



# Washington Township Health Care District

2000 Mowry Avenue, Fremont, California 94538-1716 | 510.797.1111

Kimberly Hartz, Chief Executive Officer

## Board of Directors

Jacob Eapen, MD  
William F. Nicholson, MD  
Bernard Stewart, DDS  
Michael J. Wallace  
Jeannie Yee

## BOARD OF DIRECTORS' MEETING Wednesday, October 26, 2022 – 6:00 P.M. Meeting Conducted by Zoom

<https://us06web.zoom.us/j/89291309475?pwd=T3RKY1FzZjhUaFFsQlBhaktlSXN6QT09>

Password: 977868

## AGENDA

### PRESENTED BY:

- |  |                                |
|--|--------------------------------|
| <b>I. CALL TO ORDER &amp; PLEDGE OF ALLEGIANCE</b>   | Jeannie Yee<br>Board President |
| <b>II. ROLL CALL</b>   | Dee Antonio<br>District Clerk  |
| <b>III. COMMUNICATIONS</b>   |                                |
| A. Oral<br><i>This opportunity is provided for persons in the audience to make a brief statement, not to exceed three (3) minutes on issues or concerns not covered by the agenda. "Request to Speak" cards should be filled out in advance and presented to the District Clerk. For the record, please state your name.</i> |                                |
| B. Written   |                                |
| <b>IV. CONSENT CALENDAR</b><br><i>Items listed under the Consent Calendar include reviewed reports and recommendations and are acted upon by one motion of the Board. Any Board Member or member of the public may remove an item for discussion before a motion is made.</i>  | Jeannie Yee<br>Board President |
| A. Consideration of FY23 Epic Server Hardware:<br>(2) IS Blade Chassis Upgrades  | <i>Motion Required</i>         |
| B. Consideration of FY23 Finance Workstation Upgrades  |                                |
| <b>V. ACTION</b>   |                                |
| A. Consideration of Resolution No. 1246 to Authorize the Chief Executive Officer to Enter into Several Agreements with UCSF for a Joint Cancer Center  | <i>Motion Required</i>         |

**VI. ANNOUNCEMENTS**

**VII. CLOSED SESSION**

Kimberly Hartz  
Chief Executive Officer

- A. Report of Medical Staff and Quality Assurance Committee, Health & Safety Code section 32155
- Medical Staff Committee Report
- B. Conference involving Trade Secrets pursuant to Health & Safety Code section 32106
- Strategic Planning Discussion
  - Strategic Contracting Discussion
- C. Conference with Legal Counsel – Anticipated Litigation pursuant to Government Code section 54956.9(d)(2)
- Claim: Shaba Shamson
- D. Conference involving Personnel Matters: Chief Executive Officer

**VIII. OPEN SESSION**

Report on Permissible Actions Taken During Closed Session

Jeannie Yee  
Board President

**IX. ADJOURNMENT**

Jeannie Yee  
Board President

*In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the District Clerk at (510) 818-6500. Notification two working days prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.*



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# Memorandum

**DATE:** October 18, 2022

**TO:** Kimberly Hartz, Chief Executive Officer

**FROM:** John Lee, Chief Information Officer

**SUBJECT:** FY23 Epic Server Hardware - IS Blade Chassis Upgrades

Information Systems is working to upgrade infrastructure to meet new requirements. The current two blade chassis have been in place since 2011 and they are no longer supported by the vendor.

This upgrade will replace the current two chassis with two new state of the art chassis and replacement blade servers. As we refresh the blade servers over the next few years, we will install all new blade servers in the new chassis. The blade servers host all of our Epic virtual servers that support our Epic electronic medical record system and security infrastructure. The blade servers and chassis are critical components of our information technology infrastructure.

The project to procure, setup and roll out the new chassis will take approximately six months to fully complete and will be performed using internal labor and vendor resources. The cost to install the system includes hardware, installation services, maintenance, licensing and professional services.

It is requested that the Board of Directors authorize the Chief Executive Officer to enter into the necessary contracts and proceed with the purchase of hardware, software and implementation services for a total amount not to exceed **\$370,000**. This is an approved project in the fiscal year 2023 Capital budget.



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# Memorandum

**DATE:** October 18, 2022  
**TO:** Kimberly Hartz, Chief Executive Officer  
**FROM:** John Lee, Chief Information Officer  
**SUBJECT:** FY23 Finance Workstation Upgrades

Information Systems performed an evaluation of the workstations in the Finance Division and determined that they are in need of an upgrade. In general, Finance team members require a higher amount of processing power in order to ensure applications that they use are responsive and highly functional.

These workstation upgrades will replace equipment that no longer meets the requirements of the department. This request will allow for hardware and maintenance of the hardware to meet the needs of the department. Setup and installation will be performed with Information Systems Department internal labor.

It is requested that the Board of Directors authorize the Chief Executive Officer to enter into the necessary contracts and proceed with the purchase of hardware and warranty services for a total amount not to exceed **\$49,659.12**. This is an approved expense in the fiscal year 2023 Capital budget.

**RESOLUTION NO. 1246**

**RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON  
TOWNSHIP HEALTH CARE DISTRICT TO AUTHORIZE THE CHIEF  
EXECUTIVE OFFICER TO ENTER INTO SEVERAL AGREEMENTS WITH  
UCSF FOR A JOINT CANCER CENTER**

WHEREAS, Washington Township Health Care District is a local health care district (“District”) which owns and operates a general acute care hospital and provides essential healthcare services to the population residing within the District’s political boundaries, including the cities of Fremont, Newark, Union City, parts of South Hayward and Sunol;

WHEREAS, the District entered into a Collaboration Agreement with the University of California, San Francisco (“UCSF”) under which the District and UCSF agreed to collaborate together on the delivery of high-quality care in the District and which contemplated that the District and UCSF would enter into one or more joint ventures for the delivery of health care services in the District;

WHEREAS, the District and UCSF have discussed forming a joint venture (the “Oncology Joint Venture”) that would involve the creation of a joint cancer center that will provide radiation oncology, medical oncology/hematology, and infusion services at Washington Hospital’s main campus in Fremont, California;

WHEREAS, (i) on February 23, 2022, the Board of Directors Approved Resolution No. 1236, which authorized the Chief Executive Officer to enter into a Letter of Intent and Contribution Agreement in connection with the proposed Oncology Joint venture, and (ii) on March 21, 2022, the Board of Directors approved Resolution No. 1238, which authorized the Chief Executive Officer to enter into an Operating Agreement in connection with the proposed Oncology Joint Venture, and which agreements the Chief Executive Officer subsequently executed on behalf of the District;

WHEREAS, the District and UCSF have negotiated the terms of the additional agreements listed on Exhibit A necessary to implement the proposed Oncology Joint Venture; and

WHEREAS, the Board finds that it is in the best interest of the District to proceed with the proposed Oncology Joint Venture.

NOW, THEREFORE, be it resolved that:

1. The Chief Executive Officer is authorized to execute the agreements listed on Exhibit A (the “Oncology Joint Venture Agreements”) on behalf of the District.

2. The Chief Executive Officer is further authorized to negotiate and execute any and all additional agreements or documents that she determines are necessary to implement the Oncology Joint Venture provided that the terms of such additional agreements are consistent with the terms of the Oncology Joint Venture negotiated with UCSF.

3. The Chief Executive Officer is authorized to execute such agreements on a date to be selected by her based on the anticipated date of implementing the Oncology Joint Venture.

4. The Board further authorizes the Chief Executive Officer to agree to additional modifications to the Oncology Joint Venture Agreements prior to execution, provided that the Chief Executive Officer determines that the modifications are in the best interest of the District and consistent with the spirit of this Resolution.

5. The Chief Executive Officer is authorized to take any and all further actions, which in the determination of the Chief Executive Officer, are necessary and proper to consummate the transactions described above.

Passed and adopted by the Board of Directors of the Washington Township Health Care District on this 26<sup>th</sup> day of October 2022 by the following vote:

AYES:

NOES:

ABSENT:

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Jeannie Yee  
President, Board of Directors  
Washington Township Health Care District

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William F. Nicholson, MD  
Secretary, Board of Directors  
Washington Township Health Care District

**EXHIBIT A**  
**LIST OF AGREEMENTS**

1. Management Services Agreement
2. Management Services Subcontract Agreement
3. Professional Services and Medical Director Agreement
4. QCARE Agreement
5. Trademark License and Co-Branding Agreement

**EXHIBIT B  
AGREEMENTS**

See attached.



## MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (this “*Agreement*”), dated [REDACTED], 2022] (the “*Effective Date*”), is made and entered into by and between **Washington Township Health Care District**, dba Washington Hospital Healthcare System a political subdivision of the State of California organized pursuant to the Local Health Care District Law (Div. 23 of the California Health and Safety Code) (“*WHHS*”), and **WHHS & UCSF Health Cancer Services Joint Venture, LLC**, a California limited liability company (“*Company*”). WHHS and Company are referred to collectively herein as the “*Parties*” and individually as a “*Party*”.

### RECITALS

**A.** WHHS is a political subdivision of the State of California organized pursuant to the Local Health Care District Law (Div. 23 of the California Health and Safety Code) that owns and operates a general acute care hospital located in Fremont, California and various hospital-based clinics including a radiation oncology center located at 39101 Civic Center Drive, Fremont, CA 94538 (the “*WHHS Cancer Center*”).

**B.** As part of WHHS’s business operations, WHHS arranges for the provision of services at the WHHS Cancer Center (“*Program Services*”).

**C.** Company is a California limited liability company. The members of Company are WHHS and The Regents of the University of California, on behalf of University of California San Francisco Health (“*UCSF*”).

**D.** Company desires to provide or arrange for the provision of various management and administrative services necessary for WHHS’s operation of the WHHS Cancer Center, and WHHS desires to engage Company to perform such management and administrative services as further described herein.

**E.** Company and WHHS are also parties to that certain Management Services Subcontract Agreement dated of even date herewith (the “*Management Subcontract*”).

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, including without limitation the execution of and performance under the Berkeley Outpatient Cancer Agreements, the Parties hereby agree as follows:

### AGREEMENT

1. **Defined Terms.** As used in this Agreement, the following defined terms shall have the meanings indicated below:

(a) “*Affiliate*” means, as to any Person, a Person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such Person. For purposes of this definition, the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through

ownership of voting securities, the ownership of membership interests, election or appointment of directors or by contract or otherwise.

(b) “Governmental Authority” means any foreign or domestic federal, state (including the State of California) or local government; any political subdivision thereof; any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, commission or entity; any entity that contracts with a governmental entity to administer or assist in the administration of a government program (including any Medicare or Medicaid administrative contractors and the Medicare Advantage Program) or any arbitrator with authority to bind a party at Law.

(c) “Law” means any foreign or domestic federal, state or local law, statute, code, ordinance, regulation, rule, consent agreement, constitution or treaty of any Governmental Authority, including common law.

(d) “Person” means any natural person, sole proprietorship, partnership, corporation, limited liability company, joint venture, firm, trust, unincorporated organization, joint stock company or government or agency or political subdivision thereof or other legal entity or organization.

2. Engagement. WHHS hereby retains Company, and Company hereby agrees to be retained by WHHS, as the exclusive provider to WHHS of the Management Services (as such term is hereinafter defined) pertaining to the Program Services upon the terms and conditions hereinafter set forth. During the term hereof, Company shall provide the Management Services to WHHS in a commercially reasonable manner and degree as Company reasonably determines may be necessary and appropriate for the proper and efficient provision of the Program Services. WHHS will not act in any manner which would prevent Company from providing or causing to be provided the Management Services in a business-like manner and in compliance with all applicable standards and Laws.

3. Management Services. Company shall provide or arrange for the provision of the following management and administrative services to WHHS (collectively, the “Management Services”), including through the Management Subcontract, as applicable under the terms thereof:

(a) Program Facilities. Company shall provide the real property comprising the WHHS Cancer Center for WHHS’s use and provision of the Program Services.

(b) Equipment, Fixtures, Furniture and Improvements. Company shall provide certain medical equipment, including but not limited to one (1) linear accelerator, IT infrastructure, one (1) CT scanner, inventory office and other non-medical equipment, fixtures, furniture and leasehold improvements to be reasonably necessary for the provision of the Program Services (the “Program Equipment”). Company shall be responsible for all maintenance, repair, and upkeep of the Program Equipment.

(c) General Management and Administration.

(i) Company shall supervise and coordinate the overall business activities of the WHHS Cancer Center that are reasonably necessary for the competent and efficient management of the Program Services.

(ii) Company shall supervise and coordinate the day-to-day business activities of the WHHS Cancer Center that are reasonably necessary for the competent and efficient management of the Program Services.

(d) Records Maintenance. The maintenance, custody and supervision of business records, papers, documents, ledgers, journals and reports relating to the Program Services, including document retention and storage. All such records, papers, documents, ledgers, journals and reports shall be and remain the property of WHHS.

(e) Accounting. The administration of accounting procedures, controls, forms and systems pertaining to the Program Services.

(f) Budgets. Company shall assist WHHS in preparing for WHHS an annual operating budget and capital budget pertaining to the Program Services.

(g) Financial Reporting. The preparation of monthly, quarterly and annual financial reports, as appropriate, reflecting the business operations of the Program Services.

(h) Financial Planning. The financial planning for the business operations of the Program Services.

(i) Accounts Payable Processing. The processing and payment of accounts payable relating to the Program Services.

(j) Accounts Receivable Processing. The processing and collection of accounts receivable pertaining to the Program Services, including the preparation, distribution and recordation of all bills and statements for the Program Services, and including the billing, processing and completion of any reports and forms that may be required by insurance companies, governmental agencies or other third party payors.

(k) Employee Records and Payroll Processing. The provision and processing of all employee record keeping, payroll accounting, including social security and other payroll tax reporting and insurance for all employees of WHHS, and for all other persons rendering services on behalf of WHHS at the Program Facilities.

(l) Maintenance and Security Service. The proper maintenance and cleanliness of (including refuse disposal), and the provision of adequate security services for, the Program Facilities, including environmental services.

(m) Utilities. Arranging for, and paying all costs incidental to, all utilities necessary for the effective operation of the Program Facilities, including, without limitation, gas, electricity, water, telephone, trash collection and janitorial services.

(n) Patient Records. The provision of all services related to the maintenance of patient medical records pertaining to the Program Services, including record retrieval services, located at Program Facilities. All patient medical records located at the Program Facilities shall be WHHS's property, and Company shall maintain the confidentiality of all such patient medical records in accordance with applicable laws.

(o) Billing and Collection.

(i) Billing Agent. Company shall be responsible, on behalf of WHHS and on the billhead of WHHS as its agent, for billing and collecting the charges made with respect to all Program Services rendered by or on behalf of WHHS during the term of this Agreement.

(ii) Documentation and Collection. WHHS agrees to keep and provide to Company all documents, opinions, diagnoses, recommendations, and other evidence and records necessary for the purpose of supporting fees charged for the Program Services from time to time. Notwithstanding any other term herein, WHHS agrees that WHHS shall be and remain solely responsible and liable for the coding and completion of other applicable records and documentation, as well as the accuracy and veracity thereof, associated with any claims submitted or fees charged in conjunction with the Program Services, all of which shall be entered, completed and developed in accordance and compliance with all applicable laws, regulations, guidelines, policies and procedures. Company shall maintain complete and accurate records, consistent with the general practices of Company from time to time, of all fees, charges and billings of all services contemplated hereby. It is expressly understood that the extent to which Company will endeavor to collect such fees, the methods of collecting, the settling of disputes with respect to charges and the writing off of fees that may be or appear to be uncollectible shall at all times be at the reasonable discretion of Company, and Company does not guarantee the extent to which any fees billed will be collected. WHHS or WHHS's duly authorized agent shall have the right at all reasonable times and upon the giving of reasonable notice to examine, inspect and copy the records of Company pertaining to such fees, charges, billings, costs and expenses.

(p) Staffing of Program Facilities. Company shall provide such non-physician personnel as may be reasonably necessary to enable WHHS to carry out and perform the Program Services at the Program Facilities.

(q) Supplies and Inventory. Company, in accordance with WHHS's annual budget, shall procure, as necessary, the inventory and supplies needed by WHHS for the provision of the Program Services. Company shall consult with WHHS with respect to the specifications of such inventory and supplies.

(r) Risk Management and Insurance.

(i) Risk Management. Company shall assist WHHS in coordinating the risk management program for the Program Services.

(ii) Insurance. Company shall make recommendations to WHHS regarding the adequacy of WHHS's insurance coverages, including, without limitation, professional liability and malpractice insurance coverage, errors and omissions coverage, and coverage for utilization management decisions.

(s) Marketing. Company shall assist WHHS in developing a marketing plan for the Program Services.

(t) General IT Service and Support. Company shall arrange for the provision of general information technology service and support, such as help desk support, for the computer and information technology systems contained in the Program Equipment.

(u) Compliance Services. Company will arrange for the provision of compliance services, including services related to licensing and accreditation necessary for the Program Services.

(v) Medical Direction. Company shall arrange for the provision of medical administrative services as necessary to provide the Program Services.

(w) QCARE Services. Company shall arrange for the provision of quality, communications, access, research and education services from UCSF in connection with the Program Services.

(x) Nutrition Counseling. Company shall arrange for the provision of nutrition counseling services through licensed personnel on an as needed for WHHS Cancer Center Patients.

(y) Physics and Dosimetry Services. Company shall arrange for the provision of physics, dosimetry, and physics administrative services as necessary to provide the Program Services.

(z) Engineering. Company shall arrange for the provision of engineering services as necessary to provide Program Services.

(aa) Social Work. Company shall arrange for the provision of the services of a social worker as necessary to provide Program Services.

(bb) Laundry Services. Company shall arrange for the provision of laundry services as necessary to provide Program Services.

(cc) Additional Services. Company shall provide such additional management and administrative services pertaining to the Program Services as mutually agreed upon by Company and WHHS from time to time.

(dd) Company's Right to Subcontract. Company is hereby expressly authorized to subcontract with any other persons or entities for all or any portion of the services Company is required to provide or furnish to WHHS pursuant to this Agreement, including but not limited to, through the Management Subcontract; *provided, however*, that, except as otherwise provided for under the Management Subcontract, Company shall remain responsible for the provision of all services performed by such subcontracted persons or entities. Company may disclose any term of this Agreement to any subcontractor of Company who performs services for Company on behalf of WHHS. WHHS may further subcontract for any services WHHS has agreed to provide pursuant to the Management Subcontract.

4. Independent Contractor; Relationship of the Parties.

(a) In the performance of this Agreement, it is mutually understood and agreed by the Parties that Company is at all times acting and performing as an independent contractor with, and not as an employee or joint venturer of, WHHS. Company shall not have any claim under this Agreement or otherwise against WHHS for workers' compensation, unemployment compensation, sick leave, vacation pay, pension or retirement benefits, Social Security benefits or any other employee benefits, all of which shall be the sole responsibility of Company.

(b) Company shall have no control or direction over the professional judgment of WHHS or its employed or contracted health care providers and independent contractors. It is understood between the Parties that Company does not and shall not practice medicine or employ or supervise any health care provider in providing medical services.

(c) Company is not a trustee, sponsor or fiduciary with respect to directing the operation of WHHS or WHHS's assets. Company may act as an agent of WHHS authorized to perform specific actions or conduct specified transactions only as expressly provided for in this Agreement, and subject to limitations on agency set forth in Section 4(a).

(d) It is understood between the Parties that at all times during the term of this Agreement, WHHS is and will remain the responsible party under all licenses and permits relating to the operations and other activities engaged in by WHHS. The Parties agree that Company shall not, by entering into this Agreement and performing the Management Services in accordance with this Agreement, become liable for any of the existing or future obligations, liabilities or debts of WHHS.

(e) WHHS shall have, and at all times during the term hereof shall exercise, the ultimate authority, control and direction of the assets, affairs and business of WHHS, including, without limitation, all financial, operational, medical, professional and ethical matters. Company shall have, and at all times during the term hereof shall exercise, the ultimate authority, control and direction of the assets, affairs and business of Company.

5. Management Fee.

(a) Compensation.

(i) As compensation for the Management Services described herein, within thirty (30) days after the end of each fiscal quarter ("Fiscal Quarter"), WHHS shall pay Company a management services fee (the "Management Services Fee") in an amount equal to all revenues received by WHHS during the prior Fiscal Quarter that are attributable to the Program Services (the "Program Revenue"). The WHHS fiscal year shall be defined as the period of July 1<sup>st</sup> through June 30<sup>th</sup> of the following calendar year. Notwithstanding the foregoing, the final

Management Services Fee of each fiscal year shall be made within thirty (30) days after the Company has approved the Reconciliation Statement (defined below) in writing.

