

## **RESIDENT EMPLOYMENT AGREEMENT**

THIS RESIDENT EMPLOYMENT AGREEMENT (“Agreement”) is effective as of July 1, 2017 (“Effective Date”) by and between Catholic Health Initiatives Colorado, a Colorado nonprofit corporation, doing business as **Centura Health-St. Anthony Hospital** (“Hospital”), and \_\_\_\_\_ (“Resident”).

### **RECITALS**

Hospital operates the St. Anthony General Surgery Residency Program (the “Program”), which is sponsored by the Kansas City University of Medicine & Biosciences Graduate Medical Education Consortium (“KCU-GME Consortium”).

Hospital is operated and managed by Centura Health Corporation, a Colorado nonprofit corporation (“Centura”), which may assign management duties to its Centura Health Physician Group division (“CHPG”);

Hospital is a tax-exempt organization pursuant to Section 501(c)(3) of Internal Revenue Code of 1986, as amended;

Resident is duly licensed with a Colorado physician training license, or if eligible, a full and unrestricted license by the Board of Medical Examiners to practice medicine in the State of Colorado;

Program desires to assist Resident in the pursuit of studies as a graduate medical student by granting Resident access to the Program and Program curriculum; and

In furtherance of its charitable purposes and its operations, Hospital desires to employ Resident and Resident desires to be employed to render medical services and be educated in a teaching environment in the community served by Hospital (“Community”).

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. TERM AND OBLIGATIONS OF RESIDENT**

1.1 Term. This Agreement shall be for an initial term of one (1) year, commencing on the Effective Date (“Initial Term”), unless earlier terminated as provided herein. Hospital may extend the Term as necessary to address any absences of Resident from the Program in order to satisfy Surgical Council on Resident Education, American Osteopathic Association, Accreditation Council for Graduate Medical Education and/or Graduate Medical Education Office requirements or other requirements for Resident’s completion of a post graduate year.

1.2 Full-time Employment. Resident (i) shall be a full-time General Surgery Resident postgraduate year (PGY) 1 for the term of this Agreement performing the usual and customary duties of a resident in the practice of medicine; and (ii) shall render such services in such manner and at such times and locations as are reasonably determined by Hospital. The services

provided by Resident shall include seeing patients in the Hospital, preparing medical records, and such other services as are reasonably determined by Hospital, including professional and administrative activities, as required by the Medical Education Policy and Procedure Manual, Bylaws of the Medical Staff of the Hospital, the State of Colorado Medical Practice Act and the rules of any affiliated program to which Resident may be assigned by Program or as required by the Director of the Program. Resident's duty hours shall be governed by the Accreditation Council for Graduate Medical Education (ACGME) requirements and the Program's applicable policy and/or procedure, which shall be available for Residents to access at any time.

1.3 Board Eligibility. Resident shall be responsible for the eligibility requirements related to specialty board examinations. Residents should discuss with the Program Director and/or contact the certifying board of his/her specialty for more information and clarification regarding board examination eligibility.

1.4 Professional Standards. As a condition precedent to any obligation of Hospital to employ Resident, Resident shall obtain and maintain throughout the term of this Agreement:

1.4.1 A Colorado physician training license, or if eligible, an unrestricted license to practice medicine in Colorado;

1.4.2 If eligible, an unrestricted Drug Enforcement Administration ("DEA") registration.

1.5 Medical Staff Bylaws. Resident shall comply with the Bylaws, Rules, and Regulations of the Medical Staff of Hospital and other applicable policies and procedures.

1.6 Medical Education Policies and Procedures. The Hospital Medical Education Policy and Procedure Manual will be provided to Resident, which is incorporated herein by this reference and sets forth terms and conditions of appointment. The KCU-GME Consortium Policy and Procedure Manual is located at [http://cdn.agilitycms.com/kansas-city-university/Attachments/residency/GME\\_Policy\\_Manual.pdf](http://cdn.agilitycms.com/kansas-city-university/Attachments/residency/GME_Policy_Manual.pdf).

