

FELLOWSHIP CLINICAL COVERAGE AGREEMENT

This FELLOWSHIP CLINICAL COVERAGE AGREEMENT (“Agreement”) is made by and between UNIVERSITY CLINICAL, EDUCATION & RESEARCH ASSOCIATES, dba UNIVERSITY HEALTH PARTNERS OF HAWAII, a Hawaii nonprofit corporation (hereinafter, “UHP”), and, (Fellow Name), (hereinafter, “Employee”).

RECITALS

WHEREAS, the principal purposes of UHP are to (1) provide funding to build and sustain the infrastructure of the University of Hawaii John A. Burns School of Medicine (“JABSOM”) and its departments, (2) fund research, education and scholarly development, (3) provide additional resources to recruit, retain, and develop qualified faculty, (4) provide clinical training and education to students at JABSOM, and (5) provide health care to the general public, with special attention to the poor and other underserved populations of Hawaii and the Pacific Region.

WHEREAS, additional purposes of UHP are to facilitate the faculty practice of other University of Hawaii health sciences schools, centers, and programs.

WHEREAS, in order to accomplish the above purposes and to act on behalf of JABSOM as its faculty practice plan, UHP has appointed Employee as a Fellow/trainee in the ACGME¹-accredited Maternal Fetal Medicine (“MFM”) Program and Division of JABSOM’s Department of Obstetrics and Gynecology and Women’s Health (“OB/GYN”).

WHEREAS, in order to further accomplish the above purposes and to give Employee the opportunity for patient care experiences and continuity, UHP desires to enter into this Agreement to further define these patient care experiences as a member of JABSOM’s Department of Obstetrics and Gynecology and Women’s Health (“OB/GYN”).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, UHP and Employee (collectively referred to herein as “parties”) agree as follows:

AGREEMENT

I. Employment.

UHP shall employ Employee as an academic practitioner engaged to practice in the Department of Obstetrics, Gynecology & Women's Health (“Department”). Such employment shall be considered effective on (date), (the “Effective Date”). The actual details of the time and place Employee will report for duties shall be determined by the reasonable mutual agreement of the parties. Employee accepts employment in such capacity with UHP and agrees to be bound by the terms, covenants and conditions of this Agreement.

II. Duration of Agreement.

- A. **Effective Date.** This Agreement shall begin as of the Effective Date and shall remain in effect consistent with the period in which Employee is a duly-appointed Fellow in the MFM Program, which is anticipated to span a period of three (3) years, (the “Term”). Please refer to Employee’s Fellowship Training Agreement (“Training Agreement”) for terms and

¹ Accreditation Council for Graduate Medical Education.

conditions related to the MFM Fellowship Program, which shall be incorporated hereto by reference.

- B. Extension. Subject to mutual agreement of the parties, this Agreement may be extended beyond the period in which Employee is a Fellow in the MFM Program, in order to provide additional clinical coverage for the Department, depending on clinical needs and Employee's availability. In such an event, this Agreement shall be amended in writing to address the period by which this Agreement shall be extended and the terms applicable to the extended period, per Section V below and Section 6.1 of Attachment 1, General Terms & Conditions.
- C. Termination. This Agreement may be terminated in accordance with Section 6.2 of Attachment 1, General Terms & Conditions.

III. **Performance.**

- A. Duties. Employee shall provide professional health care and/or other services at medical centers, hospitals, clinics, offices or other locations as determined by UHP (collectively, the "Facilities") for such services as described in the attached Exhibit A, "Scope of Duties and Responsibilities", which shall be incorporated by reference.
- B. Compensation. Commencing with the Effective Date, for all services rendered by Employee under this Agreement, UHP shall compensate Employee as set forth in Exhibit A, "Scope of Duties and Responsibilities", and Exhibit B, "Compensation" which exhibits are attached to this Agreement and incorporated herein for all purposes.
- C. Disclosures & Warranties. Employee shall disclose any exceptions to the "Representations and Warranties" provision (Section 1 of the General Terms & Conditions) on Exhibit C, "Disclosure of Exceptions to Representations and Warranties". Failure to make a full and accurate disclosure may result in termination of this Agreement and UHP seeking other appropriate relief.
- D. Benefits.
 - (1) Fringe benefits. Employee is entitled to receive benefits from UHP. Please see Exhibit A to the Training Agreement for details regarding the benefits applicable to Employee.
 - (2) Time off and Leave. Please see Time off and Leave provision in the Training Agreement.