(ii) Upon request from time to time, either Party shall have the right to audit the Program Revenue (including records in the possession of the other Party) to ensure that it appropriately reflects revenue attributable to the Program Services for each Fiscal Year.

(b) Program Costs. Company shall be responsible for all the direct and indirect costs incurred in providing the Management Services during each Fiscal Quarter that are attributable to the Program Services set forth on **Exhibit A** (the "Program Costs") and reflected within a budget or budget variance approved by Company and WHHS. Upon request from time to time, either Party shall have the right to audit the Program Costs (including records in the possession of the other Party) to ensure that they appropriately reflect costs attributable to the Program Services for each Fiscal Year.

(c) Calculation of Management Fee and Program Costs. The Parties agree that a more detailed methodology for calculating Program Revenue and Program Costs is set forth on **Exhibit A**, attached hereto and incorporated herein.

(d) Budget. WHHS will assist Company in the preparation of the initial annual budget for the Program that includes an estimate of Program Revenue and the Program Costs for each Fiscal Year and submit the same to Company for review and approval. WHHS and Company shall cooperate in good faith to reach a mutually agreeable budget no later than two weeks prior to the commencement of the new Fiscal Year. In the event the parties are unable to reach an agreement by this deadline, then the last approved budget will remain in effect.

(e) Annual Reconciliation. Within sixty (60) days of the close of each Fiscal Year, Company and WHHS shall prepare a written statement of actual Program Costs and a statement showing the variance of Program Revenue and Program Costs against the approved budget (the "Reconciliation Statement"). The Management Fee will be paid based on the actual Program Revenue and Program Costs.

6. Term. Unless earlier terminated as provided herein, the term of this Agreement ("Term") shall commence on the Effective Date of this Agreement and expire on the termination or expiration of the Company Operating Agreement, unless earlier terminated as set form in Section 7.

7. Termination; Events of Default.

(a) Termination by Mutual Agreement. This Agreement may be terminated at any time by the mutual agreement of Company and WHHS.

(b) Termination Upon Dissolution of Company. This Agreement shall automatically terminate upon the dissolution of Company or if either UCSF or WHHS is no longer a member of Company. Additionally, this Agreement shall automatically terminate if WHHS ceases to provide the Program Services.

(c) Termination of Management Subcontract. This Agreement shall automatically terminate upon the termination of the Management Subcontract.

(d) Termination Upon Event of Default. If any Event of Default (as defined below) occurs and is continuing, the non-defaulting Party may terminate this Agreement as set forth below. Each of the following is an event of default ("Event of Default") hereunder:

(i) Breach of Material Obligation. If a Party materially fails to perform any material obligation required hereunder as reasonably determined by the non-defaulting Party, and such failure (1) is not due to, or the result of, any act or omission of the non-defaulting Party under or in conjunction with this Agreement, and (2) shall continue for sixty (60) days after the giving of written notice by the non-defaulting Party to the Party allegedly in default specifying the nature and extent of such failure; *provided, however*, that if a non-monetary default cannot reasonably be cured by the defaulting Party within such sixty (60) day period, then, a Default shall not be deemed to have occurred if such defaulting Party commences diligently and in good faith to cure said default within such sixty (60) day period and thereafter cures said default during an additional period of time not to exceed sixty (60) days following the initial sixty (60) day period.

(ii) Insolvency. If either WHHS or Company applies for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency Law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction or an application of a creditor, adjudicating such Party to be bankrupt or insolvent, or approving a petition seeking reorganization of such Party or appointing a receiver, trustee or liquidator of such Party or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) consecutive days. Termination shall be effective automatically and immediately upon the giving of written notice of termination to the defaulting Party by the nondefaulting Party.

(e) Termination Upon Change in Laws. In the event that any Law currently existing or hereinafter enacted, or any final and nonappealable construction or interpretation of such Law by a court of competent jurisdiction or other Governmental Authority or enforcement of such Laws hereinafter occurs, makes substantial performance hereof illegal, then in the event either Party alleges or causes others to allege that substantial performance hereof is illegal, the Parties agree to use their reasonable commercial efforts to modify this Agreement in order to eliminate any such illegality in accordance with the terms hereof. If the Parties determine that this Agreement cannot be so modified, either Party may terminate this Agreement upon the effective date on which the new Law or construction, interpretation or enforcement of an existing Law prohibits the substantial performance pursuant to this Agreement.

(f) Effect of Termination. Upon the expiration or termination of this Agreement, all rights and obligations of the Parties under this Agreement shall terminate, except for those obligations that survive termination of this Agreement as expressly set forth herein. Without limiting the generality of the foregoing, the terms of Section 5 shall survive the expiration or termination of this Agreement for twelve (12) months with respect to the calculation, allocation,



payment obligations and audit rights of the Parties associated with any Program Revenue and Program Costs accruing through the effective date of such expiration or termination.

8. Business, Financial and Patient Medical Records.

(a) Ownership and Inspection of Records.

(i) Business, Financial and Personnel Records. At all times during and after the term hereof and any extensions and renewals thereof, business, financial, corporate, administrative and personnel records and information relating exclusively to the business and activities of WHHS, as distinguished from the business and activity of Company, shall be and remain the sole property of WHHS.

(ii) Patient Medical Records. At all times during and after the term hereof and any extensions or renewals thereof, all patient medical records shall be and remain the sole property of WHHS. The patient medical records shall be maintained and kept at WHHS's premises or sites owned or operated by WHHS and upon termination hereof, all such patient medical records shall be and remain in the possession of WHHS.

(iii) Applicable Law. No Party shall be required to disclose any information under this Section 8 that legal counsel for such Party has reasonably determined cannot be lawfully disclosed under any applicable law.

(b) HIPAA Privacy and Security Standards Compliance. In accordance with Health Insurance Portability and Accountability Act and the final privacy regulations promulgated thereunder, as amended from time to time (the "Privacy Standards"), Company and WHHS are concurrently executing a mutually agreeable Business Associate Agreement attached hereto as **Exhibit B**, which is incorporated herein, governing their respective obligations to one another under the Privacy Standards with respect to the performance under this Agreement.

9. Confidentiality. Each Party agrees to keep in strict confidence during and after the term of this Agreement any and all information relating, directly or indirectly, to the other Party's confidential information (the "Confidential Information") and will only disclose information and documents which the other Party, or its affiliates, or its officers, directors, employees and agents, may furnish (orally or in writing) in connection with this Agreement to its employees and other representatives who have a need-to-know for the purposes of this Agreement or to such Party's lenders or their counsel if required for review by such Party's lenders in connection with financing being sought by such Party. Each Party agrees that during and after the term of this Agreement, neither it nor any of its Affiliates shall, without the prior written consent of the other Party, disclose any such confidential information to any other Person unless such disclosure is required by Law. To the extent that a Party believes that disclosure is required as a matter of law, such Party shall advise the other in writing of the disclosure and give such other Party a reasonable opportunity to secure a court order narrowing or eliminating the production obligation and/or subjecting any disclosed information to a protective order. Each Party may use the other Party's confidential information solely for the purposes of performing its obligations under this Agreement. Each of Company and WHHS is and shall be the sole owner and holder of all right, title and interest to its respective property. Nothing in this Agreement shall preclude any Party from taking such action

as it deems necessary to fulfill their legal obligations under the California Public Records Act and similar public disclosure statutes or if such Party becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, investigative demand or similar process) to disclose any of the Confidential Information; *provided, however*, that prior to the disclosure of the Confidential Information, such Party shall, at its own expense, assert all reasonable defenses to the disclosure of the Confidential Information and apply any appropriate exceptions to the disclosure of the Confidential Information. Additionally, the Party seeking to disclose the Confidential Information in such case (the “*Receiving Party*”) shall provide the other Party (the “*Disclosing Party*”) with written notice of the proposed disclosure along with a copy of the Confidential Information to be disclosed. Such notice shall be provided within a reasonable amount of time prior to the disclosure so that the Disclosing Party may review the Confidential Information at issue and intervene by seeking a protective order or other appropriate remedy to limit or prevent the disclosure of the Confidential Information by the Receiving Party. If, in the absence of a protective order or other remedy, the Receiving Party is legally compelled to disclose Confidential Information or else stand liable for contempt or suffer other sanctions, censure or penalty, the Receiving Party may disclose the portion of the Confidential Information that is legally required to be furnished.

10. Insurance.

(a) Each of Company and WHHS shall procure and maintain during the term hereof all appropriate comprehensive general liability insurance covering the activities relating to such Party’s activities in an amount reasonably expected to conduct its business. In furtherance of the foregoing, at all times during the term of this Agreement, Company, at its sole cost and expense, shall procure and maintain in full force and effect (a) comprehensive general liability insurance with a broad form general liability endorsement or equivalent with minimum policy limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, (b) workers’ compensation insurance with the minimum policy limits required by applicable Law for all personnel providing services on behalf of Company pursuant to this Agreement and (c) managed care errors and omissions insurance and directors and officers liability insurance resulting, in whole or in part, from the acts or omissions of Company and its employees, agents and representatives under this Agreement with limits of liability on such policy not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. WHHS shall procure and maintain during the term hereof, professional liability and malpractice insurance coverage, errors and omissions coverage, and coverage for utilization management decisions in an amount reasonably expected to provide the Program Services.

(b) Company shall be responsible for the cost of any insurance obtained by WHHS for the insurance coverage described in subsection (a). In the event WHHS does not carry a separate policy or coverage for the operation of the WHHS Cancer Center and instead obtains such coverage as part of a policy covering operations at the WHHS Cancer Center and at other WHHS facilities, WHHS shall be entitled to reasonably allocate a portion of the premiums or fees for its coverage to the WHHS Cancer Center and charge the Company such amounts.

(c) Company shall reimburse WHHS for any deductibles paid by WHHS in connection with the coverages described in this Section 10.



Fremont, California 94538  
Attention: Chief Executive Officer

With a copy to: Paul Kozachenko, Esq.  
Gonsalves & Kozachenko  
2201 Walnut Avenue, Suite 220  
Fremont, California 94538

If to Company: Tina Nunez, President  
WHHS & UCSF Health Cancer Services Joint Venture, LLC  
2000 Mowry Avenue  
Fremont, CA 94538

or to such other address or number, and to the attention of such other Person, as any Party may designate at any time in writing in conformity with this Section 14.

15. Assignment; Delegation. Neither Party may assign this Agreement without the prior written consent of the other Party. In the event that this Agreement violates any state or federal law applicable to tax-exempt financing now maintained by any Party or sought by any Party in the future, the Parties shall attempt to renegotiate the terms of this Agreement in good faith in order to conform to said laws. Any such renegotiation shall, unless the Parties agree otherwise, be limited to those provisions that must be changed in order to obtain or maintain such financing. Unless renegotiation is accomplished by the good faith efforts of the Parties within sixty (60) days after written notice by any Party to the other Party of the need for such renegotiation, any Party may immediately terminate this Agreement at the expiration of such sixty (60) day period.

16. Governing Law. All matters affecting the interpretation of this Agreement and the rights of the Parties shall be governed by the Laws of the State of California, without reference to principles of conflicts of law.

17. Modification and Amendment. Neither this Agreement nor any provision hereof may be amended or modified (or deemed amended or modified), except by an agreement in writing signed by the Parties.

18. Waiver of Breach, Right or Remedy. The waiver by any Party of any breach or violation by another Party of any provision in this Agreement or of any right or remedy permitted the waiving Party in this Agreement (i) shall not waive or be construed to waive any subsequent breach or violation of the same provision, (ii) shall not waive or be construed to waive a breach or violation of any other provision and (iii) shall be in writing and may not be presumed or inferred from any Party's conduct. All remedies under this Agreement or by Law or otherwise afforded will be cumulative and not alternative.

19. Independent Covenants. Except as otherwise provided herein, each of the respective rights and obligations of the Parties shall be deemed independent and may be enforced independently irrespective of any of the other rights and obligations set forth herein.

20. Entire Agreement; Interpretation. This Agreement supersedes all prior oral discussions and written agreements between the Parties with respect to the subject matter of this Agreement (including any term sheet or similar agreement or document relating to the transactions contemplated hereby). Except for the documents and agreements executed pursuant hereto and the other documents and agreements contemplated hereby, this Agreement, including the exhibits and schedules hereto, contains the sole and entire agreement between the Parties with respect to the subject matter hereof. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this Agreement shall be interpreted for or against any Person on the basis that such Person was the draftsman of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

21. No Third-Party Beneficiary. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person or entity other than the Parties and their respective successors in interest and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any Persons to any Party nor shall any provision give any Persons any right of subrogation or action against any Party.

22. Force Majeure. Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, terrorism, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions beyond the reasonable control of either Party; *provided, however,* that the Parties shall make good faith commercially reasonable efforts to perform under this Agreement in the event of any such circumstances. Notwithstanding the foregoing, WHHS shall not be obligated to pay compensation to Company if a force majeure event prevents Company from performing its obligations under this Agreement.

23. Counterparts. This Agreement may be executed in counterparts, each and all of which shall be deemed an original and both of which together shall constitute but one and the same instrument. This Agreement, and any executed counterpart of a signature page to this Agreement, may be transmitted by facsimile, electronic transmission or PDF copy, and delivery of an executed counterpart of a signature page to this Agreement by facsimile, electronic transmission or PDF copy shall be effective as delivery of a manually executed counterpart of this Agreement.

24. Dispute Resolution.

(a) General. In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or to the acts or omissions of the Parties with respect to this Agreement (each, a “*Dispute*”), the Parties shall resolve the Dispute in accordance with the dispute resolution process set forth in the Operating Agreement of Company in effect as of the Effective Date, as such may be amended from time to time.

(b) Injunctive or Similar Relief. Notwithstanding anything to the contrary contained in this Section 24, the Parties reserve the right to seek specific performance or any other

form of preliminary, temporary or permanent injunctive or equitable relief or remedy in any state or federal court in Alameda County for purposes of enforcing this Agreement. Each Party hereby consents to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within Alameda County, and consents to the service of process in any such action or proceedings, in addition to any other manner permitted by applicable Laws, by compliance with the notice provisions of this Agreement.

25. No Prohibited Inducements or Remuneration on Account of Referrals or Other Business. The Parties each shall assure that no prohibited remuneration is promised or made on account of the volume or value of referrals made by any Party to the arrangements that constitute the Program Services, or the value or volume of business otherwise generated under the Program Services, and that referrals by participating physicians are made in accordance with established clinical standards that do not reward those physicians based on the value or volume of referrals made or business generated.

26. Non-Discrimination. The Parties agree to treat in a nondiscriminatory manner any and all patients receiving medical benefits or assistance under any federal health care program.

27. Regulations and Standards. The Parties shall comply with all applicable federal and state regulations and applicable The Joint Commission standards in connection with the arrangement contemplated by this Agreement.

28. Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

29. Change in Law. In the event that a change in state or federal law, statute, regulation, or enforcement of some materially affects this Agreement in a manner which is adverse to any Party to this Agreement, the Parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the Parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, the Party who is adversely affected may terminate this Agreement at the end of such thirty (30) day period.

30. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed through their duly authorized officers as of the Effective Date.

**WASHINGTON TOWNSHIP HEALTH CARE  
DISTRICT, DBA WASHINGTON HOSPITAL  
HEALTHCARE SYSTEM**

By: \_\_\_\_\_  
Name: Kimberly Hartz  
Title: Chief Executive Officer

**WHHS & UCSF Health Cancer Services Joint  
Venture, LLC**

By: \_\_\_\_\_  
Name: Tina Nunez  
Title: President

## EXHIBIT A

### Calculation of Program Revenue and Program Costs

#### Program Revenue

The term “*Program Revenue*” means all facility and technical revenue received by WHHS or its Affiliates for Program Services furnished at the WHHS Cancer Center.

#### Program Costs

Program Costs will be calculated according to the following formula:

$$\text{Program Costs} = \text{Direct Costs} + \text{Indirect Costs} + \text{Billing Fee}$$

#### **Direct Costs**

Direct Costs are calculated at cost. The costs for these items will be estimated on an annualized basis as part of the budget. Direct Costs are the following items:

Program Facilities	At cost	Section 3(a)
Program Equipment	At cost	Section 3(b)
Utilities*	At cost	Section 3(m)
Staffing of Program Facilities	At cost	Section 3(p)
Supplies and Inventory	At cost	Section 3(q)
Medical Direction	At cost	Section 3(v)
Insurance	At cost	Section 10(a)
Nutrition Counseling	At cost	Section 3(x)
Physics and Dosimetry Services	At cost	Section 3(y)
Engineering	At cost	Section 3(z)
Social Work	At cost	Section 3(aa)
Laundry Services	At cost	Section 3(bb)
Document Shredding and File Storage**	At cost	Section 3(d)
Security***	At cost	Section 3(l)
Environmental Services****	At cost	Section 3(l)

\* Company will cause any utilities that can be separately metered or billed to the WHHS Cancer Center to be so separately metered or billed.

\*\* The actual document shredding and storage costs will be passed through at cost. The labor associated with these items is included in the indirect costs.



\*\*\* Any contracted security services will be passed through at cost. The labor associated with supervising contracted security services is included in Indirect Costs.

\*\*\* The cost for environmental services staff to clean the Program Facilities and Program Equipment will be paid at cost.

### **Indirect Costs**

The Indirect Costs are fixed at \$279,263.00 per year for the first Fiscal Year of this Agreement, which fee will be prorated in the event the Agreement commences in the middle of a Fiscal Year. The first Fiscal Year ends of June 20, 2023.

The Indirect Costs are subject to modification (including consideration of a percentage-based methodology) after June 30, 2024, and every June 30<sup>th</sup> thereafter. No later than May 31<sup>st</sup> each year starting with May 31, 2024, WHHS shall submit any proposed modification to the Indirect Costs which will be supported by an independent third-party valuation conducted by a firm approved by both WHHS and UCSF. WHHS, UCSF and Company will enter into good faith negotiations to ensure that the Management Services Fee and Program Costs remain consistent with fair market value.

In the event the parties are not able to negotiate a modification to the Indirect Costs, then on the adjustment date the Indirect Costs shall increase based on the change in the U.S. Consumer Price Index (CPI-Urban) as published by the United States Department of Labor (i) for the first adjustment, between the Effective Date and May 31, 2024; and (ii) for any other adjustment, between May 31<sup>st</sup> of the year in which the modification is to occur and May 31<sup>st</sup> of the year of the proposed adjustment.

Notwithstanding the foregoing, the parties agree that at any time either party or UCSF may request in writing that the parties contemplate adopting a percentage-based methodology for payment of the Indirect Costs. Once such a request has been received, the parties will enter into good faith negotiations concerning such percentage-based methodology.

The Indirect Costs represent compensation related to the provision of all other Management Services not otherwise described as Direct Costs or the Billing Fee, specifically the following Management Services:

General Management and Administration	Indirect Cost	Section 3(c)
Records Maintenance	Indirect Cost	Section 3(d)
Accounting	Indirect Cost	Section 3(e)
Budgets	Indirect Cost	Section 3(f)
Financial Reporting	Indirect Cost	Section 3(g)

Financial Planning	Indirect Cost	Section 3(h)
Accounts Payable Processing	Indirect Cost	Section 3(i)
Accounts Receivable Processing	Indirect Cost	Section 3(j)
Employee Records and Payroll Processing	Indirect Cost	Section 3(k)
Maintenance and Security Services	Indirect Cost	Section 3(l)
Patient Records	Indirect Cost	Section 3(n)
Risk Management and Insurance	Indirect Cost	Section 3(r)
Marketing	Indirect Cost	Section 3(s)
General IT Service and Support	Indirect Cost	Section 3(t)
Compliance Services	Indirect Cost	Section 3(u)
Additional Services	Indirect Cost	Section 3(w)

### **Billing Fee**

The Billing Fee is calculated at 8.5% of Program Revenue. This is compensation for providing the Billing and Collection Services described in Section 3(o) of the Agreement.

The Billing Fee will be estimated on an annualized basis as part of the budget.

**EXHIBIT B**

**Business Associate Agreement**

**[To be provided]**

## MANAGEMENT SERVICES SUBCONTRACT AGREEMENT

This Management Services Subcontract Agreement (this “*Agreement*”) is made and entered into as of [REDACTED], 2022] (the “*Effective Date*”), by and between **WHHS & UCSF Health Cancer Services Joint Venture, LLC**, a California limited liability company (“*Company*”), and **Washington Township Health Care District**, dba Washington Hospital Healthcare System a political subdivision of the State of California organized pursuant to the Local Health Care District Law (Div. 23 of the California Health and Safety Code) (“*WHHS*”). WHHS and Company are referred to collectively herein as the “*Parties*” and individually as a “*Party*”.