1.7 Referrals for Items and Services. To promote patient satisfaction and continuity of care and to the extent permitted by applicable law and subject to the terms of this Section 1.5, Resident shall utilize Hospital facilities and refer patients to a facility owned or operated by the Hospital or Centura for items and services provided by Hospital or Centura-owned or -operated facilities. Accordingly, Resident shall not utilize or refer patients to another facility unless: (1) Resident notifies Hospital; and (2) one of the following conditions is met:

1.7.1 A Hospital or Centura-owned or -operated facility does not provide the item or service; or

1.7.2 The patient is already admitted to another facility ER unit and Resident is providing call coverage to said facility; or

1.7.3 The patient's insurer directs that a different provider must furnish the item or service; or

1.7.4 The patient expresses a preference for a different provider, practitioner or supplier; or

1.7.5 The referral to a Hospital or Centura-owned or -operated facility is not in the patient's best medical interests in Resident's judgment.

The required referrals relate solely to the Resident's services covered by the scope of the employment or this Agreement, and the referral requirement is reasonably necessary to effectuate the legitimate business purposes of the compensation arrangement. In no event will Resident be required to make referrals that relate to services that are not provided by Resident under the scope of this Agreement.

1.8 Medical Records. Resident shall complete appropriate medical record entries concerning all examinations, procedures and other services performed by Resident pursuant to this Agreement, in compliance with Hospital and CHPG policies. The ownership and right of control of all reports, records and supporting documents prepared in connection with medical services provided by Resident pursuant to this Agreement shall vest exclusively in Hospital; provided, however, that Resident shall have such right of access to such medical records and supporting reports and documentation as shall be required by Colorado law and this Agreement.

1.9 Administrative Activities. Resident shall, as directed by Hospital, undertake from time to time activities on behalf of Hospital, such as research, teaching, medical administrative duties, personnel evaluation, vendor and equipment evaluation, and other similar activities.

1.10 Professional Fees. All revenue from the professional activities of Resident pursuant to this Agreement shall belong solely to Hospital and is to be paid to Hospital. Any such revenue received by Resident shall be promptly delivered or paid to Hospital without deduction therefrom. Resident hereby irrevocably appoints Hospital as Resident's sole agent for billing and collection of fees for services delivered hereunder and authorizes Hospital, or its agent, to take all action and execute all documents reasonably required for the collection of such revenue. Hospital shall fix professional fee schedules from time to time. No amount shall be billed directly by Resident.

Resident further agrees to participate, if eligible, in the ARRA Incentive Program for Meaningful Use of a Physician Practice Electronic Health Record ("EHR Program"). In recognition that Hospital has expended substantial funding for development of the EHR Program and is entitled to receive physician incentive payments to offset costs incurred, Resident and Hospital agree that this Section 1.8 providing for assignment by Resident to Hospital for all payments received for services performed by Resident shall include assignment of incentive payments received in connection with use of the EHR Program.

1.11 No Right to Contract. Resident shall not represent to any third person or entity that Resident is authorized to enter into any contract for or on behalf of Hospital and shall not execute any contract for or on behalf of Hospital or attempt to bind Hospital to any obligation without Hospital's specific and prior written consent.

1.12 Performance Review. At the end of each clinical rotation, Program's relevant clinical faculty for each rotation will conduct an evaluation of Resident. Additionally, Program's clinical faculty shall conduct no less than bi-annual evaluations. Resident's appointment/promotion to the next level of training is conditional upon satisfactory evaluation.

Program may require Resident to attend additional remedial training provided by an outside organization or entity, at the expense of the Program, in the event that the Program determines, in its sole discretion, that such remedial training is required for Resident due to any problems associated with Resident's patient care, medical knowledge, practice-based learning, interpersonal communication skills, professionalism, systems-based practice, or noncompliance with any Program policy. If the provider of such remedial training develops for Resident any performance improvement plan or other personal program of learning, Resident shall be required to comply with such performance improvement plan or personal program of learning. Resident's failure to attend the remedial training program or to otherwise comply with any requirements of the remedial training, including any performance improvement plans or personal programs of learning, shall be cause for termination of this Agreement.