IV. **Expenses.** Please see Expenses provision in the Training Agreement.

- V. **Entire Agreement and Amendments.** This Agreement, including its Attachment 1 General Terms and Conditions and exhibits, in combination with the Training Agreement, constitute the entire agreement between the parties respecting the employment of Employee by UHP. There are no representations, warranties or commitments except as set forth in these Agreements. This Agreement shall be amended only in writing signed by the parties to this Agreement.

IN WITNESS WHEREOF, UHP, by its duly authorized representatives, and Employee, have signed this Agreement as of the day and year first written above.

EMPLOYEE:

University Clinical, Education & Research Associates
dba University Health Partners of Hawai'i:

(Fellow Name)

Larry J. Shapiro, MD
Chief Executive Officer

Department of Obstetrics, Gynecology & Women's
Health

Ivica Zalud, MD
Professor and Chair
Kosasa Endowed Chair
Department of OB/GYN and Women's Health
John A Burns School of Medicine
University of Hawaii

ATTACHMENT 1
GENERAL TERMS & CONDITIONS

1. Representations and Warranties.

1.1 As of the Effective Date, Employee represents and warrants to UHP that, except as specified in Exhibit C hereto, the following are true:

(a) Employee is a practitioner in good standing and duly qualified to practice medicine without restriction or limitation in the State of Hawaii. Employee is registered with the DEA to prescribe controlled substances without restriction or limitation. Employee has never been convicted of a crime related to health care fraud nor has Employee ever been excluded from participation in any federal or state health care program. Employee is an eligible provider in Medicare and Medicaid programs. Employee's medical license, DEA registration, and eligibility to participate as a Medicare or Medicaid provide has never been suspended, revoked, restricted, limited or terminated. Employee has never been the subject of any type of disciplinary or corrective action taken by any medical licensing or certification authority, or any fine or penalty relating to the rendering of medical services by Employee.

(b) Employee is under no obligation, restriction or limitation, contractual or otherwise, to any other individual or entity that would prohibit or impede him or her from undertaking and performing the duties, responsibilities and obligations under this Agreement.

(c) Employee is able to and shall before this Agreement becomes effective provide evidence to UHP of adequate occurrence-based and/or claims-based liability insurance to insure against malpractice claims arising out of any and all occurrences Employee may have had prior to the Effective Date and in the event Employee has obtained claims-based liability insurance, he or she is able to and shall before this Agreement becomes effective provide evidence to UHP of adequate "prior acts" liability insurance acceptable to UHP.

(d) Employee has never been removed for cause from any provider panel of any managed care organization, indemnity insurer or other third-party payer, or independent practice association, physician organization, physician-hospital organization or other provider network;

(e) Employee has disclosed any malpractice (professional liability) or other patient-related claims, complaints, and/or litigation, including any proceedings before any professional licensing board, pending or resolved within the last five years; and

(f) To Employee's best knowledge, he or she is not a party to any pending investigation or proceeding the basis of which implicates his or her professional competence or that could lead to a suspension, revocation, restriction, limitation or termination of his or her license to engage in clinical practice or medical staff privileges at any medical center.

1.2 Notification. Employee shall promptly notify UHP in the event the foregoing representations set forth above in Paragraph 1.1 are or become untrue for any reason. Employee shall maintain all necessary licenses, certificates, and other authorizations to provide services as contemplated in this Agreement. Employee hereby consents to and shall facilitate UHP's consulting with and receiving information from third parties to verify the representations and warranties set forth in Paragraph 1.1.