### RECITALS

**A.** Company and WHHS are parties to that certain Management Services Agreement of even date herewith (the “*MSA*”), pursuant to which Company has agreed to provide or arrange for the provision of Management Services necessary for operation of the Program Services.

**B.** Company desires to engage WHHS, and WHHS desires to accept such engagement, to provide certain services on Company’s behalf to assist Company with satisfying its duties and obligations under the MSA, and WHHS desires to accept such engagement, all pursuant to and in accordance with the terms and conditions set forth in this Agreement.

**C.** Unless otherwise defined herein, all capitalized terms in this Agreement shall have the meaning given to such terms in the MSA.

**NOW, THEREFORE**, in consideration of the above recitals, which recitals are hereby incorporated in and made a part of this Agreement, and of the mutual promises and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and WHHS hereby agree as follows:

#### 1. **DUTIES OF WHHS.**

##### 1.1 **Provision of Management Services.**

1.1.1 Company hereby authorizes and engages WHHS, during the term of this Agreement and pursuant to Section 3(dd) of the MSA, to provide and perform on behalf of Company, the Management Services with respect to the Program Services as described in Section 3(c)(ii) and Sections 3(d) through (bb) the MSA (each a “*Contracted Service*” and collectively, the “*Contracted Services*”). Each such Contracted Service shall be performed by WHHS to the extent required to be performed by Company under, and in accordance with the terms of, the MSA.

1.1.2 WHHS hereby accepts such engagement and agrees, on behalf of Company, to provide all of the Contracted Services subject to and in accordance with the terms of this Agreement and the MSA. WHHS shall provide and perform such Contracted Services in such manner as Company determines shall be necessary and appropriate in order to meet Company’s obligations under, and to comply with the terms of, the MSA. Notwithstanding anything to the contrary, in the absence of a specific directive from Company, WHHS shall perform the Contracted

Services in a professional manner at least as dutifully as WHHS would perform for others to whom it provides similar services. WHHS shall have the right to engage subcontractors to perform any of the Contracted Services.

## 2. **FEES.**

2.1 As compensation for the Contracted Services described herein, Company shall pay WHHS a fee (the "*WHHS's Fee*") equal to the Program Costs (as defined in the MSA) incurred by WHHS for such prior Fiscal Quarter. Company shall pay 1/4<sup>th</sup> of the estimated Program Costs shown on the approved budget for the Company within thirty (30) days of the first day of each Fiscal Quarter. Within sixty (60) days of the end of each Fiscal Quarter, WHHS will perform a reconciliation of actual costs incurred for the applicable Fiscal Quarter. WHHS will report the results of this reconciliation to Company. In the event actual costs exceeded the estimated payment for the quarter, WHHS shall be entitled to the difference as an additional payment on the next invoice. In the event actual costs were less than the estimated payment for the quarter, Company will be entitled to a credit for the difference on the next invoice.

## 3. **TERM AND TERMINATION.**

3.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue for as long as the MSA is in effect, unless earlier terminated as set forth herein.

3.2 **Termination upon Event of Default.** If any Event of Default (as defined below) occurs and is continuing, the non-defaulting party may terminate this Agreement as set forth below. Each of the following is an event of default ("*Event of Default*") hereunder:

3.2.1 **Breach of Material Obligation.** If a party materially fails to perform any material obligation required hereunder as reasonably determined by the non-defaulting party, and such failure (i) is not due to, or the result of, any act or omission of the non-defaulting party under or in conjunction with this Agreement, and (ii) shall continue for sixty (60) days after the giving of written notice by the non-defaulting party to the party allegedly in default specifying the nature and extent of such failure; *provided, however*, that if a non-monetary default cannot reasonably be cured by the defaulting party within such sixty (60) day period, then, an Event of Default shall not be deemed to have occurred if such defaulting party commences diligently and in good faith to cure said default within such sixty (60) day period and thereafter cures said default during an additional period of time not to exceed sixty (60) days following the initial sixty (60) day period.

3.2.2 **Insolvency.** If either WHHS or Company applies for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency Law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction or an application of a creditor, adjudicating such party to be bankrupt or insolvent, or approving a petition seeking reorganization of such party or appointing a receiver, trustee or liquidator of such party or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) consecutive days. Termination shall be effective

automatically and immediately upon the giving of written notice of termination to the defaulting party by the non-defaulting party.

3.3 Termination upon Change in Laws. In the event that any law currently existing or hereinafter enacted, or any final and nonappealable construction or interpretation of such law by a court of competent jurisdiction or other governmental authority or enforcement of such laws hereinafter occurs, makes substantial performance hereof illegal, then in the event either party alleges or causes others to allege that substantial performance hereof is illegal, the parties agree to use their reasonable commercial efforts to modify this Agreement in order to eliminate any such illegality in accordance with the terms hereof. If the parties determine that this Agreement cannot be so modified, either party may terminate this Agreement upon the effective date on which the new law or construction, interpretation or enforcement of an existing law prohibits the substantial performance pursuant to this Agreement.

3.4 Effect of Termination. Upon the expiration or termination of this Agreement, all rights and obligations of the parties under this Agreement shall terminate, except for those obligations that survive termination of this Agreement as expressly set forth herein.

#### 4. COVENANTS OF WHHS.

4.1 Cooperation. WHHS covenants and agrees to cooperate fully and in good faith with Company in connection with the performance of Company's obligations under this Agreement.

4.2 Indemnification. WHHS shall indemnify, hold harmless and defend Company, its Affiliates, officers, managers, members, directors, stockholders, affiliates, employees, agents, attorneys, representatives and independent contractors (the "Company Parties") for, from and against any and all liabilities, losses, damages, claims, causes of action and expenses (including reasonable attorneys' fees and costs and the costs of any dispute resolution proceeding) (collectively, the "Claims"), whether or not covered by insurance, suffered by a Company Party, but only in proportion to and to the extent such Claims are caused by or result from the gross negligence or willful misconduct of WHHS in connection with this Agreement. Additionally, WHHS shall indemnify, hold harmless and defend the Company Parties for, from and against any and all Claims, whether or not covered by insurance, suffered by a Company Party, to the extent arising out of or resulting from WHHS's employee hiring process, or that are incurred, arise from or are in connection with: (i) Claims related to the employment of any of WHHS's employees, (ii) Claims related to any employee benefit plan maintained by WHHS, or (iii) Claims that a Company Party is the purported employer or that WHHS and a Company Party are joint employers of any of WHHS's employees or independent contractors.

4.3 Compliance with Law. WHHS shall conduct its activities under this Agreement in material compliance with all applicable provisions of federal, state and local laws, rules and regulations.

4.4 Insurance. WHHS shall maintain general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in

the annual aggregate. The cost of this insurance shall be the responsibility of Company and shall accounted for as a Program Cost.

5. **COVENANTS OF COMPANY.**

5.1 **Cooperation.** Company covenants and agrees to cooperate fully and in good faith with WHHS in connection with the performance of WHHS's obligations under this Agreement. Company further covenants that it shall grant WHHS such authority as may be necessary or desirable, in the reasonable judgment of WHHS, to ensure WHHS's ability to perform its obligations hereunder.

5.2 **Indemnification.** Company shall indemnify, hold harmless and defend WHHS, its Affiliates, officers, managers, members, directors, stockholders, affiliates, employees, agents, attorneys, representatives and independent contractors (the "*WHHS Parties*") for, from and against any and all Claims, whether or not covered by insurance, suffered by a WHHS Party, but only in proportion to and to the extent such Claims are caused by or result from the gross negligence or willful misconduct of Company in connection with this Agreement.

5.3 **Compliance with Law.** Company shall conduct its activities under this Agreement in material compliance with all applicable provisions of federal, state and local laws, rules and regulations.

5.4 **Insurance.** Company shall maintain general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate.

6. **HIPAA PRIVACY AND SECURITY STANDARDS COMPLIANCE.**

In connection with the duties and obligations of the parties under this Agreement, WHHS and Company shall each comply with all applicable federal, state, and local laws, rules, and regulations pertaining to the confidentiality of patient medical records, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by the United States Department of Health and Human Services, as amended from time to time ("*HIPAA*"). In accordance with HIPAA, Company and WHHS are concurrently executing a mutually agreeable Business Associate Agreement attached hereto as **Exhibit A**, which is incorporated herein, governing their respective obligations to one another under the privacy and security standards under HIPAA with respect to the performance under this Agreement.

7. **RELATIONSHIP OF PARTIES.**

In the performance of the work, duties, and obligations described hereunder, it is mutually understood and agreed that each party is at all times acting and performing as an independent contractor with respect to the other, and that no relationship of partnership, joint venture, or employment is created by this Agreement. Neither party, nor any other person performing services on behalf of either party pursuant to this Agreement, shall have any right or claim against the other party under this Agreement for social security benefits, workers' compensation benefits, disability

benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave, or any other employee benefits of any kind.

8. **NOTICES.**

All notices required to be given hereunder shall be in writing and shall be given hereunder, as elected by the party giving notice, as follows: (i) by personal delivery, (ii) sent by overnight courier with confirmation of receipt, or (iii) dispatched by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as follows:

If to WHHS: Washington Hospital Healthcare System  
2000 Mowry Ave  
Fremont, California 94538  
Attention: Chief Executive Officer

With a copy to: Paul Kozachenko, Esq.  
Gonsalves & Kozachenko  
2201 Walnut Avenue, Suite 220  
Fremont, California 94538

If to Company: WHHS & UCSF Health Cancer Services Joint Venture, LLC  
2000 Mowry Avenue  
Fremont, CA 94538  
Attention: President

Notice shall be deemed given (i) on the date of receipt if delivered personally; (ii) on the business day following delivery of such notice to the overnight courier; or (iii) three (3) business days after deposit in the mail in accordance with the foregoing. Any party may change the address to which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing.

9. **THIRD PARTY BENEFICIARIES.**

Except with respect to the indemnification obligations contained in Sections 4.2 and 5.2 in favor of the Company Parties and the WHHS Parties, this Agreement is expressly entered into only by and between the parties hereto and is only for their benefit. The parties hereby expressly agree that there is no intent by either party to create or establish third party beneficiary status rights or their equivalent in any other referenced individual, subcontractor, or third party, and no third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.

10. **CONFIDENTIAL INFORMATION.**

Each party agrees to keep in strict confidence during and after the term of this Agreement any and all information relating, directly or indirectly, to the other party's confidential information (the "Confidential Information") and will only disclose information and documents which the other



party, or its affiliates, or its officers, directors, employees and agents, may furnish (orally or in writing) in connection with this Agreement to its employees and other representatives who have a need-to-know for the purposes of this Agreement or to such party's lenders or their counsel if required for review by such party's lenders in connection with financing being sought by such party. Each party agrees that during and after the term of this Agreement, it shall not, without the prior written consent of the other party, disclose any such confidential information unless such disclosure is required by applicable law. To the extent that a party believes that disclosure is required as a matter of law, such party shall advise the other in writing of the disclosure and give such other party a reasonable opportunity to secure a court order narrowing or eliminating the production obligation and/or subjecting any disclosed information to a protective order. Each party may use the other party's confidential information solely for the purposes of performing its obligations under this Agreement. Each of Company and WHHS is and shall be the sole owner and holder of all right, title and interest to its respective property. Nothing in this Agreement shall preclude any party from taking such action as it deems necessary to fulfill their legal obligations under the California Public Records Act and similar public disclosure statutes or if such party becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, investigative demand or similar process) to disclose any of the Confidential Information; *provided, however*, that prior to the disclosure of the Confidential Information, such party shall, at its own expense, assert all reasonable defenses to the disclosure of the Confidential Information and apply any appropriate exceptions to the disclosure of the Confidential Information. Additionally, the party seeking to disclose the Confidential Information in such case (the "*Receiving Party*") shall provide the other party (the "*Disclosing Party*") with written notice of the proposed disclosure along with a copy of the Confidential Information to be disclosed. Such notice shall be provided within a reasonable amount of time prior to the disclosure so that the Disclosing Party may review the Confidential Information at issue and intervene by seeking a protective order or other appropriate remedy to limit or prevent the disclosure of the Confidential Information by the Receiving Party. If, in the absence of a protective order or other remedy, the Receiving Party is legally compelled to disclose Confidential Information or else stand liable for contempt or suffer other sanctions, censure or penalty, the Receiving Party may disclose the portion of the Confidential Information that is legally required to be furnished.

11. **SEVERABILITY.**

Any terms or provisions of this Agreement that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other term or provision herein, and such remaining terms and provisions shall remain in full force and effect. All such terms or provisions that are determined by a court of competent jurisdiction or other dispute resolution proceeding to be invalid, void or illegal shall be construed and limited so as to allow the maximum effect permissible by law.

12. **DISPUTE RESOLUTION.**

In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or to the acts or omissions of the parties with respect to this Agreement (each, a "*Dispute*"), the parties shall resolve the Dispute in accordance with the dispute resolution process described in Section 24 of the MSA.

13. **GOVERNING LAW.**

The existence, validity, and construction of this Agreement shall be governed by the laws of the State of California disregarding any conflict of laws provisions that may require the application of the law of another state.

14. **ASSIGNMENT.**

Neither party shall have the right to assign this Agreement without the prior written consent of the other party.

15. **SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14, the terms, covenants, and conditions contained herein shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

16. **WAIVER.**

The waiver by either party to this Agreement of any one or more defaults, if any, on the part of the other party shall not be construed to operate as a waiver of any other or future defaults under the same or different terms, conditions, or covenants contained in this Agreement.

17. **CAPTION AND HEADINGS.**

The captions and headings throughout this Agreement are for convenience of reference only and shall in no way be held or deemed to be a part of or affect the interpretation of this Agreement.

18. **ENTIRE AGREEMENT; AMENDMENT.**

This Agreement, any attachments hereto and the MSA collectively constitute the entire contract between the parties with respect to the subject matter of this Agreement and supersede any oral or written proposals, statements, discussions, negotiations or other agreements prior to or contemporaneous with this Agreement relating to the subject matter hereof. The parties acknowledge that they have not been induced to enter into this Agreement by any oral or written representations or statements not expressly contained in this Agreement. This Agreement may be modified only by mutual written agreement of the parties. In the event that this Agreement violates any state or federal law applicable to tax-exempt financing now maintained by any party or sought by any party in the future, the parties shall attempt to renegotiate the terms of this Agreement in good faith in order to conform to said laws. Any such renegotiation shall, unless the parties agree otherwise, be limited to those provisions that must be changed in order to obtain or maintain such financing. Unless renegotiation is accomplished by the good faith efforts of the parties within sixty (60) days after written notice by any party to the other party of the need for such renegotiation, any party may immediately terminate this Agreement at the expiration of such sixty (60) day period. All rights of a party are cumulative and not exclusive, unless otherwise explicitly stated herein.

19. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterpart. Signatures sent by facsimile or electronic transmission shall be deemed to be originals for all purposes of this Agreement.

20. **CHANGE IN LAW.**

In the event that a change in state or federal law, statute, regulation, or enforcement of some materially affects this Agreement in a manner which is adverse to any party to this Agreement, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the Parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, the party who is adversely affected may terminate this Agreement at the end of such thirty (30) day period.

21. **NO PROHIBITED INDUCEMENTS OR REMUNERATION ON ACCOUNT OF REFERRALS OR OTHER BUSINESS.**

The Parties each shall assure that no prohibited remuneration is promised or made on account of the volume or value of referrals made by any party to the arrangements that constitute the Contracted Services, or the value or volume of business otherwise generated under the Contracted Services, and that referrals by participating physicians are made in accordance with established clinical standards that do not reward those physicians based on the value or volume of referrals made or business generated.

22. **NON-DISCRIMINATION.**

The Parties agree to treat in a nondiscriminatory manner any and all patients receiving medical benefits or assistance under any federal health care program.

23. **REGULATIONS AND STANDARDS.**

The Parties shall comply with all applicable federal and state regulations and applicable The Joint Commission standards in connection with the arrangement contemplated by this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed through their duly authorized officers as of the Effective Date.

**WASHINGTON TOWNSHIP HEALTH CARE  
DISTRICT, DBA WASHINGTON HOSPITAL  
HEALTHCARE SYSTEM**

By: \_\_\_\_\_  
Name: Kimberly Hartz  
Title: Chief Executive Officer

**WHHS & UCSF HEALTH CANCER SERVICES  
JOINT VENTURE, LLC**

By: \_\_\_\_\_  
Name: Christine Nunez  
Title: President

# **EXHIBIT A**

## **Business Associate Agreement**

**[To be provided]**

**PROFESSIONAL SERVICES AND MEDICAL DIRECTOR AGREEMENT**

**Washington Radiation Oncology Center**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) entered into by and between The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the University of California, San Francisco, School of Medicine, Department of Radiation Oncology (hereinafter referred to as “UCSF”), and Washington Township Health Care District, dba Washington Hospital Healthcare System a political subdivision of the State of California organized pursuant to the Local Health Care District Law (Div. 23 of the California Health and Safety Code) (hereinafter referred to as “District” or “WHHS”), sets forth the terms and conditions under which UCSF will provide professional medical services to District.

**RECITALS**

A. The District owns and operates Washington Hospital, a licensed general acute care hospital located in Fremont, California (“Washington Hospital” or “Hospital”). District operates a hospital-based outpatient department providing radiation oncology services to patients at the facility known as the Washington Radiation Oncology Center that is located at 39101 Civic Center Drive, Fremont, California (the “ROC”).

B. UCSF operates a School of Medicine which includes a Department of Radiation Oncology and employs or contracts with physicians (“UCSF Physicians”) who are licensed to practice medicine in the State of California and are qualified to provide the services identified in this Agreement for the District’s patients.

C. UCSF and the District have entered into a joint venture whereby a jointly owned limited liability company, WHHS & UCSF Health Cancer Services Joint Venture, LLC (the “Company”), will own the assets of the ROC and contract with WHHS to operate the ROC.

D. In connection with the joint venture, the District will enter into this Agreement with UCSF to obtain clinical coverage, medical direction and physics oversight services from UCSF for the ROC. District desires to provide for services to be performed for its patients and does not have the capability to do so. UCSF desires to provide those services through its UCSF Physicians as set forth in this Agreement. In doing so, UCSF shall support the mission of the University of California. All patients receiving Services (defined below) under this Agreement in the ROC shall be referred to in this Agreement as “ROC Patients.”

E. Washington Radiation Oncology Center, a Medical Group, Inc. and UCSF are parties to that certain Professional Services Agreement dated October 1, 2018, as amended (the “**Existing PSA**”). By entering into this Agreement, the parties agree to terminate the Existing PSA as of the date this Agreement becomes effective.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and restrictions set forth herein, the parties agree as follows:

**1. RESPONSIBILITIES OF UCSF**

1.1 Professional Services and Coverage.

(a) *Clinical Coverage Services.* During the term of this Agreement, UCSF Physicians shall provide professional services to ROC Patients as scheduled by District in mutual agreement with UCSF. UCSF shall have authority and responsibility for providing the UCSF Physicians to District (including recruiting, hiring, promoting, compensating, and disciplining) and for establishing the terms of the UCSF Physicians' employment with UCSF. The UCSF Physicians shall be employees of UCSF and shall be carried on UCSF's payroll. The UCSF Physicians providing services under this Agreement are identified in **Exhibit 1.1(a)**, attached hereto and incorporated herein by reference.

(b) *Hours of Availability for Clinical Coverage Services.*

(i) UCSF shall assign at least one Physician to provide Clinical Coverage Services (defined in **Exhibit 1.1(b)**) in the ROC on each day in which ROC Patients are scheduled to receive treatment at the ROC (up to five (5) days per week), which shall include both the provision of professional medical services at the ROC during normal ROC hours and unrestricted call coverage on a 24/7 basis outside of normal business hours (including holidays and weekends), subject to the following provisions of this paragraph. Unless otherwise agreed by the Parties, when scheduled to provide Clinical Coverage Services at the ROC, the assigned Physician(s) shall be responsible for a twenty-four (24) hour shift consisting of eight (8) hours of coverage in the ROC (during normal ROC hours) and sixteen (16) hours of unrestricted call outside of normal ROC hours, plus unrestricted call over any weekend adjacent to any day in which a Physician has been assigned to provide Clinical Coverage Services. For purposes of this paragraph, the term "weekend" shall mean the time period commencing upon the closure of the ROC on the last day of the week that the ROC has normal business hours through 11:59 p.m. on the day immediately preceding the next day the ROC has normal business hours.