1.13 Compliance with Policies, Laws and Accreditation Standards. At all times during the term of this Agreement, Resident shall comply in all material respects with (i) applicable state and federal laws and regulations and local ordinances, including without limitation, laws and regulations under the Medicare and Medicaid programs, and those promulgated in connection with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) applicable standards, rules and regulations of the Hospital's Medicare professional review organization, the Hospital's Medicare Administrative Contractor, third party payors, The Joint Commission, or other entities that exercise authority to regulate, administer, accredit, reimburse or otherwise set standards for the Hospital; (iii) Hospital and CHPG policies and procedures; and (iv) the ACGME standards and requirements.

1.14 Ethical and Religious Directives. Resident shall not provide any services to or perform any procedures in the Hospital that are in violation of the Ethical and Religious Directives for Catholic Health Care Services (the "Directives"), as promulgated by the United States Conference of Catholic Bishops, as amended from time to time and as interpreted by the local bishop.

## **2. COMPENSATION AND BENEFITS**

2.1 Compensation. Hospital shall pay Resident an annual training and service stipend in the amount of Forty-Seven Thousand Five Hundred Dollars (\$47,500.00), subject to applicable tax and/or other withholdings in accordance with the established policy of the Program.

2.2 Benefits. Resident shall be eligible for the benefits set forth on **Exhibit A**, as may be amended from time to time.

## **3. INSURANCE**

3.1 Hospital shall obtain and maintain for Resident a claims-made policy of malpractice insurance covering professional actions or omissions by Resident and those under Resident's direction pursuant to and during the term of this Agreement, through self-insurance arrangements or through insurance companies licensed to do business in Colorado, with coverage in minimum amounts of One Million Dollars (\$1,000,000.00) per claim and Three Million Dollars (\$3,000,000.00) in the aggregate, or the minimum required by regulatory authorities, whichever is greater. Hospital shall cover the cost of any tail coverage incurred, or

arrange appropriate tail coverage for Resident should Hospital or Resident terminate this Agreement without cause, or Resident terminate this Agreement for cause. Except as otherwise provided in this Agreement, in the event Hospital terminates this agreement for cause, Resident shall be responsible for the cost of obtaining professional liability tail insurance coverage. If Resident fails to purchase appropriate tail coverage, Hospital may purchase such coverage on behalf of Resident and withhold from amounts due Resident hereunder the amount necessary to cover the cost of the tail insurance policy. Upon termination of this Agreement due to Resident's death, permanent disability, or retirement from the practice of medicine, Hospital shall cover the cost of tail coverage. Resident shall deliver promptly to Hospital, upon receipt, a copy of any notice of claim against Resident involving Resident's liability insurance or any adverse action, change or modification to the terms and conditions of Resident's insurance coverage.

3.2 Resident shall cooperate in filling out applications or other documents required to obtain the tail or other coverage, and Resident agrees to cooperate with Hospital in the defense of any such claim made against Resident or any claim made against Hospital.

3.3 If Hospital authorizes Resident to engage in professional or other services outside the scope of Resident's employment under this Agreement (and such services comply with Hospital policies and the Program's Manual), Resident shall, at Resident's own cost and expense, purchase or otherwise acquire professional liability insurance coverage from a company acceptable to Hospital to cover the services outside the scope of Resident's employment, and shall provide Hospital with a Certificate of Insurance and the declaration page of such policy or policies evidencing such coverage.

#### **4. TERMINATION**

4.1 Notification of Non Renewal; Program Closure. The Resident must provide Hospital with at least thirty (30) days notice prior to the end of the term of Resident's intent to not renew this Agreement. Resident acknowledges that Hospital may terminate this Agreement by providing sixty (60) days advance written notice to Resident in the event the Program is closed or reduced. In such event, Program shall attempt to allow Resident to complete his or her education and/or provide reasonable assistance to Resident in identifying a Program in which to continue Resident's education.