1.3 Licensure; Eligibility. In addition, Employee will (i) maintain, without material restrictions, a license to practice medicine, nursing, or other clinical discipline in the State of Hawaii; (ii) maintain eligibility to participate in the Medicare or Medicaid programs; (iii) maintain to the extent applicable, without material restriction, active or associate staff privileges at the Facilities; (iv) maintain registration with the Drug Enforcement Administration (“DEA”) as relevant; (v) be and remain insurable for malpractice liability in accordance with the requirements of the laws of the State of Hawaii; and (vi) maintain certification by such credentialing agencies as shall be reasonably determined by UHP.

1.4 Medicare Compliance. Employee agrees to comply with all applicable Medicare laws, regulations, and Centers for Medicare & Medicaid Services (“CMS”) instructions, including but not limited to the following:

(a) The U.S. Department of Health & Human Services (“HHS”), the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records involving transactions related to a Medicare contract for a period of 10 years from the final date of the contract or the completion of any audit, whichever is later;

(b) Employee will safeguard beneficiary privacy and confidentiality and assure the accuracy of beneficiary health records;

(c) Employee may not hold beneficiaries liable for payment of fees that are the legal obligation of an applicable Medicare Advantage Organization;

(d) Services performed by Employee will comply with an applicable Medicare Advantage Organization’s policies and procedures, as well as with obligations CMS imposes upon the Medicare Advantage Organization;

(e) Services performed by the Employee that are pertinent to a contract with a Medicare Advantage Organization may be monitored by the Medicare Advantage Organization on an ongoing basis;

(f) The credentials of Employee may be (i) reviewed by the Medicare Advantage Organization; (ii) or the credentialing process may be reviewed and approved by the Medicare Advantage Organization, (iii) OR the Medicare Advantage Organization may audit the credentialing process on an ongoing basis;

(g) Employee will comply with Medicare fraud and abuse plan requirements;
and

(h) Employee will cooperate with the applicable Medicare Advantage Organization’s process of complaints or grievances, quality improvement programs, requests to change providers, and analyses of enrollee satisfaction surveys and other sources of enrollee input.

2. Relationship between Parties.

2.1 Employee Responsibilities. Employee will devote all necessary time and best efforts to the performance of his or her clinical practice duties and related services for UHP. Employee will observe and conform to all applicable laws and abide by all general policies, ethics, and standards of care regarding the services performed by him or her. Employee shall keep and maintain health

record documentation in accordance with professional standards of practice and the policies of the organization. Employee shall, on a monthly basis or as otherwise requested by UHP, complete all required time sheets and other documentation verifying and certifying the hours worked by Employee. Employee agrees to provide professional clinical services pursuant to such schedules as may be assigned.

Prior to the Effective Date, the parties shall take all actions reasonable to confirm that Employee has all necessary medical privileges at the Facilities, as defined below.

2.2 Compensation Methodology.

(a) Salary Basis. Employee is an exempt professional salaried (as opposed to a non-exempt hourly) employee. Accordingly, Employee's performance of services during more than a specified minimum number of hours shall not entitle Employee to additional salary or overtime pay.

(b) Production Model Compensation Benefits. [reserved].

(c) Employment Benefits and Taxes. All amounts due Employee by UHP under this Agreement are subject to and shall be reduced by applicable employment-related taxes, including but not limited to income tax, Medicare and Social Security.

(d) Qualified Retirement Plans. Employee shall have the right to participate in the retirement plan qualified under Section 403(b) of the Internal Revenue Code sponsored by UHP. However, such participation shall be subject to the eligibility, vesting, benefit accrual and other requirements of UHP's Section 403(b) tax-deferred annuity plan. UHP shall have the sole and exclusive discretionary right to interpret, administer, amend, limit, reduce benefits under or terminate any such plans in accordance with their provisions only pursuant to the UHP Bylaws and upon affirmative vote of the UHP Practitioner Compensation Committee.