(ii) The phrase "normal ROC hours" shall conform to WHHS's recognized holiday schedule and, in addition, shall include alternate schedules on weeks where following a normal holiday schedule would result in the closure of the ROC for more than three consecutive days. An example of the latter would be a week when Christmas Eve and Christmas fall on (or are recognized on) a Thursday and Friday, in which case the ROC would normally be open on the Saturday to avoid a four-day closure.

(iii) If, due to unforeseen circumstances outside of UCSF's control, UCSF is unable to provide the Clinical Coverage Services contemplated by this Agreement, UCSF shall immediately notify WHHS and the Parties will work together to ensure the provision of as

much Clinical Coverage Services as possible under the circumstances. UCSF shall be provided no less than thirty (30) days to attempt to resolve any disputes described in this Section 1.1(b)(iii) before it may be considered a breach of this Agreement.

1.2 Administrative Services.

(a) *Medical Director Services.* UCSF will provide a UCSF Physician to serve as the director of the ROC (“Medical Director”) to perform Medical Director Services (defined in **Exhibit 1.2(a)**). The UCSF Physician shall be identified in **Exhibit 1.2(a)** by mutual agreement of the parties. Medical Director shall keep monthly time logs submitted to ROC and shall provide an average of twenty (20) hours per month in Medical Director Services with an annual maximum of two-hundred and forty (240) hours per year.

(b) *Physics Oversight Services.* UCSF will provide a qualified employee (“Physics Director”) to perform Physics Oversight Services (as defined in **Exhibit 1.2(b)**) for the radiological physics services offered at the ROC. Physics Director shall be identified in **Exhibit 1.2(b)** by mutual agreement of the parties. Physics Director shall keep monthly time logs submitted to ROC and shall provide an average of twenty (20) hours per month in Physics Oversight Services with an annual maximum of two-hundred and forty (240) hours per year.

1.3. Scope of Services. The services to be provided under this Agreement shall include professional medical radiation oncology treatment for ROC Patients, and other administrative services (collectively, the “Services”), all as described in greater detail in **Exhibits 1.1(b), 1.2(a) and 1.2(b)** attached hereto and incorporated herein by reference.

1.4 Physician Qualifications. During the term of this Agreement, each Physician shall be experienced in rendering the services required of Physician under this Agreement and shall maintain on an unrestricted basis:

- (a) An unrestricted license to practice medicine in California;
- (b) Federal Drug Enforcement Administration certification;
- (c) Washington Hospital Medical Staff membership in good standing and appropriate clinical privileges at Washington Hospital;
- (d) Board certification in radiation oncology;
- (e) A salaried full time faculty appointment at UCSF; and
- (f) Professional liability coverage as set forth in this Agreement.

1.5 Standards. To the extent permitted by law, each UCSF Physician providing Services hereunder shall perform his or her professional medical duties in accordance with: (a)



Hospital's Medical Staff Bylaws, rules and regulations, and policies; (b) all rules and regulations generally applicable to physicians practicing medicine in California; (c) all applicable policies and procedures of the ROC; and (d) the standards and recommendations of The Joint Commission ("TJC").

1.6 Removal of UCSF Physicians.

(a) UCSF shall promptly remove UCSF Physicians from providing Services under this Agreement in the event that the UCSF Physician no longer meets requirements set forth in Section 1.4 above. UCSF shall replace such UCSF Physician at WHHS with a UCSF Physician otherwise satisfying the requirements for UCSF Physicians supplied under this Agreement.

(b) Notwithstanding the foregoing provisions of this Section 1.6, UCSF shall be responsible for the discipline of UCSF Physicians and others in accordance with UCSF's applicable policies and procedures. UCSF may, but need not, consult with WHHS concerning any proposed disciplinary action but shall promptly notify WHHS of any discipline imposed. WHHS agrees to abide by UCSF's recommended disciplinary action. UCSF acknowledges receipt of the medical staff policies of WHHS and acknowledges that the UCSF Physicians shall be subject to further and additional discipline and supervision under such policies.

1.7 Cost of Clinical Coverage. In the event UCSF is unable to provide physicians to provide Clinical Coverage Services as required under this Agreement and either the District or Company is required to obtain physician coverage to provide such services, UCSF shall be required to reimburse the District or Company for the documented direct and indirect cost of obtaining such coverage. UCSF shall be responsible for the billing and collection of Clinical Coverage Services provided on behalf of UCSF Physicians. The District agrees to use its best efforts to assist in the credentialing and approval of physicians identified to assist in providing Clinical Coverage Services on behalf of UCSF Physicians. Notwithstanding anything in this Agreement to the contrary, UCSF shall not be deemed to be in breach of this Agreement in the event Company or District obtains physician coverage under this paragraph provided (i) UCSF promptly reimburses the Company or District as required by this paragraph and (ii) UCSF is diligently and in good faith attempting to secure physicians to provide the Clinical Coverage Services. For the sake of clarity, in the event the District or Company is required to obtain physician coverage for the ROC, such physicians need not satisfy the requirement of Section 1.4(e).

2. RESPONSIBILITIES OF DISTRICT

District shall provide the following space, equipment, services, supplies and personnel in this Article 2 in accordance with sound medical and legal practices and any applicable federal and

state laws and regulations, including the requirements of TJC and the Medicare Conditions of Participation.

2.1 Space. District shall provide UCSF Physicians with suitable space to perform the Services at the times set forth in Section 1.1 above. UCSF Physicians will perform the services for District solely at this location as set forth in this Agreement. District shall remain responsible for the overall operation of the ROC and shall maintain such space and facilities in good and sanitary order, condition, and repair.

2.2 Equipment. District shall furnish all equipment and supplies necessary for UCSF Physicians to perform the Services. District will be responsible for ensuring that the equipment used by UCSF Physicians pursuant to this Agreement is maintained in good operating order, including any necessary maintenance and/or repairs.

2.3 Services and Supplies. District shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other services, including medical records, administrative and engineering services, and expendable supplies as District and UCSF agree are necessary for the proper operation and conduct of the ROC.

2.4 Personnel.

(a) Subject to subsection (b) below, District shall employ or otherwise retain all non-physician personnel, including nurses, technicians, radiation therapists, site manager, and clerical personnel necessary for the proper operation and conduct of the ROC. District shall ensure that such personnel are appropriately trained and certified or licensed as necessary and are covered by District's insurance or have obtained equivalent coverage. District shall be solely responsible for satisfying any and all obligations for any personnel it retains, employs, or contracts with, to assist it to perform this Agreement. Such obligations shall include, but are not limited to, paying all federal and state withholding taxes applicable to employees, complying with federal and state wage-hour obligations (including overtime), workers compensation obligations, unemployment insurance obligations, and other applicable taxes and contributions to government mandated employment related insurance and similar programs.

(b) With respect to physicists and/or dosimetrists providing services at the ROC, the parties have agreed that the District will retain its existing service provider commencing with the start of the term of this Agreement. In the event the existing service provider is not available to provide services, the Company shall be responsible for locating and engaging replacement physicists and dosimetrists, even where the District would ultimately enter into the contract for such services. The District shall not be solely responsible for identifying replacement physicists and/or dosimetrists and shall not be in breach of this Agreement in the event such non-physician personnel are not available for the ROC.

2.5 UCSF Physicians. The WHHS Medical Staff shall be responsible for the discipline of UCSF Physicians and others in accordance with the applicable WHHS Medical Staff bylaws, rules, policies, and procedures. WHHS may, but need not, consult with UCSF concerning any proposed disciplinary action but shall promptly notify UCSF of any discipline imposed and any restrictions placed on patient care privileges. The Parties agree to work together in good faith to develop a mutually acceptable peer review information sharing agreement.

### **3. COMPENSATION AND BILLING**

#### **3.1 Compensation to UCSF.**

(a) **Medical Direction:** District shall pay UCSF the sum of Four Hundred Dollars (\$400) per hour, for Medical Director Services performed under this Agreement up to an annual maximum of Ninety-Six Thousand Dollars (\$96,000.00).

(b) **Physics Oversight Services.** District shall pay UCSF the sum of Two Hundred and Ten Dollars (\$210) per hour, for Physics Oversight Services performed under this Agreement up to an annual maximum of Fifty Thousand Four Hundred Dollars (\$50,400.00).

3.2 UCSF Invoicing and Payment. District will provide payment to UCSF for Medical Direction Services and Physics Oversight Services rendered pursuant to this Agreement within forty-five (45) days of receipt of an invoice for the same for the preceding month services that is accompanied by a timesheet in substantially the same form as attached hereto as Exhibit 3.2 (medical direction) and Exhibit 3.2a (physics direction) signed off by WHHS's representative. Payment shall be made by check made payable to The Regents of the University of California and mailed to: UCSF Health, [REDACTED], Box 0296, 500 Parnassus Avenue, E530, San Francisco, California 94117.

3.3 Compensation and Billing for Clinical Coverage Services. UCSF shall bill and collect for Clinical Coverage Services provided by UCSF Physicians and physicians providing Clinical Coverage Services on behalf of UCSF Physicians. UCSF agrees that such collections shall be its sole compensation for all Clinical Coverage Services provided by UCSF Physicians and physicians providing Clinical Coverage Services on behalf of UCSF Physicians. UCSF shall comply with applicable laws and customary professional practices governing billing for Medicare and Medi-Cal programs.

3.4 Compliance with Laws. District represents that it maintains a compliance program designed to promote adherence to applicable federal and state laws, regulations, and interpretations. District and UCSF shall use their respective best efforts to ensure that all claims relating to the Services satisfy all applicable payor rules, regulations, and instructions.

**3.5 Renegotiation.** Any Party may request renegotiation of the rates contained herein in writing at least thirty (30) days prior to the end of each two year period following the Effective

Date of this Agreement, but no more frequently than once every two (2) years, and in all cases such renegotiated rates shall be set in advance for a minimum term of two (2) years. If no Party requests a renegotiation in the time period set forth above, or if the Parties engage in a renegotiation but fail to mutually agree prior to such anniversary date of the Effective Date of this Agreement, the rates charged for Medical Director and Physics Oversight Services shall increase by the larger of three percent (3%) or the percentage increase in the Consumer Price Index for all Urban Consumers (Professional Services) published by the United States Bureau of Labor Statistics for the preceding calendar year, for the subsequent two (2) year period of this Agreement, effective on such anniversary date of the Effective Date. Notwithstanding the foregoing, rates paid to UCSF shall at all times be and remain commensurate with and will not exceed the reasonable fair market value of the services to be provided by UCSF hereunder. Any adjustments to compensation as mutually agreed upon by the Parties shall be commensurate with fair market value and shall take effect on a prospective basis only.

#### **4. TERM AND TERMINATION**

4.1 Term. The term of this Agreement shall commence on [REDACTED], 2022] (the “Commencement Date”), and continue until the first of the following to occur (the “Initial Term”): (i) an event occurs causing the dissolution and liquidation of the Company, which events are described in that certain Operating Agreement for WHHS & UCSF Health Cancer Services Joint Venture, LLC dated March 24, 2022 (the “Operating Agreement”); or (ii) UCSF (identified as “UCSF Health” in the Operating Agreement) transfers substantially all of its ownership interest in the Company to the Company, WHHS or an unrelated third party. Nothing herein prohibits the parties from mutually agreeing to terminate this Agreement at any time.

4.2 Termination With Cause. Either party may terminate this Agreement upon the material breach of this Agreement by the other party by giving the other party written notice of such breach and completing the dispute resolution process described in this Section 4.2. Within fifteen (15) days of the receipt of the written notice of breach, the parties must convene a meeting between the President of UCSF’s Affiliates Network and WHHS’ CEO to discuss the dispute and identify possible cures. If said representatives cannot resolve the dispute within sixty (60) days after such request for a meeting is given, the non-breaching party may move forward with the termination of this Agreement.

4.3 Immediate Termination. Notwithstanding any other provision herein, this Agreement may be terminated immediately by either party if: (a) if the insurance coverage for UCSF Physicians or District, as required hereunder, is canceled or modified, and replacement coverage is not obtainable on commercially reasonable grounds; or (b) if District fails to maintain its TJC accreditation or meet the requirements of the Medicare Conditions of Participation.

4.4 Compliance. Compliance. Each party shall have the right to terminate this Agreement upon written notice to the other party that the terminating party, on the advice of legal counsel, has determined that the terminating party is in violation of any applicable statute,

regulation, or binding legal precedent and that the risk regarding the violation cannot be reasonably mitigated; provided, however, before such termination shall become effective, the Chief Executive Officer of the District and the President of UCSF (or their designees, who must be senior-level officers) and legal counsel for both parties shall meet to attempt to reach a compromise that will not require termination of the Agreement.

## **5. MEDICAL RECORDS**

5.1 Confidentiality. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including but not limited to the California Confidentiality of Medical Records Information Act, codified at Section 56.1 of the California Civil Code and California Evidence Code Sections 1156 and 1157.

5.2 Ownership. All medical records and charts created at District by UCSF Physicians pursuant to this Agreement shall be and remain the property of District; provided, however, UCSF and/or UCSF Physicians shall be entitled to inspect and/or obtain copies of all such records upon request.

5.3 Notification of Disclosures. Each party agrees to notify the other party's privacy office of the unauthorized access, use, or disclosure of any personally identifiable information, or protected health information known or suspected by such party within two (2) days of learning of the same in order to ensure that the reporting of such unauthorized access, use or disclosure of this information is reported within five (5) days of detection to the California Department of Public Health (CDPH) and as appropriate, to the Office of Civil Rights and Centers for Medicare and Medicaid Services . Each party's privacy office will oversee the required notification to CDPH.

5.4 Costs Associated with Disclosure. Each party agrees that if they fail to adhere to any of the privacy, confidentiality, and/or data security provisions set forth herein and, as a result, personally identifiable information or protected health information is unlawfully accessed, used or disclosed, that they agree to pay, upon written demand of the other party, all costs associated with any notification to affected individuals required by law or deemed appropriate, and that they also agree to pay for any and all fines and/or administrative penalties imposed for such unauthorized, access, use or disclosure of personally identifiable information or protected health information or for delayed reporting.

5.5 Business Associate Agreement. The parties agree that the Business Associate Agreement attached hereto as Exhibit 5.5 and incorporated by reference shall apply to the Administrative Services performed by UCSF for WHHS hereunder and any other services performed hereunder for which UCSF is a business associate, as defined by HIPAA, of WHHS.

**6. STATUS OF THE PARTIES**

It is the express intention of the parties that the legal status of UCSF to District shall be that of an independent practice, furnishing the services of its employees to District under a contractual arrangement which constitutes neither a partnership, joint venture, or a cost-sharing arrangement. UCSF shall be solely responsible for paying or withholding all relevant taxes arising from the compensation of the UCSF Physicians, and UCSF shall be solely responsible for all other governmental requirements applicable to UCSF and the UCSF Physicians arising out of their employment relationship. The UCSF Physicians shall have no claim under this Agreement, or otherwise, against District for workers' compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits, or any other employee benefits, all of which shall be the sole responsibility of UCSF.

**7. INDEMNIFICATION AND INSURANCE**

7.1 Indemnification by District. District shall defend, indemnify and hold UCSF, UCSF Physicians, its officers, employees and agents harmless from and against any and all liability, loss, expense, (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of District, its officers, employees, or agents.

7.2 Indemnification by UCSF. UCSF shall defend, indemnify and hold District, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCSF, its officers, employees, or agents.

7.3 Insurance for District. District shall secure and maintain the insurance coverage described in **Exhibit 7.3**, a copy of which is attached hereto and incorporated herein by this reference.

7.4 Insurance for UCSF Physicians. UCSF shall secure and maintain coverage on behalf of UCSF Physicians in accordance with UCSF policies and procedures described in **Exhibit 7.4**, attached hereto and incorporated herein by this reference.

**8. USE OF NAME AND MARKETING**

8.1 Use of Name. The parties agree that any use of the "UCSF," or the "University of California" name or other similar references to the University of California San Francisco, its physicians or facilities, shall be subject to the prior written approval of The Regents of the

University of California in accordance with the provisions of applicable law, including but not limited to California Education Code Section 92000.

8.2 Marketing of UCSF Physicians. District shall not advertise or use any of the UCSF Physician's names in any marketing materials without UCSF's prior written consent.

8.3 Trademark and Co-Branding Agreement. The parties acknowledge that they have entered into a separate Trademark and Co-Branding Agreement dated [REDACTED], 2022] ("Marketing Agreement"), and that in the event of a conflict between the terms of the Marketing Agreement and this Agreement, the terms of the Marketing Agreement shall control with respect to the matters addressed in this Section 8.

**9. COOPERATION IN DISPOSITION OF CLAIMS.**

District and UCSF agree to cooperate with each other in the timely investigation and disposition of certain audits, disciplinary actions and third-party liability claims arising out of any Services provided under this Agreement. To the extent allowed by law, District and UCSF shall have reasonable and timely access to the medical records, charts, and/or de-identified quality assurance data of the other party relating to any claim or investigation related to Services provided pursuant to this Agreement. Provided, however, that nothing shall require either District or UCSF to disclose any peer review documents, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege or under the Attorney Work-Product Privilege. UCSF shall be responsible for discipline of UCSF Physicians in accordance with UCSF's applicable policies and procedures.

To the extent allowed by law and in accordance with the applicable institution policies, the parties shall notify one another as soon as possible of any adverse event which may result in liability to the other party. District shall notify UCSF of any disciplinary concern involving UCSF Physicians that it becomes aware of, including but not limited to allegations of sexual harassment or sexual violence. The failure to provide notice shall not be deemed a breach of the Agreement, and such failure to do so shall not relieve the indemnifying party of its indemnity obligations if such delay does not prejudice the defense thereof.

It is the intention of the parties to fully cooperate in the disposition of all such audits, actions or claims. Such cooperation may include, but is not limited to, timely notice, joint investigation, defense, disposition of claims of third parties arising from Services performed under this Agreement, and making witnesses available; provided, however only to the extent consistent with UCSF policies and only so long as any personnel assistance by UCSF does not materially interfere with any UCSF employee's performance of his or her UCSF employment responsibilities.

**10. PATIENT RECORDS.**

Any and all of District's medical records and charts created at District's facilities as a result of performance under this Agreement shall be and shall remain the property of District. Both during and after the term of this Agreement, UCSF shall be permitted to inspect and/or duplicate, at UCSF's expense, any individual charts or records which are: (1) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action; (3) for educational or research purposes; and/or (4) necessary for UCSF to ensure compliance with all regulatory requirements. Such inspection and/or duplication shall be permitted and conducted pursuant to commonly accepted standards of patient confidentiality in accordance with applicable federal, state and local laws.

**11. COMPLIANCE WITH LAWS**

The parties shall comply with all applicable state and federal laws and regulations and with the requirements of TJC.

**12. FORCE MAJEURE**

Neither party shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment deemed resulting, directly or indirectly, from Acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, a pandemic or other national, state or locally declared public health crises, strikes or other work interruptions by the parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstance.

**13. GENERAL**

13.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with and subject to the laws of the State of California without regard to its conflict of law provision.

13.2 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereto shall remain in full force and effect and shall in no way be affected, impaired or invalidated as a result of such decision.

13.3 Assignment. Neither party may assign, delegate or transfer in any manner the obligations and rights set forth in this Agreement.



13.4 Amendments. This Agreement or any part of it may be amended only by the mutual written consent of the duly authorized representatives of the parties unless otherwise provided in this Agreement.

13.5 Entire Agreement. This Agreement is the entire agreement between the parties relating to the subject matter of the Agreement and shall supersede all prior arrangements, negotiations, and understandings between the parties, whether oral or written. No waiver of any term, provision or condition of this Agreement shall be deemed to be, or shall constitute a waiver of any term, and no waiver of any present condition shall constitute a waiver of such condition occurring in the future.

13.6 Notice. All notices, demands and other communications to be given or delivered under this Agreement shall be in writing and shall be deemed to have been given (i) when delivered, if personally delivered by hand; (ii) when received, if sent by UPS, FedEx or other similar overnight service; (iii) 3 business days after being mailed, if sent by first class mail, return receipt requested, or (iv) when receipt is acknowledged by an affirmative act of the Party receiving notice, if sent electronically (provided that such an acknowledgment does not include an acknowledgment generated automatically by an electronic transmission device). Notice given by e-mail shall be to the address provided in this Agreement and shall include the following text in the Subject field: FORMAL LEGAL NOTICE.