4.2 Immediate Termination by Hospital for Cause. Subject to the grievance and due process described in the Program Manual, this Agreement may be terminated by Hospital, immediately, without liability resulting from such termination, upon the occurrence of any one of the following events:

4.2.1 Resident is convicted (whether final or on appeal) of, or enters a plea of guilty or nolo contendere to, or becomes a party to a deferred prosecution agreement for, any crime involving moral turpitude, dishonesty, fraud, or unethical professional conduct or a felony.

4.2.2 Resident has a physical or mental disability that prevents Resident from performing the essential functions of the position, as determined by Hospital based on its assessment of the circumstances, including but not limited to the following examples: Resident has unpredictable, unreliable, and erratic attendance; is a danger to self or others; is unable to provide a definitive return to work date after using a leave or



leaves; has been on a leave for up to approximately 180 consecutive days; fails to cooperate in the accommodation process; is ineligible for leave or additional leave under Hospital policy applicable to physicians and laws such as the Family Medical Leave Act (“FMLA”) and the Americans with Disabilities Act, (“ADA”). Notwithstanding any other provision to the contrary, should the Hospital terminate the Agreement under this Section 4.2.2, then Hospital (and not Resident) shall be responsible for the costs of tail coverage under Section 3.1 above.

4.2.3 Revocation, cancellation, restriction or suspension of Resident’s training license or license to practice medicine in any state or DEA registration, which, in the judgment of Hospital, prevents Resident from performing services pursuant to this Agreement.

4.2.4 If at any time, Hospital cannot obtain professional liability insurance coverage for Resident.

4.2.5 Resident is found by Hospital or Centura to have been dishonest, committed material acts of misconduct or violated any law, regulation or Hospital policy.

4.2.6 Resident is excluded from participation in any governmentally funded health care program including Medicare and Medicaid.

4.2.7 Resident fails to perform the duties and responsibilities under this Agreement, or violates any provision of this Agreement.

4.2.8 Resident fails to comply with remedial training requirements, as described in Section 1.10.

4.3 Termination For Cause After Notice. This Agreement may be terminated by either party without liability to the terminating party resulting from such termination if either party commits any breach of the Agreement that has not been cured to non-breaching party’s reasonable satisfaction following thirty (30) days’ written notice, or that constitutes a breach of a type that the breaching party has already committed at least twice before, whether or not cured. If such breach cannot be remedied within a thirty (30) day period, upon mutual agreement of the parties, the breaching party may have such additional time reasonably necessary to cure the breach and so long as the breaching party shall have commenced and shall thereafter proceed diligently to remedy the breach.

4.4 Grievance and Due Process. Any grievances by either party in relation to this Section 4 shall be handled in accordance with the Program’s Manual.

## **5. REPRESENTATIONS AND WARRANTIES**

5.1 Fraud and Abuse. Resident and Hospital hereby represent to one another that they have not engaged in any and will not in the future engage in any activities that are prohibited by federal statutes relating to governmental health care programs, in any activities that would result in the creation of a financial relationship that would result in prohibition of referrals to Hospital or a related entity under 42 U.S.C. § 1395nn, or related state statutes or the regulations promulgated thereunder or similar activities with respect to any third-party payors, including, but not limited to, the following: (i) knowingly making or causing to be made a false statement,

representation or omission of a material fact in any application for a benefit or payment; (ii) knowingly making or causing to be made any false statement, representation or omission of a material fact for use in determining rights to any benefit or payment; or (iii) knowingly soliciting or receiving, directly or indirectly, any compensation, in cash or in kind or offering to pay any compensation to a third person in exchange for (A) referring an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part by a governmental health care program or (B) either recommending or purchasing, leasing, ordering or arranging for any services or item for which payment may be made in whole or in part by a governmental health care program.

