confidential or proprietary information gathered during my association with PPH for my own personal benefit.
7. I will not obtain any improper personal benefits by virtue of my practice at PPH facilities.
8. I will notify the compliance officer of PPH immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding PPH.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not accept any gift of more than nominal value, and hospitality or entertainment that because of its source or value might influence my independent judgment in transactions involving PPH as it relates to services provided under this agreement.
12. I will not provide any gifts to any government or public agency representative as it relates to services provided under this agreement.
13. I will disclose any compensation arrangements or an ownership in a privately-owned entity (not big pharmaceutical or other major public companies and not ownership through mutual funds) that I or a member of my immediate family has.
14. I will not disclose confidential medical information pertaining to PPH patients without the express written consent of the patient in accordance with HIP AA, other applicable law and PPH applicable policies or procedures.
15. I will promptly report all violations or suspected violations of this code by myself to the compliance officer of PPH.
16. I will not conspire with a competitor of PPH to illegally fix prices, labor cost, allocate markets, or engage in group boycotts.

Exhibit 2.8

**Exhibit 2.10**

**EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF GROUP**

## Exhibit 8.5

### OBLIGATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”)

1. **Definitions.**

- a. **“Designated Record Set”** shall have the meaning given to such term under the Privacy Rule (as defined below).
- b. **“HIPAA Obligations”** means the obligations of Group and each Group Practitioner as set forth in this Exhibit.
- c. **“Privacy Rule”** means the HIPAA Regulation that is codified at Title 45 of the Code of Federal Regulations, Parts 160 and 164, or applicable successor provisions, as may be amended from time to time.
- d. **“Protected Health Information”** means any information, whether oral or recorded in any form or medium that: (i) relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, or is defined as such under the Privacy Rule.
- e. **“Protected Information”** means Protected Health Information provided by Hospital to Group or any Group Practitioner or created or received by Group or any Group Practitioner on Hospital’s behalf.
- f. **“Required by Law”** shall have the meaning given to such term under the Privacy Rule.

2. **Use of Protected Information.** Neither Group nor any Group Practitioner shall use Protected Information except as permitted by and for the purpose of performing their respective obligations under this Agreement. Neither Group nor any Group Practitioner shall use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by Hospital.

3. **Permitted Disclosures.** Neither Group nor any Group Practitioner shall disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by Hospital, except that Group and any Group Practitioner may disclose Protected Information in a manner permitted pursuant to this Agreement or as Required by Law.

4. **Appropriate Safeguards.** Group shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Agreement.



5. **Reporting of Improper Use or Disclosure.** Group shall notify Hospital in writing of any use or disclosure of Protected Information other than as provided for by this Agreement and this Exhibit within two (2) days of becoming aware of such use or disclosure.
6. **Group Practitioner's Agents.** Group and each Group Practitioner shall ensure that any agents, including subcontractors, to whom either provides Protected Information, agree in writing to the same restrictions and conditions that apply to Group and each Group Practitioner with respect to such Protected Information.
7. **Access to Protected Information.** Group and each Group Practitioner shall make Protected Information maintained by Group, any Group Practitioner or their respective agents or subcontractors in Designated Record Sets available to Hospital for inspection and copying within ten (10) days of a request by Hospital to enable Hospital to fulfill its obligations under the Privacy Rule.
8. **Amendment of Protected Health Information.** Within ten (10) days of receipt from Hospital for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Group, each Group Practitioner and their respective agents or subcontractors shall make such Protected Information available to Hospital for amendment and incorporate any such amendment to enable Hospital to fulfill its obligations under the Privacy Rule.
9. **Accounting Rights.** Within ten (10) days of notice by Hospital of a request for an accounting of disclosures of Protected Information, Group and each Group Practitioner and their respective agents or subcontractors shall provide to Hospital an accounting of disclosures sufficient to enable Hospital to fulfill its obligations under the Privacy Rule. As set forth and as limited by the Privacy Rule, neither Group nor any Group Practitioner shall provide an accounting to Hospital of disclosures: (i) to carry out treatment, payment or health care operations; (ii) to individuals of Protected Information about them; (iii) to persons involved in the individual's care or other notification purposes; (iv) for national security or intelligence purposes; or (v) to correctional institutions or law enforcement officials. [*Group shall implement a process that allows for an accounting to be collected and maintained by Group and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule.*] At a minimum, such information shall include: (A) the date of disclosure; (B) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (C) a brief description of Protected Information disclosed; and (D) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or copy of the individual's authorization, or a copy of the written request for disclosure.
10. **Governmental Access to Records.** Group and each Group Practitioner shall make their respective internal practices, books and records relating to the use and disclosure of Protected Information available to Hospital or, at the request of Hospital, to the Secretary of the U.S. Department of Health and Human Services, for purposes of determining Hospital's compliance with the Privacy Rule.

11. **Retention of Protected Information.** Except as provided in Sections 12 and 13 of this Exhibit, Group, each Group Practitioner and their respective agents or subcontractors shall retain all Protected Information throughout the term of this Agreement and shall continue to maintain the information required hereunder for a period of six (6) years after expiration or termination of this Agreement.
12. **Term of Obligations.** Group's and each Group Practitioner's HIPAA Obligations shall commence as of the compliance date of the Privacy Rule, and shall terminate when all of the Protected Information is destroyed or returned to Hospital, or, if it is infeasible to return or destroy Protected Information, protections are extended to such information, in accordance with Section 14 of this Exhibit.
13. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Group and each Group Practitioner shall return or destroy all Protected Information that Group, any Group Practitioner or their respective agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Group and each Group Practitioner shall continue to extend the protections of this Exhibit to such information, and limit further use of such Protected Health Information to those purposes that make the return or destruction of such Protected Health Information infeasible.
14. **Amendment.** The Parties agree to take such action as is necessary to amend HIPAA Obligations from time to time in order for Hospital to comply with the requirements of the Privacy Rule, HIPAA and other applicable laws relating to the security or confidentiality of Protected Health Information.
15. **Interpretation of Obligations.** The HIPAA Obligations shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The Parties acknowledge and agree that any ambiguity in the HIPAA Obligations shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.