If to UCSF:



Government & Business Contracts  
Senior Associate Director  
Office of Sponsored Research  
University of California, San Francisco  
490 Illinois Street, Fourth Floor  
Campus Box 0962  
San Francisco, CA 94143  
use 94158 for Federal Express.  
[orbusinesscontracts@ucsf.edu](mailto:orbusinesscontracts@ucsf.edu)

If to District Washington Township Health Care District  
2000 Mowry Avenue  
Fremont, CA 94538  
Attention: Chief Executive Officer

Gonsalves & Kozachenko  
2201 Walnut Avenue, Suite 220  
Fremont, CA 94538  
Attention: Paul Kozachenko, Esq., Partner

13.7 Change in Law. In the event that a change in state or federal law, statute, regulation, or enforcement or same materially affects this Agreement, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within sixty (60) days of such negotiation period, this Agreement shall terminate at the end of such sixty- (60) day period.

13.8 Third Parties. This Agreement is not intended and shall not be construed to create any rights for any third party.

13.9 Exhibits. All exhibits referred to herein are hereby incorporated herein. In the event that any provision of this Agreement conflicts with any exhibit to this Agreement, the exhibit shall control with respect to the subject matter of such exhibit.

13.10 Counterparts; Electronic Copies. This Agreement may be executed in any number or counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, electronic signature, .pdf data file or other scanned executed counterpart by email shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Each duplicate and counterpart shall be equally admissible in evidence, and each shall fully bind each party who has executed it. The parties to this document agree that a digital signature or copy of the original signature may be used for any and all purposes for which the original signature may have been used. The parties agree they will have no rights to challenge the use or authenticity of this document based solely on the absence of an original signature.

13.11 Singular and Plural. Words used herein in the singular, where the context so permits shall be deemed to include the plural and vice versa.

13.12 Ability to Enter Agreement. Each party represents and warrants that it is free to enter into this Agreement and to perform each of the terms and conditions of the Agreement.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year set forth in Article 4 above.

The Regents of the University of California, on behalf of the University of California, San Francisco, School of Medicine, Department of Radiation Oncology

Washington Township Health Care District, dba Washington Hospital Healthcare System

By: \_\_\_\_\_  
Neal Cohen, MD

By: \_\_\_\_\_  
Kimberly Hartz

Its: Vice Dean, UCSF, School of Medicine

Its: Chief Executive Officer

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

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

**Read and Acknowledged:**

By: \_\_\_\_\_  
Catherine Park, M.D.  
Chair, UCSF Department of Radiation  
Oncology

**EXHIBIT 1.1(a)**

**UCSF PHYSICIANS PROVIDING SERVICES**

Emi Yoshida, MD  
Nicolas Prionas, MD  
Jesse Alexander, MD

**EXHIBIT 1.1(b)**

**CLINICAL COVERAGE SERVICES**

Clinical Coverage Services shall consist of the provision of professional medical radiation oncology treatment for ROC Patients during “normal ROC hours” or unrestricted call coverage (on a 24-hour per day basis) for the same outside of normal business hours, including weekends when applicable as described in Section 1.1(b) of this Agreement.

**EXHIBIT 1.2(a)**

**MEDICAL DIRECTOR SERVICES**

**a. Medical Director:**

- 1) Emi Yoshida, MD

**b. Administrative Duties:**

- 1) Provide general oversight, direction and coordination of the patient care services, quality control programs, cost-efficiency programs, peer review process, physician recruiting activities, physician retention services, and other customary services specific to the ROC as necessary or appropriate.
- 2) Assist WHHS in assuring operational compliance with applicable rules, regulations and guidelines as established by the federal, state, and local governments. Assist WHHS in developing and implementing new plans for maintaining compliance as these rules, regulations and guidelines are revised.
- 3) Participate in WHHS, medical staff, and, as appropriate, other committees in reference to the ROC.
- 4) Provide appropriate and sufficient times to be available for consultation with WHHS leadership, medical staff, and ROC staff on an as-needed basis.
- 5) Act as physician liaison for the medical staff of the ROC, when appropriate.
- 6) Perform such other medical-administrative duties as are requested from time to time by WHHS.
- 7) Participate in community education at least once a year.
- 8) Meet not less than once each month with the Hospital Chief Executive Officer or her designee, to assure thorough communication, including concerns and problems regarding personnel, physicians, patient complaints, potential liability, program performance against metrics and what has been accomplished in performance of the duties as defined.

**c. Medical Director Services Related to the WHHS Rules Applicable at the ROC**

- 1) Advise WHHS with respect to the development and/or revision of WHHS Rules applicable at the ROC.
- 2) Assist in the design, development, and implementation of patient information forms, medical record forms, and consent forms that impact patient care.

**d. Medical Director Services Related to Cost Efficiency Programs**

- 1) Assist in the development, collection and evaluation of data for use in the analysis of practice guidelines' marketing strategies, cost-control, critical path, formulary, management, order sets and other programmatic functions, as applicable.
- 2) With assistance from WHHS staff, monitor and evaluate the ROC's current care delivery system to ensure the coordination of high-quality cost-effective medical services. If such evaluation reveals an opportunity, then Medical Director will assist in ensuring that the modification of such systems are coordinated with the activities of other staff, support services, and departments.
- 3) Assist in identifying cost containment opportunities in the way in which medical services are provided. The primary focus for cost containment will be through better and more efficient use of ROC resources in meeting patient and physician needs, while maintaining high standards of care.
- 4) Review agreed upon metrics.
- 5) Attend mutually agreed upon task forces or committees related to radiation oncology

**e. Medical Director Services related to WHHS's peer review process**

- 1) Assist and participate in establishing or modifying a peer review process to evaluate clinical competence and skills of physicians at the ROC.
- 2) Evaluate clinical competency and skills of physicians at the ROC through the peer review process.
- 3) Advise WHHS with respect to selection, retention, and termination of all non-physician personnel who may be required for the proper operation of the ROC; provided, however that the WHHS shall retain the ultimate decision-making authority regarding the section, retention, and termination of all such personnel.

**f. Medical Director Services related to WHHS' equipment and technology for ROC**

- 1) Consult, as necessary, with medical staff and ROC staff regarding the current and new technology, equipment, supplies, maintenance, and the needs of the ROC.
- 2) Consult with WHHS administration and act as ROC liaison regarding the necessity, safety and appropriateness of current technology, equipment, supplies, maintenance, and needs of the ROC.
- 3) Assist in the evaluation and possible implementation of new technologies as they develop.
- 4) Give such technical advice and assistance as may be requested by WHHS to facilitate the selection, purchase, and installation of new technology, equipment, and supplies at the ROC.

**EXHIBIT 1.2(b)**

**PHYSICS OVERSIGHT SERVICES**

**a. Physics Director:**

- 1) UCSF Chief of Physics and/or Clinical Chief of Physics

**b. Administrative Duties:**

- 1) Provide general oversight, direction and coordination of the clinical physics operation, physics quality management program, peer review process, physics and dosimetry recruiting activities, and other customary services specific to the ROC as necessary or appropriate.
- 2) Assist WHHS in assuring operational compliance with applicable rules, regulations and guidelines as established by the federal, state, and local governments. Assist WHHS in developing and implementing new plans for maintaining compliance as these rules, regulations and guidelines are revised.
- 3) Participate in WHHS, and as appropriate, other committees in reference to the ROC.
- 4) Provide appropriate and sufficient times to be available for consultation with WHHS leadership, physics and dosimetry staff, and ROC staff on an as-needed basis.
- 5) Perform such other physics-administrative duties as are requested from time to time by WHHS.

**c. Physics Director Services Related to the WHHS Rules Applicable at the ROC**

- 1) Advise WHHS with respect to the development and/or revision of physics-related elements of the WHHS Rules, Policies, Procedures, or regulations applicable at the ROC.
- 2) Advise in the design, development, and implementation of radiation oncology clinical programs that involve physics and dosimetry services such as system upgrades, advanced treatment delivery approaches (e.g. SBRT, DIBH, SRS, etc.), new radiation therapy equipment, etc.

**d. Physics Director Services Related to Physics Quality Management Programs (QMP)**

- 1) Perform regular reviews and audits of Physics reports as related to the QMP, including but not limited to monthly, quarterly, and annual calibration reports, acceptance and commissioning reports, post-service reports, in-vivo dosimetry analysis and reports, periodic spot checks of appropriate equipment maintenance and cross-calibration evaluations.



- 2) Review and advise in updates of clinical physics policies and procedures, including treatment planning protocols and procedures, workflows, chart check procedures, and treatment policies.
- 3) Attend mutually agreed upon task forces or committees related to radiation oncology

**e. Physics Director Services related to WHHS's peer review process**

- 1) Assist and participate in establishing or modifying a peer review process to evaluate clinical competence and skills of Physics and Dosimetry at the ROC.
- 2) Evaluate clinical competency and skills of Physics and Dosimetry at the ROC through the peer review process.
- 3) Advise WHHS with respect to selection, retention, and termination of all non-physician personnel who may be required for the proper operation of the ROC if and when requested to provide such advice by WHHS; provided, however that the WHHS shall retain the ultimate decision-making authority regarding the section, retention, and termination of all such personnel.

**f. Physics Director Services related to WHHS' equipment and technology for ROC**

- 1) Assist and advise in the evaluation and possible implementation of new technologies as they develop.
- 2) Consult, as necessary, with medical staff and ROC staff regarding the current and new technology, equipment, supplies, maintenance, and the needs of the ROC.
- 3) Consult with WHHS administration and act as ROC liaison regarding the necessity, safety and appropriateness of current technology, equipment, supplies, maintenance, and needs of the ROC.
- 4) Provide technical advice and assistance as may be requested by WHHS to facilitate the selection, purchase, and installation of new technology, equipment, and supplies at the ROC.
- 5) Upon purchase, advise in project planning process including renovation and construction review, technical specification reviews, state reporting requirements, physics acceptance and commissioning plans, and clinical implementation roll-out as appropriate.
- 6) Advise WHHS and ROC staff on physics-related components of relevant operating protocols and procedures based on UCSF's experience operating radiation oncology centers

**EXHIBIT 3.2**

**MEDIAL DIRECTOR TIMESHEET**

See attached.

# CONFIDENTIAL

## WASHINGTON HOSPITAL HEALTHCARE SYSTEM MEDICAL DIRECTOR TIME LOG

Medical Director: \_\_\_\_\_ Service Month and Year: \_\_\_\_\_

Program: \_\_\_\_\_ Total Hours Worked: \_\_\_\_\_

All activity dates, amounts of time spent and complete descriptions are required for payment.

### 1. CLINICAL SUPERVISION

1. Advise and consult on established and new policies and procedures; train and supervise the nurses and technicians in special techniques, new procedures, new supplies or equipment.
2. Provide leadership to staff and serve as a mentor and resource on service lines.
3. Conduct educational seminars and in-service programs for professional and non—professional hospital staff.

<u>Activity Date</u>	<u>Topic/Issue</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>

**4. MEDICAL ADVISOR SERVICES**

Activities involving patient care will require patient identification in addition to activity dates, amounts of time and complete descriptions of activities for payment.

1. Consult and become involved in patient care with individual physicians on especially difficult cases, when requested by Management.

<u>Activity Date</u>	<u>Patient I.D.</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>

**2. ADMINISTRATIVE OBLIGATIONS**

1. Serve on appropriate Hospital Committees/Task Forces.
2. Evaluate and recommend equipment to WHHS's Chief Executive Officer or her designee no later than April 1<sup>st</sup> of each year (for the Capital Budget).
3. Meet not less than once each month with WHHS's Chief Executive Officer or her designee, to assure thorough communication, including concerns and problems regarding personnel, physicians, patient complaints, potential liability and what has been accomplished in regards to trials and objections for service lines.
4. Submit a fiscal year written report of the operation and status of the Program.
5. Work with WHHS Administration to review and discuss budgetary projections and performance.
6. Participate in community groups and serve as liaison regarding public relations or marketing as agreed upon in advance with WHHS Administration.

7. Support the goals and philosophy of the Strategic Development Plan of WHHS. WHHS agrees to consult with the Director with respect to the Program and its relationship to the Strategic Development Plan.
8. Attend scheduled inspections and accreditations surveys, when requested and make a good faith effort to be present at those that are unscheduled.
9. Upon reasonable notice and at a mutually agreeable time, the Director will attend seminars or conferences reasonably determined by the Chief Executive Officer to be in the best interests of WHHS. Such seminars or conferences shall be for the overall benefit of WHHS as determined by the Chief Executive Officer and not for physicians' continuing medical education requirements.
10. Participate in and take calls from the Washington Hospital Emergency Department on-call roster, as agreed to.
11. Be responsive to WHHS Administration's requests during periods of high census by calling Administration (or the Nursing Supervisor, after hours) and, if asked, by coming in to WHHS.
12. Be responsive to community emergencies (i.e., earthquakes, accidents and attacks) by immediately contacting the WHHS Hospital Command Center ("HCC") through the WHHS operator and, if asked, by immediately reported to the on-site HCC.

<u>Activity Date</u>	<u>Topic/Issue</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>

Service Month and Year: \_\_\_\_\_

Total Hours Worked: \_\_\_\_\_

The above time log accurately reflects my services rendered and time spent as Medical Director of the Program during the above-referenced Service Month/Year.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewed by:

\_\_\_\_\_

**EXHIBIT 3.2a**

**PHYSICS DIRECTOR TIMESHEET**

Physics Director: \_\_\_\_\_ Service Month and Year: \_\_\_\_\_

Program: \_\_\_\_\_ Total Hours Worked: \_\_\_\_\_

All activity dates, amounts of time spent and complete descriptions are required for payment.

**Administrative Duties**

- Provide general oversight, direction and coordination of the clinical physics operation, physics quality management program, peer review process, physics and dosimetry recruiting activities, and other customary services specific to the ROC as necessary or appropriate.
- Assist WHHS in assuring operational compliance with applicable rules, regulations and guidelines as established by the federal, state, and local governments. Assist WHHS in developing and implementing new plans for maintaining compliance as these rules, regulations and guidelines are revised.
- Participate in WHHS, and as appropriate, other committees in reference to the ROC.
- Provide appropriate and sufficient times to be available for consultation with WHHS leadership, physics and dosimetry staff, and ROC staff on an as-needed basis.
- Perform such other physics-administrative duties as are requested from time to time by WHHS.

<u>Activity Date</u>	<u>Topic/Issue</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>


**Duties Related to WHHS Rules at ROC**

- Advise WHHS with respect to the development and/or revision of the physics-related elements of the WHHS Rules, Policies, Procedures, or regulations applicable at the ROC.
- Advise in the design, development, and implementation of radiation oncology clinical programs that involve physics and dosimetry services such as system upgrades, advanced treatment delivery approaches (e.g. SBRT, DIBH, SRS, etc.), new radiation therapy equipment, etc.

<u>Activity Date</u>	<u>Patient I.D.</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>



**Duties Related to Quality Management Plan**

- Perform regular reviews and audits of Physics reports as related to the QMP, including but not limited to monthly, quarterly, and annual calibration reports, acceptance and commissioning reports, post-service reports, in-vivo dosimetry analysis and reports, periodic spot checks of appropriate equipment maintenance and cross-calibration evaluations.
- Review and advise in updates of clinical physics policies and procedures, including treatment planning protocols and procedures, workflows, chart check procedures, and treatment policies.
- Attend mutually agreed upon task forces or committees related to radiation oncology

<u>Activity Date</u>	<u>Topic/Issue</u>	<u>Description of Activity</u>	<u>Total Hours Spent</u>

**Duties Related to Peer Review Process**

- Assist and participate in establishing or modifying a peer review process to evaluate clinical competence and skills of Physics and Dosimetry at the ROC.
- Evaluate clinical competency and skills of Physics and Dosimetry at the ROC through the peer review process.
- Advise WHHS with respect to selection, retention, and termination of all non-physician personnel who may be required for the proper operation of the ROC if and when requested to provide such advice by WHHS; provided, however that the WHHS shall retain the ultimate decision-making authority regarding the selection, retention, and termination of all such personnel.

<b><u>Activity Date</u></b>	<b><u>Topic/Issue</u></b>	<b><u>Description of Activity</u></b>	<b><u>Total Hours Spent</u></b>

**Duties Related to Equipment and Technology at the ROC**

- Assist and advise in the evaluation and possible implementation of new technologies as they develop.
- Consult, as necessary, with medical staff and ROC staff regarding the current and new technology, equipment, supplies, maintenance, and the needs of the ROC.
- Consult with WHHS administration and act as ROC liaison regarding the necessity, safety and appropriateness of current technology, equipment, supplies, maintenance, and needs of the ROC.
- Provide technical advice and assistance as may be requested by WHHS to facilitate the selection, purchase, and installation of new technology, equipment, and supplies at the ROC.
- Upon purchase, advise in project planning process including renovation and construction review, technical specification reviews, state reporting requirements, physics acceptance and commissioning plans, and clinical implementation roll-out as appropriate.
- Advise WHHS and ROC staff on physics-related components of relevant operating protocols and procedures based on UCSF’s experience operating radiation oncology centers

<b><u>Activity Date</u></b>	<b><u>Topic/Issue</u></b>	<b><u>Description of Activity</u></b>	<b><u>Total Hours Spent</u></b>

Service Month and Year: \_\_\_\_\_

Total Hours Worked: \_\_\_\_\_

The above time log accurately reflects my services rendered and time spent as Physics Director of the Program during the above-referenced Service Month/Year.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewed by:

\_\_\_\_\_

**EXHIBIT 5.5**

**BUSINESS ASSOCIATE AGREEMENT**

This Agreement is subject to the Business Associated Agreement dated [REDACTED] by and between Washington Township Health Care District and The Regents of the University of California.

**EXHIBIT 7.3**

**DISTRICT INSURANCE**

District, at its sole cost and expense, shall insure its activities in connection with this Agreement, and obtain, keep in force and maintain insurance as follows:

1. Professional Medical Liability Insurance with financially-sound and reputable companies with limits of five million dollars (\$5,000,000) per occurrence and a general aggregate of ten million dollars (\$10,000,000). If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to coinciding with the effective date of this Agreement and a deductible of no more than five hundred thousand dollars (\$500,000). In the event that a claims-made policy is canceled or non-renewed, then District shall obtain extended reporting (tail) coverage for the remainder of the five (5)-year period.
2. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with a limit of (1) one million dollars (\$1,000,000) per occurrence (2) one million dollars (\$1,000,000) Personal and Advertising Injury; and (3) five million (\$5,000,000) General Aggregate. If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement.
3. Workers' Compensation Insurance in a form and amount covering District's full liability as required by law under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.
4. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the parties against other insurance risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of District.

District, upon execution of this Agreement, shall furnish UCSF with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days' advance written notice to UCSF of any modification, change or cancellation of any of the above insurance coverages.

**EXHIBIT 7.4**

**UCSF PHYSICIANS' INSURANCE**

UCSF warrants that it maintains a program of self-insurance that covers its activities in connection with this Agreement as follows:

1. Professional Medical Liability Insurance with self-insured retention of five million dollars (\$5,000,000) per occurrence, with a general aggregate of ten million dollars (\$10,000,000). If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement and a deductible of no more than five hundred thousand dollars (\$500,000). In the event that a claims-made policy is canceled or non-renewed, then UCSF shall obtain extended reporting (tail) coverage for the remainder of the five (5) year period.
2. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with a limit of two and a half million dollars (\$2,500,000) per occurrence. If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement.
3. Worker's Compensation Liability Insurance with self-insured retention in amounts required by the State of California.
4. Such other insurance in such amounts from time to time may be reasonably required by the mutual consent of the parties against other insurance risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of UCSF.

UCSF, upon execution of this Agreement, shall furnish District with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days' advance written notice to District of any modification, change or cancellation of any of the above insurance coverages.

## QCARE SERVICES AGREEMENT

THIS QCARE SERVICES AGREEMENT (the “**Agreement**”) is made and entered into as of [REDACTED], 2022 (the “**Effective Date**”) by and among THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of UCSF Health (“**UCSF**”), WASHINGTON TOWNSHIP HEALTH CARE DISTRICT, dba Washington Hospital Healthcare System, a political subdivision of the State of California organized pursuant to the Local Health Care District Law (Div. 23 of the California Health and Safety Code) (“**WHHS**” or “**Washington**”), and WHHS & UCSF HEALTH CANCER SERVICES JOINT VENTURE, LLC (“**WUHCS**”), a California limited liability company. UCSF, WHHS, and WUHCS are sometimes referred to in this Agreement individually as a “**Party**” or, collectively, as the “**Parties.**”

### RECITALS

A. UCSF operates California’s leading tertiary and quaternary medical center and is experienced in the provision of high-quality comprehensive cancer care services. As part of UCSF’s cancer care operations, UCSF operates the UCSF Helen Diller Family Comprehensive Cancer Center.