5.2 Applications. Resident and Hospital mutually represent and warrant that all material facts provided to and relied upon by the parties regarding employment with Hospital and Resident's application for the Program are complete, correct, true, and not misleading, and the parties will keep one another informed of any change in circumstances which would render any of such facts untrue or misleading.

5.3 Notification. Resident shall promptly notify Hospital of any investigation or formal administrative action by state or federal agencies affecting Resident and/or when any other facts or circumstances occur which could reasonably be expected to result in a change to, modification, suspension or revocation of Resident's Colorado training/medical license, DEA registration, or any adverse action at any hospital or any other facility at which Resident performs services.

5.4 Exclusion. Resident and Hospital each represent and warrant to the other that they are not, and at no time have been, excluded from participation in any federally funded health care program, including Medicare and Medicaid. Resident and Hospital agree to immediately inform the other of any threatened, proposed or actual exclusion from any federally funded health care program, including Medicare and Medicaid. In the event that either party is excluded from participation in any federally funded health care program during the term of this Agreement, or if any time after the Effective Date it is determined that either party is in breach of this Section 5.4, this Agreement shall, as of the date of such exclusion or breach, automatically terminate. Each party shall indemnify, defend and hold harmless the other against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, including reasonable attorneys' fees, arising directly or indirectly out of any violation of Section 5.4 hereof by the indemnifying party, or due to the exclusion of the indemnifying party from a federally funded health care program, including Medicare and Medicaid.

## **6. CONFIDENTIALITY AND NONDISCLOSURE**

6.1 Proprietary Information. Resident acknowledges that in the course of performing professional services under this Agreement, Resident will come into possession of information relating to patient lists, referral sources, business plans, systems, financial data, trade secrets and other proprietary information of a material nature which is confidential to Hospital. Resident hereby agrees to keep such information confidential and not to disclose the same to any other person, firm or entity without first securing the written permission of Hospital.

Confidentiality of Medical Records. All records relating to any patient of Hospital treated by Resident, whether classified as medical records, therapists' notes, business records or otherwise shall be confidential and shall be the sole property of Hospital. Resident agrees

not to remove such records upon the termination of his/her employment without the written consent of Hospital; provided, however, Resident shall be provided on a timely basis a full and complete copy of such patient records upon appropriate patient authorization or as required by law. For all records so duplicated, Hospital reserves the right of full and complete access in any event of litigation or administrative proceedings arising after termination of Resident's employment.

6.2 Confidential Agreement. The provisions of this Agreement shall be confidential in nature and neither party shall divulge any of the provisions set forth in this Agreement to any third parties, except as necessary for the conduct of Hospital and CHPG business, or as may otherwise be required by law.

6.3 Work for Hire. All works of authorship and all developments made, conceived, created, discovered, invented or reduced to practice in the performance of work performed hereunder for Hospital or at the direction of Hospital are and shall remain the sole and absolute property of Hospital.

## **7. PRACTICE IN THE COMMUNITY**

Resident shall devote best efforts to the performance of services under this Agreement and shall not practice medicine or render any services of a business, commercial or professional nature to any other person or organization, for compensation or otherwise, without obtaining the prior written permission of Program Director, as determined in the Program Director's sole discretion. Resident's ability to moonlight during the term of this Agreement shall be governed by the Program's policy and/or procedure in place, which shall be provided to Resident upon request.

## **8. GENERAL COVENANTS AND CONDITIONS**

8.1 Applicable Law. All questions concerning the validity or construction of this Agreement shall be determined in accordance with the laws of Colorado without regard to its conflicts of law principles.

8.2 Assignment. This Agreement shall be assignable without Resident's consent by Hospital to any entity that controls, is controlled by, or is under common control with Hospital. The rights of Resident hereunder are personal and may not be assigned or transferred except as Hospital may consent thereto in writing.

8.3 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way, and to this extent the provisions of this Agreement are severable.