2.3 Use of Facilities. Employee agrees not to use or permit anyone to use any part of the Facilities for any purpose other than the performance of services under this Agreement. Without limiting the generality of the foregoing statement, Employee agrees not to use the Facilities in any manner that may jeopardize any applicable tax-exempt status, insurance or risk management programs.

2.4 Exclusive Services. During the Term, Employee will not engage in clinical practice or any activity for which a license to engage in clinical practice is required, except in the performance of his or her duties under this Agreement and the Training Agreement.

Employee acknowledges that UHP's professional liability insurance coverage and/or deductible contribution will not cover Employee when and if Employee practices medicine or another clinical discipline or provides services outside the scope of this Agreement and the Training Agreement.

2.5 Relocation Expenses. [reserved].

2.6 Employee Handbook. Employee acknowledges receipt of the UHP Employee Handbook and agrees to the terms and conditions in the Handbook provided that in any conflict between this Agreement and the Handbook, this Agreement shall prevail.

3. UHP as Agent (Attorney in Fact).

3.1 Contracts. Employee authorizes UHP to negotiate and execute agreements with third parties for the professional services of Employee, including but not limited to managed care and participating provider agreements. Employee agrees that UHP has the authority to bind Employee to the terms and conditions of any such agreements. As such, Employee designates UHP as his/her agent and Attorney in Fact with respect to the aforementioned agreements and professional services.

3.2 Assignment of Fees and Income. All fees or other income attributable to the services of Employee under this Agreement shall belong to and shall be paid and delivered to UHP. Any exceptions to this rule must be requested by Employee from the Board of Directors of UHP prior to Employee's rendering of the services. Employee hereby assigns to UHP the right to bill for the clinical services performed by him or her as an employee of UHP and to receive payments from any patients or third party payer (including without limitation, the Medicare and Medicaid programs) with respect to those services. Employee agrees not to bill any patient or third party payer for those services and to remit to UHP all payment received on account of professional services performed as an employee of UHP.

4. Records and Work Product.

4.1. Reports. Employee agrees to cause to be promptly prepared and filed reports of all examinations, procedures, and other professional services performed under this Agreement, and Employee agrees to maintain an accurate and complete file within the Facilities or other locations approved by UHP of all such reports and supporting documents, in accordance with UHP's policies. The ownership and right to control of all reports, case records, case histories, x-ray and other films, and supporting documents prepared by Employee during the Term shall belong to and remain the property of UHP; provided that Employee may have reasonable access to such reports, records and supporting documents as authorized by UHP's policies and the laws of the State of Hawaii. UHP shall furnish at a reasonable copying charge, such records and information relating to patients who request in writing that their records be transmitted to Employee or to a third party.

4.2 Confidentiality. For purposes of this Agreement, "Confidential Information" includes all information that is protected by law and any and all information that is maintained and designated as confidential by UHP, including but not limited to the following:

- (a) Information regarding the identity, address, health plan or insurance status, medical history, diagnosis and treatment of UHP's patients (whether or not treated by Employee);
- (b) The records and information regarding quality assurance, peer review or utilization review evaluations;
- (c) Information about the financial operations, business plans, or strategy of UHP; and
- (d) Information agreed to be held as confidential with entities with whom UHP has contracted.

Employee shall not, during or after the Term, directly or indirectly use, permit others to use, or disclose any Confidential Information except as is necessary: (i) in the course of performing

duties as an employee of UHP; (ii) as may be required by law or by professional ethics; or (iii) as provided under Paragraph 4.1 with respect to patients who wish to continue to see Employee after the Term.