B. Through its hospitals, hospital-based clinics, and non-hospital-based clinics, Washington furnishes high-quality cancer care services.

C. UCSF and WHHS are the parties to that certain WUHCS Operating Agreement (the “**WUHCS Operating Agreement**”) dated as March 24, 2022, which contemplates this Agreement.

D. WUHCS has been formed to acquire, develop, manage and provide support services to the radiation oncology clinic located at 39101 Civic Center Drive (“**Phase 1**”) and (ii) fund and manage the construction and build-out of a new cancer center at 2500 Mowry Avenue in Fremont, California that would involve the operation and management of a medical oncology/hematology clinic (“**Phase 2**”) (collectively referred to herein as the “**Centers**”), and (b) to such other related enterprises as may be agreed upon from time to time by unanimous vote of UCSF Health and WHHS (collectively, the “**Business**”).

E. Washington and WUHCS desire to contract with UCSF for quality, communications, access, research and education services in connection with the operation of the Centers and UCSF desires to provide such services to Washington and WUHCS.

F. The Parties hereby reference those certain additional agreements to which WHHS, UCSF, and/or WUHCS are parties: (1) WUHCS Operating Agreement, (2) Management Services Agreement (“**MSA**”) (3) Management Services Subcontract Agreement (“**MSSA**”), (4) Professional Services and Medical Director Agreement, (5) UCSF Trademark License Agreement; and (6) the Contribution Agreement (collectively, the “**Cancer Program Agreements**”).



AGREEMENT

**NOW THEREFORE**, in consideration of the premises and mutual covenants herein set forth in this Agreement, the Parties agree as follows:

1. **UCSF’S RIGHTS AND RESPONSIBILITIES.**

a. **Representations and Warranties.** UCSF represents and warrants to Washington and WUHCS as follows:

(1) **Good Standing.** UCSF is duly organized, validly existing and in good standing under the laws of the State of California and, to the best knowledge of UCSF’s officers, directors and employees, UCSF is not a party to any litigation or investigation an adverse outcome of which would materially affect UCSF’s ability to enter into this Agreement.

(2) **No Exclusion.** As of the Effective Date, neither UCSF nor any of UCSF’s representatives or UCSF’s employees, agents, servants, officers, directors, personnel, contractors or subcontractors who will provide QCARE Services (as defined below) to Washington pursuant to this Agreement (collectively, “**UCSF’s Staff**”) are:

(a) currently excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the Office of the Inspector General (“**OIG**”) or the Government Services Administration (“**GSA**”);

(b) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and/or

(c) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits.

(3) **Capacity to Perform.** UCSF is not bound by any agreement or arrangement which would preclude it from entering into, or from fully performing its obligations under, this Agreement.

(4) **Legal Compliance.** UCSF and UCSF’s Staff shall perform the services required hereunder in material compliance with all applicable federal, state, and local laws, rules and regulations.

(5) **UCSF’s Licenses.** UCSF has, and shall maintain throughout the term, all appropriate licenses, permits, certifications, approvals and other authorizations that are required in order for UCSF to perform the services required of UCSF under this Agreement.

(6) **Staff's Licenses.** UCSF's Staff have, and shall maintain throughout the term of this Agreement, all appropriate licenses, certifications, and medical staff credentials that are required in order for UCSF's Staff to perform the functions required under this Agreement.

(7) **Compliance with Terms of Agreement.** In providing services on behalf of UCSF under this Agreement, all of UCSF's Staff shall comply with all applicable provisions of this Agreement.

b. **UCSF's Responsibilities.** UCSF shall provide the services described in this Section 1.b (collectively, the "QCARE Services") upon the terms and subject to the conditions set forth in this Agreement.

(1) **QCARE Services.** UCSF shall provide the QCARE Services set forth in Exhibit A.

(2) **Performance Goals.** UCSF shall provide an annual report to WHHS describing UCSF's performance in providing the QCARE Services with respect to the metrics mutually agreed upon by the parties on an annual basis. The metrics for the initial year of the term are set forth in Exhibit C. Metrics for subsequent years will be mutually agreed upon in writing and set forth on an updated version of Exhibit C.

c. **Required Disclosures.** UCSF shall notify Washington and WUHCS in writing within three (3) days after any of the following events occur:

(1) **Event with Material Adverse Effect.** An event that materially adversely affects the ability of UCSF or any of the QCARE Personnel to perform the QCARE Services; or

(2) **Restrictions on Program Participation.** UCSF or any of QCARE Personnel's conviction of an offense related to health care or listing by a federal agency as being suspended, debarred, excluded, otherwise ineligible for federal program participation, or otherwise ineligible to furnish services under this Agreement.

2. **WASHINGTON'S RIGHTS AND RESPONSIBILITIES.**

a. **Facilities, Support and Staffing.** Washington shall provide support and data reasonably required for the operation of the Centers and reasonable assistance to UCSF research, quality, and tumor board staff as necessary to support the provision of the QCARE Services.

b. **Representations and Warranties.** WHHS each represent and warrant to UCSF as follows:

(1) **Good Standing.** WHHS is duly organized, validly existing and in good standing under the laws of the State of California and, to the best knowledge of their officers, directors and employees, WHHS is not a party to any litigation or investigation an adverse outcome of which would materially affect the ability of WHHS to enter into this Agreement.

(2) As of the Effective Date, WHHS is not:

(a) currently excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b-(f) (the “Federal health care programs”) and/or present on the exclusion database of the OIG or the GSA;

(b) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and/or

(c) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits.

(3) **Capacity to Perform.** WHHS is not bound by any agreement or arrangement which would preclude it from entering into, or from fully performing its obligations under, this Agreement.

(4) **Legal Compliance.** Washington and Washington’s staff shall perform Washington’s obligations required hereunder in material compliance with all applicable federal, state, and local laws, rules and regulations.

(5) **Washington’s Licenses.** Washington has, and shall maintain throughout the term, all appropriate licenses, permits, certifications, approvals and other authorizations that are required in order for UCSF to perform the services required of Washington under this Agreement.

(6) **Compliance with Terms of Agreement.** In meeting the obligations of Washington under this Agreement, all of Washington’s staff shall comply with all applicable provisions of this Agreement.

e. **Required Disclosures.** Washington shall notify UCSF in writing within three (3) days after any of the following events occur:

(1) **Event with Material Adverse Effect.** An event that materially adversely affects the ability of Washington to perform the obligations of Washington set forth in this Agreement; or

(2) **Restrictions on Program Participation.** Washington’s conviction of an offense related to health care or listing by a federal agency as being suspended, debarred, excluded, or otherwise ineligible for federal program participation.

f. **Responsibility.** Washington shall retain professional and administrative responsibility for the operation of the Center, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Washington’s retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations

of UCSF under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in Section 5.

3. **WUHCS'S RIGHTS AND RESPONSIBILITIES.**

a. **Representations and Warranties.** WUHCS represents and warrants to UCSF and WHHS as follows:

(1) **Good Standing.** WUHCS is a duly organized limited liability company, validly existing and in good standing under the laws of the State of California and, to the best knowledge of their officers, directors and employees, WUHCS is not a party to any litigation or investigation an adverse outcome of which would materially affect the ability of WUHCS to enter into this Agreement.

(2) As of the Effective Date, none of WUHCS's representatives or WUHCS's employees are:

(a) currently excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the OIG or the GSA;

(b) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and/or

(c) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits.

(3) **Capacity to Perform.** WUHCS is not bound by any agreement or arrangement which would preclude it from entering into, or from fully performing its obligations under, this Agreement.

(4) **Legal Compliance.** WUHCS and WUHCS's staff shall perform WUHCS's obligations required hereunder in material compliance with all applicable federal, state, and local laws, rules and regulations.

(5) **WUHCS's Licenses.** WUHCS has, and shall maintain throughout the term, all appropriate licenses, permits, certifications, approvals and other authorizations that are required in order for UCSF to perform the services required of WUHCS under this Agreement.

(6) **Compliance with Terms of Agreement.** In meeting the obligations of WUHCS under this Agreement, all of WUHCS's staff shall comply with all applicable provisions of this Agreement.

c. **Required Disclosures.** WUHCS shall notify UCSF in writing within three (3) days after any of the following events occur:

(1) **Event with Material Adverse Effect.** An event that materially adversely affects the ability of WUHCS to perform the obligations of WUHCS set forth in this Agreement; or

(2) **Restrictions on Program Participation.** WUHCS'S or any of WUHCS Staff's conviction of an offense related to health care or listing by a federal agency as being suspended, debarred, excluded, or otherwise ineligible for federal program participation.

4. **COMPENSATION.** In exchange for UCSF's provision of QCARE Services, WUHCS shall compensate UCSF as follows:

a. **QCARE Services Fee.** WUHCS shall pay to UCSF the amounts determined in accordance with the terms of Exhibit B (the "**QCARE Services Fee**") no later than thirty (30) days after receiving an invoice from UCSF for the QCARE Services Fee.

b. **Additional Compensation.** UCSF, Washington and WUHCS may, from time to time, agree that UCSF shall provide to the Business additional items or services not described in this Agreement (the "**Additional Support**"). Any agreement to provide Additional Support to the Business shall be in writing and shall be in the form of an amendment to this Agreement signed by the Parties. If UCSF provides Additional Support to the Business, WUHCS or Washington, as applicable, shall pay additional compensation to UCSF, the amount of which shall be set forth in any such amendment and which shall be on a prospective basis only.

c. **Renegotiation.**<sup>1</sup> Any Party may request renegotiation of the rates contained herein in writing at least thirty (30) days prior to the end of each two year period following the Effective Date of this Agreement, but no more frequently than once every two (2) years, and in all cases such renegotiated rates shall be set in advance for a minimum term of two (2) years. If no Party requests a renegotiation in the time period set forth above, or if the Parties engage in a renegotiation but fail to mutually agree prior to such anniversary date of the Effective Date of this Agreement, the QCARE Services Fee shall increase by three percent (3%) for the following two (2) year period of this Agreement, effective on such anniversary date of the Effective Date. Notwithstanding the foregoing, rates paid to UCSF shall at all times be and remain commensurate with and will not exceed the reasonable fair market value of the services to be provided by UCSF hereunder. Any adjustments to compensation as mutually agreed upon by the Parties shall be commensurate with fair market value and shall take effect on a prospective basis only.

## 5. **INSURANCE AND INDEMNIFICATION.**

a. **UCSF Insurance.** UCSF warrants that it maintains a program of self-insurance that covers its activities in connection with this Agreement as follows:

1. Professional Medical and Hospital Liability Insurance in the amount of five million dollars (\$5,000,000) per occurrence, with a general aggregate of ten

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<sup>1</sup> NOTE TO DRAFT: Parties need to discuss this methodology.

million dollars (\$10,000,000).

2. General Liability Insurance in the amount of five million dollars (\$5,000,000) per occurrence; (2) one million dollars (\$1,000,000) Personal and Advertising Injury; and (3) five million dollars (\$5,000,000) General Aggregate.
3. Worker's Compensation Liability Insurance in amounts required by the State of California.
4. Such other insurance in such amounts from time to time may be reasonably required by the mutual consent of the Parties against other insurance risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of UCSF.

UCSF, upon request, shall furnish Washington and WUHCS with Certificates of Insurance evidencing compliance with all requirements set forth in this Section.

b. **Washington Insurance.**<sup>2</sup> Washington warrants that it maintains insurance policies, or an equivalent program of self-insurance, that covers its activities in connection with this Agreement as follows:

1. Professional Medical and Hospital Liability Insurance with limits of five million dollars (\$5,000,000) per occurrence and a general aggregate of ten million dollars (\$10,000,000).
2. General Liability Insurance (contractual liability included) with a limit of five million (\$5,000,000).
3. Workers' Compensation Insurance in amounts as required by the State of California.
4. Such other insurance in such amounts that from time to time may be reasonably required by the mutual consent of the Parties against other insurable risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of Washington.

Washington, upon execution of this Agreement, shall furnish UCSF with Certificates of Insurance evidencing compliance with all requirements set forth in this Section.

c. **Indemnification by UCSF.** UCSF shall defend, indemnify and hold WHHS and WUHCS and their respective officers, directors, shareholders, employees, agents, and representatives harmless from and against any and all liabilities, losses, expenses (including

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<sup>2</sup> NOTE TO DRAFT: Need to confirm that this provision is consistent across the Cancer Program Agreements.

reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCSF, its officers, employees, or agents.

d. **Indemnification by WHHS.** WHHS shall defend, indemnify and hold UCSF and WUHCS, and their officers, employees, agents and representatives harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of WHHS and its respective officers, employees, or agents.

6. **TERM AND TERMINATION.**

a. **Term.** Unless earlier terminated as provided herein, the term of this Agreement ("**Term**") shall commence on the Effective Date of this Agreement and expire on the termination or expiration of the WUHCS Operating Agreement pursuant to Section 6.e below.

b. **Termination for Breach.** This Agreement may be terminated as follows:

(1) Washington or WUHCS may immediately terminate this Agreement upon written notice to UCSF in the event UCSF or any of UCSF's Staff providing QCARE Services pursuant to this Agreement is listed by a federal agency as being suspended, debarred, excluded, or otherwise ineligible for federal program participation.

(2) UCSF may immediately terminate this Agreement upon written notice to Washington and WUHCS in the event WUHCS, Washington, or any personnel they assign to the Business is listed by a federal agency as being suspended, debarred, excluded, or otherwise ineligible for federal program participation.

(3) A non-breaching Party may immediately terminate this Agreement upon written notice to the breaching Party in the event of a breach of any other provision of this Agreement by the breaching Party which continues for thirty (30) days after receipt by the breaching Party of written notice thereof from the non-breaching Party.

c. **Termination on General Assignment for the Benefit of Creditors.** Any Party may terminate this Agreement on one (1) day's prior written notice to the other Parties in the event one of the other Parties is the subject of a general assignment for the benefit of creditors, or the initiation of proceedings of any nature by third parties against the other Party under any federal or state law for the relief of debtors that is not dismissed within thirty (30) days after the filing of a petition therefor.

d. **Termination on the Appointment of a Receiver.** Any Party may terminate this Agreement on one (1) day's prior written notice to the other Parties in the event one of the other Parties is the subject of the appointment of a receiver to take charge of its affairs.

e. **Termination for Termination or Expiration of the WUHCS Agreement.** If WHHS or UCSF terminate the WUHCS Operating Agreement, for any reason or for no reason at all, or permit the WUHCS Operating Agreement to expire according to the terms of the WUHCS Operating Agreement, either WHHS or UCSF may, in its sole discretion, terminate this Agreement without cause. If a Party elects this option, it shall provide the other Parties with written notice of same no later than thirty (30) days after receiving notice of the other Party's intent to terminate the WUHCS Operating Agreement or permit the WUHCS Operating Agreement to expire, and termination of services pursuant to this Agreement shall occur contemporaneously with the termination or expiration of the WUHCS Operating Agreement.

f. **Effect of Termination.** As of the effective date of any termination of this Agreement, no Party shall have any further rights or obligations hereunder except: (1) as otherwise provided herein; (2) for rights and obligations accruing prior to such effective date of termination; and (3) those arising as a result of any breach of this Agreement. In the event termination occurs, the Parties will work collaboratively to ensure continuity of care and minimize the potential impact on patients receiving care under the Business.

## 7. **RELATIONSHIP BETWEEN THE PARTIES.**

a. **No Obligation to Make Referrals.** The Parties acknowledge that none of the benefits granted the Parties under this Agreement is conditioned on any requirement or expectation that either Party makes referrals to, be in a position to make or influence referrals to, or otherwise generate business for the other Party. The Parties further acknowledge that neither Party is restricted from referring any service to, or otherwise generating any business for, any other entity of its choosing. Washington's rights under this Agreement shall not be dependent in any way on the referral of patients or business to Washington by UCSF.

b. **Independent Contractor.** In performing its services hereunder, UCSF is acting as an independent contractor, and neither UCSF nor UCSF's Staff shall be considered employees of WHHS or WUHCS. The Parties agree and acknowledge that, as an independent contractor, UCSF retains the right to contract with and provide services to facilities and persons other than WUHCS and Washington and its patients, and nothing in this Agreement shall be interpreted as limiting or restricting that right in any way except as expressly stated elsewhere in this Agreement. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties hereto, and nothing contained herein shall be construed to authorize any Party to act as agent for the other. UCSF shall be liable for its own debts, obligations, acts and omissions, including with respect to all of UCSF's Staff, the payment of all applicable compensation, wages, pensions, workers' compensation, insurance, and all required withholding, social security and other taxes and benefits. Neither UCSF nor any UCSF's Staff shall be subject to any Washington or WUHCS policies solely applicable to the Center's employees, or eligible for any employee benefit plan offered by Washington or WUHCS. The provisions set forth herein shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

c. **Limitation on Control.** The physicians practicing at the Centers shall at all times be free, in their sole discretion, to exercise their professional and/or medical judgment on behalf of their respective patients. No provision of this Agreement is intended, nor shall it be



construed, to permit UCSF to affect or influence the professional and/or medical judgment of any the WHHS's medical staff or other health care practitioners.

d. **No Benefit Contributions.** Neither Washington nor WUHCS shall have any 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, UCSF or any other person employed or retained by UCSF. Notwithstanding the foregoing, if Washington or WUHCS 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, UCSF or any other person employed or retained by UCSF, UCSF shall reimburse Washington or WUHCS, as applicable, for any such expenditure within thirty (30) calendar days after being notified of such expenditure.

8. **COOPERATION OF THE PARTIES.**

a. Each Party and its respective employees, contractors, and medical staff members shall interact positively and respectfully with the other Parties and their respective employees, contractors, and medical staff.

b. 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 reasonable commercial efforts, to address such risk management and legal issues, claims, or actions.