8.4 Waiver of Breach. The waiver by a party of a breach by the other party of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.



Third-party Beneficiaries. It is the mutual intention of the parties that this Agreement is a personal Agreement for their exclusive benefit, that it does not confer any rights upon any person not a party to this Agreement and that no individual or entity shall be construed or considered to be a third-party beneficiary of this Agreement, including any patient, payor or other individual or entity.

8.5 Entire Agreement and Amendments. This Agreement, including any Exhibits attached hereto, which are incorporated herein by reference, embodies the entire agreement and understanding of the parties with regard to the matters herein addressed and, when fully executed, shall supersede any and all prior and existing agreements, either oral or in writing. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement may be amended only by mutual written agreement of the parties.

8.6 Further Assurances. Upon the request of either party to the other, each party will take such action and execute and deliver to the other party such instruments or documents as may be reasonably necessary to assure, complete, evidence or implement the provisions of this Agreement.

8.7 Violation of Law; Tax-Exempt Status. If any term of this Agreement violates federal, state or local law or regulation or could jeopardize the federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, of Hospital or any affiliated tax-exempt entity or the tax-exempt status of the bonds of Hospital or any affiliated tax-exempt entity, or could result in prohibition of any referral or payment to Hospital or related entity, then the terms of this Agreement shall be changed as necessary so that such federal, state or local law or regulation is no longer violated, such federal tax-exempt status is no longer threatened or such prohibition would no longer result, as the case may be.

8.8 Notices. All notices required by the provisions of this Agreement must be in writing and must be served on the other party personally or by sending a letter properly addressed by certified mail, postage prepaid, to such party's last known address. Notices delivered personally shall be deemed received upon actual receipt. Mailed notices shall be deemed received three days after mailing.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**CATHOLIC HEALTH INITIATIVES  
COLORADO dba CENTURA HEALTH-  
ST. ANTHONY HOSPITAL**

**RESIDENT**

\_\_\_\_\_  
Edward H. Sim  
Chief Executive Officer  
Date: \_\_\_\_\_

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

**ACKNOWLEDGED:**

**ST. ANTHONY GENERAL SURGERY  
RESIDENCY PROGRAM**

\_\_\_\_\_  
Rebecca Vogel, M.D.  
Program Director  
Date: \_\_\_\_\_

**CENTURA HEALTH PHYSICIAN  
GROUP**

\_\_\_\_\_  
Scott Ellner, D.O.  
President and Chief Executive Officer  
Date: \_\_\_\_\_

**CENTURA HEALTH**

*Approved as to form:*

Sarah Radunsky  
Associate General Counsel

## **EXHIBIT A BENEFITS**

- Beginning on the Effective Date, Hospital will provide Resident and eligible dependents with health insurance, life insurance and disability insurance and any other benefits offered under the current benefit plans applicable to Program.
- Beginning on the Effective Date, Resident shall be entitled to fifteen (15) workdays, excluding weekends (Saturdays and Sundays), of paid vacation annually during the term hereof. Vacation days may not be taken on some rotations. Parental leave is available to eligible residents as specified in the St. Anthony General Surgery Residency Program Manual. Vacation days cannot accrue from year to year and are not paid if not used. Resident shall be entitled to five (5) days sick leave. Sick leave does not accrue from year to year and is not paid if not used. Under any circumstances, the effect of leave time of all types on the Resident's status in the training Program will be determined by the policies of the training Program currently in effect, the American Osteopathic Associates (AOA), and/or the Accreditation Council for Graduate Medical Education (ACGME).
- Resident shall have access to appropriate and confidential counseling, medical and psychological support services consistent with those like benefits offered to Hospital employees. Counseling, treatment and education for physician impairment, including but not limited to substance abuse or chemical dependency, shall be made available to Resident through referral to the Colorado Physician Health Program.
- Program will provide sleeping quarters, meal allowance and hospital scrub clothing for Resident while on duty on Program hospital services.