4.3 Records. Employee further agrees that after the Term, Employee will neither take nor retain any records (i.e., patient and/or business), papers, files, computer programs, hardware and software, other documents or copies thereof, or other Confidential Information belonging to UHP or the Facilities. Without limiting other remedies available to UHP for the breach of this covenant, Employee agrees that an injunction or other equitable relief shall be available without the necessity of UHP or the Facilities posting a bond.

4.4 Inventions. All modalities, plans, programs, and all patents, formulae, inventions, ideas of inventions, processes, copyrights, know-how, proprietary information, trademarks, trade names, strategic and operational planning information, and other medical and patient related developments (collectively, "Items"), or future improvements to such Items, developed or conceived by Employee in the course and scope of Employee's employment under this Agreement, or with the use of the facilities, property or personnel of UHP, that are not otherwise covered by the University of Hawaii policies regarding ownership of Items, are the sole property of UHP and shall be promptly disclosed to UHP. At any time during the Term and thereafter, Employee will execute an assignment of such Items to UHP and execute such other instruments as UHP shall request to protect UHP's interest in such items.

5. Insurance. [See Training Agreement].

6. Modifications and Termination.

6.1 Amendments. This Agreement shall be amended only in a writing signed by the parties to this Agreement.

6.2 Termination. Except in the event of Employee's death, in which case termination shall be automatic, termination of this Agreement shall be by written notice specifying the Section pursuant to which the Agreement is being terminated. This Agreement may be terminated upon the occurrence of any of the following events:

(a) Death or Disability. Death of Employee or permanent disability, ill health or other disability of Employee which prevents or makes inadvisable Employee's continued engagement in clinical practice as contemplated by this Agreement;

(b) Cause. Notwithstanding any provision of this Agreement to the contrary and the Employee Handbook of UHP, UHP may terminate this Agreement immediately upon written notice to Employee for any of the following events:

(i) Dismissal or separation from the MFM Fellowship Program;

(ii) Any termination, suspension exceeding 30 days, withdrawal under threat of disciplinary action, probation, material limitation, denial, revocation, material reduction or material restriction in Employee's staff or medical practice privileges at any of the Facilities;

(iii) Any termination, suspension exceeding 30 days, probation, material limitation, revocation or lapse of Employee's license to engage in clinical practice in the State of Hawaii or any other state, loss or material restriction in Employee's federal authorization to administer or prescribe controlled substances, or qualification under the Medicare or Medicaid programs;

(iv) If, in the reasonable judgment of UHP, Employee becomes uninsurable at standard rates under such insurance carriers or programs as UHP elects to utilize to meet the insurance requirements set forth in this Agreement and Employee has been offered and has declined to pay that portion of the cost of such insurance that exceeds standard rates;

(v) The commission by Employee of acts constituting any felony or any misdemeanor involving moral turpitude;

(vi) If, in the reasonable judgment of UHP, individual health or safety is in imminent and serious danger from Employee's actions or Employee does anything to materially harm the business reputation of UHP or any of the Facilities; or

(vii) For conduct by Employee which by the standard of clear and convincing evidence is illegal or unethical, or for repeated material breaches by Employee of Employee's duties and obligations under this Agreement provided Employee has been given written notice of such material breach and 30 days opportunity to cure; or

(c) Consent. Upon the written consent of the parties to this Agreement.

7. Non-Solicitation.

7.1 Non-solicitation of Patients. [reserved].

7.2 Non-solicitation of Employees. [reserved].

7.3 Restrictions on Referrals. During the Term, Employee agrees that he or she shall obtain the prior written consent of UHP prior to:

(a) Referring any patient of UHP to any healthcare service business in which Employee has any interest (equity or otherwise, except for equity interests in publicly traded corporations listed on a major stock exchange), and which does not have a duly authorized provider service agreement with UHP (including any ancillary service business);

(b) Using Employee's position with UHP in any way for the financial benefit of any such healthcare service business; or

(c) Making any referral to any entity the services of which fall within those healthcare services defined as "Designated Health Services," as that term is defined in 42 U.S.C. §1395nn (the "Stark Law"), or as defined under any rules or regulations pertaining to the Stark Law.