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

9. **CONFIDENTIAL INFORMATION.**

a. **UCSF Information.** Washington and WUHCS recognize and acknowledge that, by virtue of entering into this Agreement and obtaining services from UCSF hereunder, Washington and WUHCS may have access to certain information of UCSF that is confidential and constitutes the valuable, special, and unique property of UCSF, including policies and procedures and operating manuals of UCSF. Washington and WUHCS warrant and covenant to UCSF that

neither Washington nor any Washington employee or independent contractor nor WUHCS or any WUHCS employee or contractor will at any time, (either during or subsequent to the Term), disclose to others, use, copy or permit to be copied, without UCSF's express prior written consent, except as otherwise permitted hereunder or as otherwise available to the public, any confidential or proprietary information of UCSF.

a. **Washington or WUHCS Information.** UCSF recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Washington and WUHCS hereunder, UCSF and UCSF's Staff may have access to certain information of Washington and WUHCS that is confidential and constitutes the valuable, special, and unique property of Washington or WUHCS. UCSF warrants and covenants to Washington and WUHCS that neither UCSF nor any of UCSF's Staff will at any time, (either during or subsequent to the Term), disclose to others, use, copy or permit to be copied, without Washington's or WUHCS's, as applicable, express prior written consent, except in connection with the performance of UCSF's or UCSF's Staff's duties hereunder or as otherwise available to the public, any confidential or proprietary information of Washington or WUHCS, including, without limitation, information which concerns Washington's patients, costs, prices, and treatment methods.

b. **HIPAA Compliance.** UCSF shall comply, and shall ensure that UCSF's Staff complies, with the HIPAA Business Associate Agreement signed contemporaneously with this agreement.

c. **Survival.** The provisions set forth herein shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

## 9. ACCESS TO BOOKS AND RECORDS.

a. If the value or cost of services rendered to Washington and WUHCS pursuant to this Agreement is Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, in accordance with Section 1861(v)(1)(I) of the Social Security Act, UCSF agrees as follows:

(1) Until the expiration of four (4) years after the furnishing of such services, UCSF shall, upon written request, make available to the Secretary of the United States Department of Health and Human Services (the "**Secretary**"), the Comptroller General of the United States, or their respective duly authorized representatives, such books, documents and records as may be necessary to certify the nature and extent of the cost of such services; and

(2) If any such services are performed by way of subcontract with a related organization and the value or cost of such subcontracted services is Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such subcontract shall contain, and UCSF shall enforce, a clause to the same effect as Section 9.a(1), above.

b. The availability of UCSF's books, documents, and records shall be subject at all times to all applicable legal requirements, including, without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of Sections 9.a and 9.b shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

10. **GENERAL PROVISIONS.**

a. Notices. All notices or other communications hereunder shall be in writing and shall be deemed given (a) upon confirmation of receipt of a facsimile transmission or (b) when sent by a reputable overnight carrier (providing proof of delivery) or when delivered by hand, addressed to the other Party at the address set forth below or on such other address as the Party may designate in writing in accordance with this Section 10.a:

To Washington or WUHCS:

Washington Hospital Healthcare System  
2000 Mowry Ave  
Fremont, California 94538  
Attention: Chief Executive Officer

With a copy to:

Paul Kozachenko, Esq.  
Gonsalves & Kozachenko  
2201 Walnut Avenue, Suite 220  
Fremont, CA 94538

To UCSF:

UCSF Health  
500 Parnassus Avenue, MUE5  
San Francisco, CA 94143  
Attention: Chief Strategy Officer

With a copy to:

Office of Legal Affairs  
UC San Francisco  
745 Parnassus Avenue, Suite 216  
San Francisco, CA 94143-0986  
Attention: Chief Campus Counsel

b. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each Party and its permitted successors and assigns.

c. Governing Law. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California without regard to its conflicts of laws provisions. If applicable, this Agreement shall be construed in accordance with and governed by all applicable federal, California, and applicable county laws, and other rules and regulations of any and all governmental authorities and accrediting agencies relating to the transfer of patients, including without limitation EMTALA, the Consolidated Omnibus Budget Reconciliation Act (42 U.S.C. section 1395dd, also known as COBRA), the Health Insurance

Portability and Accountability Act of 1996 (42 U.S.C. § 1320 through d-8, also known as HIPAA), California laws and regulations and The Joint Commission on Accreditation of Healthcare Organizations.

d. Assignment. Neither party shall assign any of its rights under this Agreement, nor delegate any of its duties, without the other party's prior written consent, and, if required by this Agreement or under law, the review and written approval of applicable regulatory agencies; provided however, that UCSF may delegate its duties hereunder to affiliated entities and to subcontractors when appropriate as determined by UCSF. Subject to the foregoing restriction, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

e. Relationship of the Parties. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The Parties are not, and shall not be construed to be in a relationship of joint venture, partnership or employer-employee. No Party shall have the authority to make any statements, representations or commitments of any kind on behalf of the other Party without the prior written consent of the other Party.

f. Costs. Each Party will be solely responsible for and bear all of its own costs and expenses, including, without limitation, fees and expenses of legal counsel, accountants and other advisors, incurred in connection with the negotiation of this Agreement and the Cancer Program Agreements.

g. Public Statements and Disclosure; Use of Name; Co-Branding. The Parties will keep this Agreement, and all other information regarding the matters contemplated herein and in the Cancer Program Agreements (including financial terms, if any) confidential until mutual agreement is reached in writing on publicity, and all subsequent publicity by a Party will be cleared in writing in advance with all other Parties. To the extent that a Party believes that disclosure is required as a matter of law, such Party shall promptly advise the other in writing of the disclosure that it intends to make. If the Parties wish to announce their collaboration pursuant to this Agreement or any of the Cancer Program Agreements, they agree to work together on a joint announcement. The use of the UCSF name and shall be subject to the UCSF Trademark License Agreement signed by UCSF, Washington and WUHCS.

h. Confidentiality; Public Records Act. Each Party will keep, and will cause its affiliates, and its and their officers, directors, employees and agents to keep, strictly confidential, all information and documents which the other Parties, or their affiliates, or their respective officers, directors, employees and agents, may furnish (orally or in writing) in connection with this Agreement and the Cancer Program Agreements (the "**Confidential Information**"). Each Party and its representatives will use the Confidential Information for the purposes contemplated herein or in the Cancer Program Agreements, as applicable, and for no other purpose. Notwithstanding the foregoing, the parties acknowledge that UCSF is subject to, and is required to comply with, the provisions of the California Public Records Act. If UCSF or any of its representatives is requested (including, without limitation, a request under the California Public Records Act), becomes legally compelled (by oral questions in a deposition under oath, interrogatories, requests for production of information or documents, subpoena, civil or criminal investigative demand, or

similar process) or is required by a regulatory body or governmental entity to make any disclosure that is prohibited by this Agreement, UCSF shall provide Washington with prompt notice of such request so that Washington may seek an appropriate protective order or other appropriate remedy. UCSF shall cooperate with Washington to the extent reasonably possible in obtaining such protective order or other appropriate remedy. Subject to the foregoing, UCSF may furnish that portion (and only that portion) of the confidential information that, in the opinion of UCSF's legal counsel, UCSF is legally compelled or otherwise required to disclose. If WHHS or any of its representatives is requested (including, without limitation, a request under the California Public Records Act), becomes legally compelled (by oral questions in a deposition under oath, interrogatories, requests for production of information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body or governmental entity to make any disclosure that is prohibited by this Agreement, WHHS shall provide UCSF with prompt notice of such request so that UCSF may seek an appropriate protective order or other appropriate remedy. WHHS shall cooperate with UCSF to the extent reasonably possible in obtaining such protective order or other appropriate remedy. Subject to the foregoing, WHHS may furnish that portion (and only that portion) of the confidential information that, in the opinion of WHHS's legal counsel, WHHS is legally compelled or otherwise required to disclose.

i. Amendments. This Agreement and any Exhibit hereto may be amended only by a written instrument signed by the Parties. In the event that this Agreement violates any state or federal law applicable to tax-exempt financing now maintained by any Party or sought by any Party in the future, the Parties shall attempt to renegotiate the terms of this Agreement in good faith in order to conform to said laws. Any such renegotiation shall, unless the Parties agree otherwise, be limited to those provisions that must be changed in order to obtain or maintain such financing. Unless renegotiation is accomplished by the good faith efforts of the Parties within sixty (60) days after written notice by any Party to the other Parties of the need for such renegotiation, any Party may immediately terminate this Agreement at the expiration of such sixty (60) day period.

j. Entire Agreement. All Exhibits referred to herein shall be deemed to be incorporated herein by reference. This Agreement and its Exhibits, and the WUHCS Operating Agreement and all Cancer Program Agreements with their respective Exhibits, represent the entire agreement of the Parties relating to the subject matter hereof. In the event that any provision of this Agreement conflicts with the terms of any Exhibit to this Agreement, the terms of the Exhibit shall control with respect to the subject matter of such Exhibit.

k. 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. Electronic signature pages shall constitute original signature pages for the purposes hereof.

l. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

m. 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, and shall apply only to the specific instance expressly stated.

n. Dispute Resolution. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined in accordance with the dispute resolution mechanism described in Section 19.8 of the Operating Agreement of WUHCS.

o. Change in Law. In the event that a change in state or federal law, statute, regulation, or enforcement or same materially affects this Agreement in a manner which is adverse to any Party to this Agreement, the Parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the Parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, the Party who is adversely affected may terminate this Agreement at the end of such thirty (30) day period.

p. Third Parties. This Agreement is not intended and shall not be construed to create any rights for any third party.

q. Force Majeure or Commercial Impracticability. Any Party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the reasonable control and without the fault of such Party including, without limitation, acts of God such as fire, flood, earthquake; acts of government (i.e., civil injunctions or enacted statutes and regulations); or acts or events caused by third parties such as riot, strike, or explosion; or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, extend the Term or release such Party from using its reasonable commercial efforts to avoid or remove such cause and such Party shall continue performance hereunder promptly whenever such causes are removed. Upon claiming any such excuse or delay in performance, such Party shall give prompt notice thereof to the other Parties, provided that failure to give such notice shall not in any way limit the operation of this provision.

r. Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

s. Non-Discrimination. The Parties agree to treat in a nondiscriminatory manner any and all patients receiving medical benefits or assistance under any federal health care program.

t. Regulations and Standards. The Parties shall comply with all applicable federal and state regulations and The Joint Commission standards.

u. Representation by Counsel; Interpretation. The Parties each acknowledge that each Party to this Agreement has been represented by counsel in connection with the drafting and negotiation of this Agreement and the transactions contemplated by this Agreement, and hereby waive application of any rules of contract interpretation or construction requiring provisions to be interpreted in favor of or against the person drafting the agreement. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the Parties.

v. Evidence Code 1156 and 1157. UCSF does not waive its rights pursuant to Evidence Code Sections 1156 and 1157 et seq. Said rights shall survive any subsequent termination of this Agreement.

*[signature page follows]*

The Parties have executed QCARE Services Agreement on the dates listed below:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of UCSF Health (“UCSF”):

WASHINGTON TOWNSHIP HEALTH CARE DISTRICT (“WHHS”):

By: \_\_\_\_\_  
Shelby Decosta  
President, UCSF Health Affiliates  
Network & Chief Strategy Officer

By: \_\_\_\_\_  
Kimberly Hartz  
Chief Executive Officer

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

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

UCSF HEALTH & WHHS CANCER SERVICES JOINT VENTURE, LLC (“WUHCS”):

By: \_\_\_\_\_  
Christine Nunez  
President

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



**EXHIBIT A**

**QCARE SERVICES**

The goal of the Q CARE package is to ensure that WHHS and UCSF demonstrate to the communities we serve that the standard of care provided in our joint venture is consistently high quality, regardless of whether the care is provided at WHHS or at UCSF. This goal will be achieved by deliberately and systematically integrating UCSF cancer related clinical care processes by establishing and measuring quality metrics (Q), improving communication between UCSF and WHHS (C), providing rapid access to UCSF experts through second opinions (A), expanding research and clinical trials capabilities (R), holding joint UCSF and WHHS Tumor Boards and increasing staff and provider education (E) – Q CARE. Specifics of Q CARE are listed below.

**Q CARE Package**

<b>CARE area</b>	<b>Program</b>
<b>Quality</b>	<p><b>Purpose</b></p> <ul style="list-style-type: none"><li>• The goal is to improve quality on key metrics through diligence and the sharing of best practices.</li><li>• UCSF will provide:<ul style="list-style-type: none"><li>○ Best practice sharing for monitoring and improving quality care within Radiation Oncology, Hematology/Oncology, and Infusion at the Centers (Phase 1 and Phase 2)</li><li>○ Expert advice to the WHHS &amp; UCSF Health Cancer Services Joint Venture as the Centers are being developed, given UCSF’s extensive experience building cancer centers and cancer programs</li></ul></li></ul> <p><b>Quality Analytics &amp; Management</b></p> <ul style="list-style-type: none"><li>• Coordinate the reporting of quality metrics using Incytive and establish baselines for Radiation Oncology exclusively</li><li>• Consultation on metric gathering, framework and best practices</li><li>• Perform informatics assessment for Radiation Oncology</li><li>• Review technical, clinical and physics staffing levels based on quality, safety and regulatory standards and make recommendations to ensure appropriate staffing skill mix and levels to ensure a high quality and efficient program</li><li>• Review any findings from audits or regulatory accreditation and help support the development of a remediation plan if necessary</li></ul> <p><b>Reviewing Results</b></p> <ul style="list-style-type: none"><li>• <i>Reporting to Committees</i><ul style="list-style-type: none"><li>○ The WHHS &amp; UCSF Health Cancer Services Joint Venture will report on all metrics and participate in the UCSF Cancer Quality Committee, a multi-disciplinary clinical team that meets monthly</li></ul></li></ul> <p><b>Operational Consultation</b></p> <ul style="list-style-type: none"><li>• UCSF Cancer Leadership will provide advice on policy, procedure and guidelines-related questions, including updates to regulatory guidelines and improvement opportunities</li></ul>

CARE area	Program
	<ul style="list-style-type: none"> <li>Specific UCSF Subject Matter Experts are also available for consultation in specific areas (e.g., best practices in nutrition support for head and neck Radiation Oncology, Hematology/Oncology, and Infusion patients)</li> <li>Policy Review and Feedback including a review of policies and procedures for Radiation Oncology, Hematology/Oncology, and Infusion services.</li> </ul>
<b>Communication and Access</b>	<p><b>Cancer Concierge Line</b></p> <p>UCSF will provide concierge access for referrals from the employed Joint Venture physicians for the Centers (Phase 1 and Phase 2) to UCSF for other cancer services and clinical trials.</p> <ul style="list-style-type: none"> <li>Concierge referrals will be managed through the Cancer Services Referral Center (CSRC).</li> <li>Clinical trials access will be facilitated by the Clinical Trial Finder tool and then appointment scheduling through the CSRC.</li> </ul>
	<p><b>Operational consultation</b>, including staffing models, benchmarking, and workflows</p>
	<p><b>Sharing best practices</b> from UCSF Cancer Leadership, including but not limited to operational insights, market insights, and policy updates</p>
<b>Research</b>	<p><b>Centralized Research and Clinical Trial Program Support</b></p> <p>UCSF will provide help growing the Centers research pipeline in Fremont in the following ways:</p> <ul style="list-style-type: none"> <li>UCSF will facilitate applications to open UCSF investigator-initiated clinical trials at the Centers on a case-by case basis. This includes assistance with site assessment, PI relationship building, and rapid audit of first three (3) patients on each clinical trial.</li> <li>Sandy Amos, RN, Infusion Center will be the certified location for infusional therapy related to all investigational trials</li> <li>UCSF will provide regularly updated and prioritized clinical trial lists for complex trials not open at the Centers, with a streamlined referral process.</li> <li>UCSF will advise the WHHS &amp; UCSF Health Cancer Services Joint Venture in developing metrics for clinical trial enrollment and strategies to increase physician and patient satisfaction with trials.</li> <li>UCSF will provide continuous auditing of patients enrolled in trials. Auditing for cooperative group trials will continue as before. UCSF will audit non-cooperative group trials.</li> </ul>
	<p><b>Education Support</b></p> <ul style="list-style-type: none"> <li>Invitation for cancer program physicians, cancer program staff, and community physicians to participate in UCSF sponsored continue education events and educational webinars including in the areas of medical oncology/hematology, radiation oncology, infusion and physics.</li> <li>Cancer program physicians can attend UCSF Disease specific Site Committee relevant to clinical trials and research endeavors</li> <li>UCSF HEM/ONC physicians can attend UCSF Department of Medicine Division of Hematology / Oncology Division Committee meetings</li> <li>UCSF HEM/ONC physicians can attend the UCSF Department of Medicine Division of Hematology/Oncology Friday morning case conference review meetings</li> </ul> <p><b>UCSF Tumor Board</b></p> <ul style="list-style-type: none"> <li>The WHHS &amp; UCSF Health Cancer Services employed Joint Venture physicians will be provided with open access to listen to and ask questions during UCSF Tumor Boards</li> </ul>
<b>Education</b>	

CARE area	Program

**EXHIBIT B**

**QCARE SERVICES FEES**

The QCARE Service Fee is Three Hundred Thousand Dollars (\$300,000) payable monthly in equal installments.

**The Service Fees include:**

General Cancer Center QCARE Program & Analytics	\$20,000
Radiation Oncology (clinical trials, informatics and administration)	\$150,000
Medical Oncology (clinical trials, tumor board and administration)	\$130,000
<b>Total</b>	<b>\$300,000</b>

**Key Deliverable for QCARE Program:**

A comprehensive QCARE annual report.

**EXHIBIT C**

**QCARE SERVICES PERFORMANCE METRICS**

**Radiation Oncology Metrics:**

1. Radiation Oncology Quality Metrics
  - a. Number of incident reports made per month
  - b. Time from referral to new patient consult scheduled for urgent referral (including pain follow-up or palliative care)
  - c. End of treatment summary completion within seven business days
2. Radiation Oncology Operational Metrics
  - a. New patient consults
  - b. New starts
  - c. Disease sites
  - d. Modalities
  - e. Number of fractions

**Medical Oncology Metrics:**

1. Quality Metrics
  - a. FY 2022: Survivorship
  - b. FY 2023: *Subject to additional input by clinical team*
    - i. Patient experience
    - ii. Financial/Quality (Access)
    - iii. Employee Engagement
2. Operational Metrics
  - a. New patient consults
  - b. Patient volume by specialty
3. Research Metrics
  - a. Number of clinical trials offered
  - b. Number of patients enrolled in clinical trials
4. Education
  - a. Lectures offered by UCSF
  - b. Lectures attended by employed Center physicians

**Infusion Center Metrics:**

1. Infusion Quality Metrics:
  - a. Bar Code Scanning Compliance
  - b. TAT (Turn Around Time) – medications dispensed from pharmacy
  - c. Patient experience – LTR
  - d. Employee Engagement – Nursing certification rate
2. Infusion Operational Metrics:
  - a. Functional assessments

## TRADEMARK LICENSE AND CO-BRANDING AGREEMENT

This Trademark License and Co-Branding Agreement (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2022 (the “**Effective Date**”) by and among The Regents of the University of California, on behalf of its San Francisco campus (“**UCSF**”), Washington Township Health Care District, a local health care district organized under the laws of the State of California, doing business as Washington Hospital Healthcare System (“**WHHS**”), and WHHS & UCSF Health Cancer Services Joint Venture, LLC, a California limited liability company (“**Cancer JV**” or “**Company**”).

### RECITALS

A. UCSF is the owner of rights, title and interest – including trademark rights – in and to “UCSF,” “UCSF Health,” “University of California, San Francisco,” and similar names, trademarks, service marks, and related logos within the United States and elsewhere.

B. WHHS is the owner of rights, title and interest – including trademark rights – in and to “Washington Hospital Healthcare System” and similar names, trademarks, service marks, and related logos within the United States and elsewhere.

C. UCSF and WHHS have formed Cancer JV pursuant to that certain Operating Agreement of WHHS & UCSF Health Cancer Services Joint Venture, LLC (the “**LLC Agreement**”) dated March 24, 2022, by and between UCSF and WHHS, that furthers the parties’ goals of promoting health and providing or expanding access to cancer healthcare services to a broad cross section of the community through the development of regional cancer center in Fremont, California (collectively, the “**Cancer Center**”). The Cancer Center will consist of the joint management through the Cancer JV of the following: (i) a Radiation Oncology Center at 39101 Civic Center Drive, Fremont, California, and (ii) the design, construction, build out, and fitting, of a medical oncology/hematology and infusion clinic located at 2500 Mowry Avenue, Fremont, California.

D. UCSF and WHHS have entered into that certain Collaboration Agreement effective June 28, 2013 (the “**Collaboration Agreement**”), pursuant to which the parties agreed to collaborate to enhance the availability of specialty services in the Washington community through program development. For purposes of this Agreement, the Washington community consists of the geographic region defined by the zip codes listed in Exhibits C and E of the LLC Agreement.

E. As of the Effective Date, UCSF and WHHS have entered into that certain Professional Services Agreement dated as of [July 1, 2022] (the “**PSA**”), pursuant to which UCSF shall provide professional medical services, medical director services and related medico-administrative services to WHHS, and that certain QCARE Services Agreement dated as of July 1, 2022 (the “**QCARE Agreement**”) pursuant to which UCSF will provide quality, communications, access, research and education services in connection with the operation of the Cancer Center.

F. As of the Effective Date, WHHS and Company have entered into that certain Management Services Agreement dated [July 1, 2022] (the “**MSA**”) and Management Services Subcontract Agreement dated [July 1, 2022] (the “**MSA Subcontract**”) pursuant to which the parties manage certain aspects of the cancer program (collectively, the “**Healthcare Services**”).

G. In connection with the parties' affiliation through the LLC Agreement, the Collaboration Agreement, the PSA, the QCARE Agreement, the MSA and the MSA Subcontract: (i) Cancer JV and WHHS wish to publicly use the UCSF logo(s) identified on **Exhibit A** (the "UCSF Marks") next to WHHS's name or logo to inform local communities and patients that WHHS is affiliated with UCSF, (ii) Cancer JV and UCSF wish to publicly use the WHHS logo(s) identified on **Exhibit B** (the "WHHS Marks") next to UCSF's name or logo to inform local communities and patients that UCSF and Cancer JV are affiliated with WHHS, and (iii) Cancer JV, UCSF, and WHHS wish to publicly use the Co-Brand "lockup" logo(s) set identified on **Exhibit A**.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged, and intending to be legally bound hereby, the parties agree as follows:

## 1. UCSF LICENSE

(a) **License.** Subject to the restrictions, terms, and conditions of this Agreement or incorporated herein, UCSF hereby grants to Cancer JV and WHHS (collectively, the "UCSF Licensees") a non-exclusive, non-transferable, non-sublicenseable and royalty-free license to use the UCSF Marks identified on **Exhibit A** according to the terms of this Agreement and solely in conformance with the Branding Plan (as defined below) and solely for the purpose of providing Healthcare Services at the Cancer Center.