8. Miscellaneous.

8.1. Waiver. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of such provision or of any other or subsequent breach of such provision or any other provision of this Agreement.

8.2. Agreement to Perform Necessary Acts. Each party agrees to perform any further acts and to execute and deliver any further documents that may be reasonably necessary or otherwise reasonably required to carry out the provisions of this Agreement.

8.3. Dispute Resolution. Employee agrees to the UHP Dispute Resolution Plan, which is incorporated by reference, as a condition of employment under this Agreement.

8.4. Severability. If any part, term, or provision of this Agreement is held by any court to be illegal or in conflict with any laws of the State of Hawaii, the validity of the remaining provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions held to be invalid.

8.5. Governing Law. This Agreement shall be construed in accordance with, and any and all disputes arising under or out of this Agreement shall be governed by, the laws of the State of Hawaii without regard to principles of conflict of laws.

8.6. Policies. [See Training Agreement].

8.7. Authorization. Each signatory represents and warrants that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party on whose behalf the signature is proffered.

8.8. Gender and Number. Unless the context otherwise requires, whenever used in this Agreement the singular shall include the plural, the plural shall include the singular, and the masculine gender shall include neuter or feminine gender and vice versa.

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

8.10. Headings. The headings included in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit, alter, or extend the scope of this Agreement or the effect of any of its provisions.

8.11. Survival. Sections 3.2, 4, 7, and 8.3 shall survive termination or expiration of this Agreement.

[Remainder of page intentionally left blank.]

EXHIBIT A**Scope of Duties and Responsibilities**

The Employee shall provide 22 calls per year which will be one weeknight and one weekend call during the months when in the generalist call pool.

The option for additional general OB/GYN call coverage will be offered to Fellows in good standing and who meet the standard required number of calls per quarter (9). The additional calls must be concurrent with Department needs. This call shall be compensated to the Employee on a quarterly incentive basis at the appropriate General OB/GYN rate at the time of service as detailed in the table contained in Exhibit B below.

EXHIBIT B
Compensation

Compensation for call coverage defined above in Exhibit A shall be calculated in accordance with the below:

General Ob/Gyn Clinical Call Coverage Credits		
KMCWC Coverage Counts	Shift times	Rate
UH A Night 1	5:00p-2:00a	\$ 245
UH B Night 1	5:00p-2:00a	\$ 245
UH A Night 2	2:00a to 7:30a	\$ 245
UH B Night 2	2:00a to 7:30a	\$ 245
KMCWC Weekend Call A (Saturday, Sunday)	8:00a-8:00p	\$ 1,200
KMCWC Weekend Call B (Saturday, Sunday)	8:00a-8:00p	\$ 1,200
Holiday Coverage (JABSOM) A&B	8:00a-8:00p	\$ 1,200
<i>Rates Effective 1/1/2016</i>		

NOTE:

1. Weeknight call is one UH A and one UH B shift for a total of \$490.
2. A 24-hour weekend or holiday call is a single shift for a total of \$1200.
3. For MFM Fellows, night call per ABOG and ACGME rules cannot be more than 4 weeknights and one 24-hour weekend (or equivalent number of hours).

Good Standing Criteria: The fellow should be in good academic standing as night call could potentially interfere with learning. Thus fellows should be meeting expectations in these areas:

Criteria	Yes/No
Clinical Services	
Education	
Research	
Administration	
Professionalism	

EXHIBIT C

Disclosure of Exceptions to Representations and Warranties

Employee represents and warrants that the statements contained in Section 1.1 of the General Terms and Conditions of this Agreement are true.

Please check one.

I have NO Disclosures.

OR:

The above is true except for the following (please indicate related paragraph and give details):

Paragraph # _____:

Insert detailed description.

Initials ► _____
EMPLOYEE