(b) **Retention of Rights.** UCSF retains all rights, title, and interest in and to the UCSF Marks including any goodwill associated with the UCSF Marks, and is free to continue to use and license the UCSF Marks and derivatives thereof as it deems appropriate. Any use of the UCSF Marks by the UCSF Licensees will inure to the benefit of UCSF, and the UCSF Licensees agree not to take any action that is inconsistent with UCSF's ownership of the UCSF Marks.

(c) **Co-Branding Obligation.** During the Term of this Agreement, WHHS and Cancer JV, at Cancer JV's sole cost and expense, shall co-brand all marketing and promotional materials and communications set forth in **Exhibit A** (collectively, the "Licensed Materials") solely in connection with the Healthcare Services provided at the Cancer Center, with the UCSF Marks in accordance with the terms and conditions of this Agreement, including the co-branding plan and communication standards set forth as **Exhibit A** attached hereto (the "Branding Plan"), with the co-branded "lockup" logo(s) set forth on **Exhibit A** and such other designs as the parties hereto may agree in writing from time to time (the "Co-Brand"). During the Term of this Agreement, the Licensed Materials will not be branded or named with any mark, name or logo other than the Co-Brand. For avoidance of doubt, the UCSF Licensees' co-branding obligation extends only to the Healthcare Services provided at the Cancer Center as set forth in the Branding Plan, and the UCSF Licensees have no obligation or right to co-brand any other WHHS or Cancer JV business, operation or activity with any UCSF Mark. For the sake of clarity, nothing in this paragraph shall be interpreted or deemed to impair the rights of any party to the use of UCSF Marks or WHHS Marks under a separate agreement concerning the use of such marks.

(d) **Other University Marks Excluded.** UCSF does not grant to the UCSF Licensees any rights, title, and interest in the University Marks except for the UCSF Marks used in connection

with the Co-Brand. The term “**University Marks**” means all characters, colors, emblems, designs, identifications, logos, landmarks, mascots, name, service marks, symbols, trademarks, service marks, all trade names and other proprietary designations, including the UCSF Marks, that are owned, licensed to or controlled by The Regents of the University of California (the “**University**”) and which are in existence at the beginning of or created during the term of this Agreement. Nothing in this Agreement, or in the UCSF Licensees’ use of the UCSF Marks (or the Co-Brand), shall give the UCSF Licensees any right to use the University Marks, or any similar marks, beyond the rights granted to the UCSF Licensees to use the UCSF Marks under this Agreement. The University retains all right, title, and interest in the University Marks, including without limitation the UCSF Marks, except as otherwise granted herein.

(e) Limitations. The UCSF Licensees agree to use the UCSF Marks only in connection with marketing, promoting or identifying all or part of the Healthcare Services provided at the Cancer Center and pursuant to the Branding Plan. The UCSF Licensees shall not use the UCSF Marks in combination with any other trademark or service mark except as set forth on Exhibit A, unless prior written consent of the University is given. Notwithstanding anything to the contrary herein, the parties agree that the UCSF Licensees will not be required to display the UCSF Marks (i) on any materials, messaging, communications, or other items in which solely the name of the UCSF Licensees is required under applicable law, or (ii) in any permits, licenses or other items required by applicable law to be provided or displayed in connection with the UCSF Licensees’ performance as a provider of health care services under applicable laws.

(f) Misuse or Registration. The UCSF Licensees agree that the UCSF Marks include significant goodwill the University has developed in connection with the UCSF Marks and University Marks, as well as the value of that goodwill in the minds of educational communities, the public, and other constituencies. The UCSF Licensees agree that it is critical that such goodwill be protected and enhanced and, toward this end, the UCSF Licensees shall not misuse the UCSF Marks; apply to register or maintain any application or registration of a confusingly similar service mark, trademark, or logo; or use the UCSF Marks, the Co-Brand or any other University Marks in any way except as authorized by this Agreement.

(g) Sublicensing. The UCSF Licensees may not grant any sublicenses for use of the UCSF Marks to any third parties without the prior written consent of the University. For the sake of clarity, any rights granted by Cancer JV to WHHS under the MSA shall not be considered a grant of a sublicense under the terms of this Agreement. Any agreement granting a sublicense of the UCSF Marks shall contain University-approved terms and conditions no less restrictive than those set forth in this Agreement and shall state that the sublicense is subject to the termination of this Agreement. The UCSF Licensees shall have the same responsibility for the activities of any sublicensee as if the activities were directly those of the UCSF Licensees. The UCSF Licensees shall provide the University with the name, contact information and address of each sublicensee, as well as information regarding proposed uses of the UCSF Marks, to allow the University to determine if the sublicense poses any undue risk to the University. Upon the University’s written request, the UCSF Licensees shall provide to the University copies of each sublicense agreement and any amendments thereto.



## 2. QUALITY CONTROL OF THE UCSF MARKS

(a) UCSF Policies. In connection with its licensed use of the UCSF Marks, the UCSF Licensees agree that they will abide by all terms and standards set forth on <http://identity.ucsf.edu> or its successor website(s), which may be amended from time to time by UCSF in its sole discretion.

(b) Standard of Care. The UCSF Licensees agree that they will render all Healthcare Services while using the UCSF Marks in a manner consistent with high quality and a high standard of care for the communities where the Healthcare Services will be rendered.

(c) Notice. If UCSF objects to any use of the UCSF Marks by the UCSF Licensees (i.e., to the extent not already then-approved or authorized under this Agreement or through separate written approval of UCSF), UCSF will notify the UCSF Licensees in writing as to UCSF's concerns, and the UCSF Licensees agree to use commercially reasonable efforts to resolve all of UCSF's concerns as quickly as reasonably practicable under the circumstances and no later than 10 business days.

(d) Annual Samples. During the term of this Agreement, UCSF will have the right to request that the UCSF Licensees submit to UCSF no more than once per year samples of any or all uses of the UCSF Marks on or in connection with the UCSF Licensees' services and activities, to the extent such uses have (i) not then been approved or authorized under this Agreement or through a separate written approval of UCSF and (ii) not otherwise been provided to UCSF or its representatives in writing. The Cancer JV shall be responsible for the costs associated with compliance with this paragraph.

(e) Education Code. The UCSF Licensees agree that, at all times, they will comply with Section 92000 of California's Education Code governing the use of the University of California name and its abbreviations.

## 3. UC CODE OF CONDUCT FOR TRADEMARK LICENSEES

To the extent that the UCSF Licensees produce or create – or subcontract for the production or creation of – merchandise or other physical goods (whether for sale or give-away) that contain the UCSF Marks (such as business cards), the UCSF Licensees agree that they and their contractors will abide by then-existing “University Of California Code Of Conduct For Trademark Licensees” (currently available at: <http://policy.ucop.edu/doc/3000130/CodeTrademarkLicensees>), as it may be modified from time to time.

## 4. UCSF TRADEMARK NOTICES AND APPROVALS

(a) Review and Approval. The UCSF Licensees agree to submit to the UCSF Medical Center Marketing Department (the “UCSFMCMD”), which oversees the UCSF Marks, for review and approval in advance, samples of the UCSF Licensees' proposed new or modified uses of the UCSF Marks (other than uses already approved in the Branding Plan), based on the guidelines available at:

<http://identity.ucsf.edu> or their successor website(s).

The UCSFMCMD will make reasonable efforts to review samples submitted by the UCSF Licensees and to approve or suggest necessary modifications to such samples within five (5) business days after receipt of the submission. The UCSF Licensees agree to modify, at their sole cost and expense, any changes made to the UCSF Marks or samples that were not preapproved.

(b) Notice. The UCSF Licensees shall promptly notify the University in writing if it becomes aware that (A) any person or entity is using or plans to use the University Marks without authorization from UCSF, or (B) any person or entity claims that it is the owner of the UCSF Marks or that the UCSF Licensees' use of the UCSF Marks infringes its intellectual property rights.

(c) Enforcement. The UCSF Licensees may not initiate any action with respect to the enforcement of the University's rights to the University Marks, including, but not limited to, pursuing or settling an infringement action; however, the UCSF Licensees shall cooperate with the University in the University's pursuit of any legal action designed to protect the University's rights to the University Marks. UCSF shall inform the UCSF Licensees of the need for such efforts before incurring any costs and expenses.

(d) Notices and Legends. To denote the University's ownership of the UCSF Marks, the UCSF Licensees shall include as necessary or as required by the University, appropriate trademark and/or copyright notices in marketing/communication materials, in media (such as websites), and/or on products. Such trademark notice shall be approved in advance, in writing, by UCSF and shall include the following statement (or its equivalent): "*UCSF*" and "*UCSF Health*" are trademarks of The Regents of the University of California, and are used under license. In addition, the UCSF Licensees will include such other legends, markings and notices as UCSF may reasonably request from time to time, including as set forth in the guidelines described in Section 4(a) above or as specified in the Branding Plan.

(e) Seal. The UCSF Licensees shall not issue any licenses, certificates or similar documents bearing the University seal. For avoidance of doubt, no rights are being granted to the UCSF Licensees to use the University seal.

(f) No Other Rights. Nothing in this Agreement grants by implication, estoppel, or otherwise any rights to the University's intellectual property, except as explicitly set forth herein.

## 5. **WHHS LICENSE**

(a) License. Subject to the restrictions, terms, and conditions of this Agreement or incorporated herein, WHHS hereby grants to UCSF and Cancer JV (collectively, the "**WHHS Licensees**") a non-exclusive, royalty-free, non-sublicenseable, non-transferable license to use the WHHS Marks identified on **Exhibit B** according to the terms of this Agreement and solely in conformance with the Branding Plan and solely for the purpose of providing Healthcare Services at the Cancer Center, including without limitation the Healthcare Services at the Cancer Center that the WHHS Licensees are providing under the terms of the LLC Agreement, PSA and MSA.

(b) Retention of Rights. WHHS retains all rights, title, and interest in and to the WHHS Marks including any goodwill associated with the WHHS Marks, and is free to continue to use and license the WHHS Marks as it deems appropriate. Any use of the WHHS Marks by the WHHS

Licensees will inure to the benefit of WHHS, and the WHHS Licensees agree not to take any action that is inconsistent with WHHS's ownership of the WHHS Marks.

(c) Co-Branding Obligation. During the Term of this Agreement, the WHHS Licensees, at Cancer JV's sole cost and expense, shall co-brand all Licensed Materials with the WHHS Marks in accordance with the terms and conditions of this Agreement, including the Branding Plan, and with the Co-Brand set forth on **Exhibit A** and such other designs as the parties hereto may agree in writing from time to time. During the Term of this Agreement, the Licensed Materials used by the WHHS Licensees will not be branded or named with any mark, name or logo other than the Co-Brand. For avoidance of doubt, the WHHS Licensees' co-branding obligation extends only to the Healthcare Services provided at the Cancer Center or as set forth in the Branding Plan, and the WHHS Licensees have no obligation or right to co-brand any other UCSF or Cancer JV business, operation or activity with any WHHS Mark.

(d) Limitations. The WHHS Licensees agree to use the WHHS Marks only in connection with marketing, promoting or identifying all or part of their Healthcare Services that are provided at the Cancer Center and pursuant to the Branding Plan. The WHHS Licensees shall not use the WHHS Marks in combination with any other trademark or service mark except as set forth on **Exhibit A and Exhibit B**, unless prior written consent of the WHHS is given. Notwithstanding anything to the contrary herein, the parties agree that the WHHS Licensees will not be required to display the WHHS Marks (i) on any materials, messaging, communications, or other items in which solely the name of the WHHS Licensees is required under applicable law, or (ii) in any permits, licenses or other items required by applicable law to be provided or displayed in connection with the WHHS Licensees' performance as a provider of health care services under applicable laws.

(e) Misuse or Registration. The WHHS Licensees agree that the WHHS Marks include significant goodwill WHHS have developed in connection with the WHHS Marks, as well as the value of that goodwill in the minds of the public and other constituencies. The WHHS Licensees agree that it is critical that such goodwill be protected and enhanced and, toward this end, the WHHS Licensees shall not misuse the WHHS Marks; apply to register or maintain any application or registration of a confusingly similar service mark, trademark, or logo; or use the WHHS Marks in any way except as authorized by this Agreement.

(f) Sublicensing. The WHHS Licensees may not grant any sublicenses for use of the WHHS Marks to any third parties without the prior written consent of WHHS. Any agreement granting a sublicense of the WHHS Marks shall contain terms and conditions no less restrictive than those set forth in this Agreement and shall state that the sublicense is subject to the termination of this Agreement. The WHHS Licensees shall have the same responsibility for the activities of any sublicensee as if the activities were directly those of the WHHS Licensees. The WHHS Licensees shall provide WHHS with the name, contact information and address of each sublicensee, as well as information regarding proposed uses of the WHHS Marks, to allow WHHS to determine if the sublicense poses any undue risk to WHHS. Upon WHHS's written request, the WHHS Licensees shall provide to WHHS copies of each sublicense agreement and any amendments thereto.

## 6. QUALITY CONTROL OF THE WHHS MARKS

(a) WHHS Policies. In connection with its licensed use of the WHHS Marks, the WHHS Licensees agree that they will abide by all terms and standards set forth on **Exhibit B** attached hereto.

(b) Standard of Care. The UCSF Licensees agree that they will render all Healthcare Services while using the WHHS Marks in a manner consistent with high quality and a high standard of care for the communities where the Healthcare Services will be rendered.

(c) Notice. If WHHS objects to any use of the WHHS Marks by the WHHS Licensees (i.e., to the extent not already then-approved or authorized under this Agreement or through separate written approval of WHHS), WHHS will notify the WHHS Licensees in writing as to WHHS's concerns, and the WHHS Licensees agree to use commercially reasonable efforts to resolve all of WHHS's concerns as quickly as reasonably practicable under the circumstances and no later than 10 business days.

## 7. WHHS TRADEMARK NOTICES AND APPROVALS

(a) Review and Approval. The WHHS Licensees agree to submit to WHHS, for review and approval in advance, samples of the WHHS Licensees' proposed new or modified uses of the WHHS Marks (other than uses already approved in the Branding Plan). WHHS will make reasonable efforts to review samples submitted by the WHHS Licensees and to approve or suggest necessary modifications to such samples within five (5) business days after receipt of the submission. The WHHS Licensees shall certify upon request which shall be no more often than annually that their use of the WHHS Marks conforms to the pre-approved samples. The WHHS Licensees shall submit such certification within forty-five (45) days of WHHS's written request. The WHHS Licensees agree to modify, at their sole cost and expense, any changes made to the WHHS Marks or samples that were not preapproved.

(b) Notice. The WHHS Licensees shall promptly notify WHHS in writing if it becomes aware that (A) any person or entity is using or plans to use the WHHS Marks without authorization from WHHS, or (B) any person or entity claims that it is the owner of the WHHS Marks or that the WHHS Licensees' use of the WHHS Marks infringes its intellectual property rights.

(c) Enforcement. The WHHS Licensees may not initiate any action with respect to the enforcement of WHHS's rights to the WHHS Marks, including, but not limited to, pursuing or settling an infringement action; however, the WHHS Licensees shall cooperate with WHHS in WHHS's pursuit of any legal action designed to protect WHHS's rights to the WHHS Marks. WHHS shall inform the WHHS Licensees of the need for such efforts before incurring any costs and expenses.

(d) Notices and Legends. To denote WHHS's ownership of the WHHS Marks, the WHHS Licensees shall include as necessary or as required by WHHS, appropriate trademark and/or copyright notices in marketing/communication materials, in media (such as websites), and/or on products. In addition, the WHHS Licensees will include such other legends, markings

and notices as WHHS may reasonably request from time to time, including as set forth in the guidelines described in Section 7(a) above or as specified in the Branding Plan.

(e) No Other Rights. Nothing in this Agreement grants by implication, estoppel, or otherwise any rights to WHHS's intellectual property, except as explicitly set forth herein.

## 8. CHANGING BRANDS

Notwithstanding anything in this Agreement to the contrary, each of UCSF and WHHS shall have the right to change, from time to time, in its discretion, its respective mark(s) set forth in **Exhibit A** and **Exhibit B** and how such marks appear in the Co-Brand set forth in **Exhibit A** to conform to such party's broader branding strategies. If a party desires to so change its mark, it shall notify the other parties, and the parties shall cooperate in good faith to revise the Co-Brand to reflect such new marks. Once the parties reach written agreement with respect to the revised Co-Brand, the UCSF Licensees and the WHHS Licensees will display the new Co-Brand on all Licensed Materials (except for such Licensed Materials in existence at the time of such agreement, which may be used until such materials are depleted, provided, however, that such old materials shall be destroyed and discarded after 12 months from the date the parties reach such written agreement). Nothing in this provision will affect the specifications of the Co-Brand set forth above in Section 1(c) or other obligations under this Agreement in respect of the Co-Brand.

Notwithstanding the foregoing, WHHS is currently in the process of a brand refresh, and UCSF shall not have the right to unreasonably withhold, delay, or condition its consent to the revised WHHS Marks.

## 9. TERM AND TERMINATION

(a) Term. Unless sooner terminated pursuant to Sections 9(b), 9(c) or 9(d) below, the term of this Agreement and the license granted hereby will remain in force from the Effective Date until the first to occur of the following: (i) the date of dissolution of the Cancer JV; (ii) UCSF no longer holds any ownership interest in the Cancer JV; or (iii) the termination or expiration of the PSA (the "**Term**").

(b) Termination by Mutual Agreement. This Agreement may be terminated at any time by mutual agreement of the parties in writing.

(c) Suspension by Either Party. The licenses granted by UCSF and WHHS under this Agreement may be suspended by UCSF or WHHS, respectively, in each party's sole discretion but subject to the notice and cure rights below, in the event of a material breach or other violation of the terms or standards of this Agreement that is not cured within thirty (30) business days upon the other party's receipt of written notice from the applicable party specifying the underlying breach or violation. If suspended, the license granted by either party under this Agreement shall be reinstated once the basis for such suspension (*i.e.*, the breach or violation) is cured or corrected. The license granted by either party under this Agreement may be immediately suspended by such party upon written notice to the other party, in the such party's sole discretion and not subject to any cure rights, if, in such party's good-faith reasonable judgment, a licensee under this Agreement (i) jeopardizes the mental or physical health, safety, or well-being of any person or damages the

reputation of such party or (ii) materially breaches any of the terms or standards of this Agreement in a manner that is not practicably curable.

(d) Legal Jeopardy. If any party determines in good faith based on advice of qualified legal counsel that any federal, state, or local law or regulation (i) prohibits the relationship of the parties as presently structured under this Agreement; (ii) would subject such party to this Agreement to a material risk of criminal prosecution or civil monetary penalties; (iii) would prohibit or restrict the operations of UCSF or WHHS; (iv) would prohibit a referral of any patient from WHHS to UCSF or vice versa, or any of their respective Affiliates; or (v) would jeopardize the federal income tax exemption of UCSF or WHHS or any of their respective Affiliates, then any party may give notice thereof to the other parties, and the parties shall make a good faith effort to alter their relationship and modify this Agreement to the minimum extent necessary to comply with such law or regulation or otherwise resolve the legal or other problem. If, after diligent good faith efforts, UCSF and WHHS are unable to mutually agree upon such modification within thirty (30) days after such notice, or if such modification is not legally possible, then this Agreement shall be terminated by any party upon ten (10) days' prior written notice.

(e) Post-Termination Rights and Obligations. Upon termination or expiration of this Agreement, all rights and obligations of the parties hereunder shall forthwith terminate, and the UCSF Licensees and the WHHS Licensees (each a "Licensee" and, collectively, the "Licensees") shall comply with all of the following obligations, save and except for any liabilities arising out of any antecedent breaches and any provisions which are expressed to survive the termination or expiration of this Agreement:

(i) The UCSF Licensees shall cease to, directly or indirectly, represent to the public or hold itself out as a licensee of the UCSF Marks, and the WHHS Licensees shall cease to, directly or indirectly, represent to the public or hold itself out as a licensee of the WHHS Marks;

(ii) The UCSF Licensees shall permanently cease to use, by advertising or in any other manner whatsoever, the UCSF Marks and any other identifying characteristics and marks of the University's relationship with the UCSF Licensees, and any other intellectual property licensed by the University pursuant to this Agreement, and the WHHS Licensees shall permanently cease to use, by advertising or in any other manner whatsoever, the WHHS Marks and any other identifying characteristics and marks of WHHS's relationship with the WHHS Licensees, and any other intellectual property licensed by WHHS pursuant to this Agreement;

(iii) The UCSF Licensees shall remove all University Marks immediately from all electronic media, destroy promptly all materials bearing any University Marks, and cease any and all use of the University Marks; and the WHHS Licensees shall remove all WHHS Marks immediately from all electronic media, destroy promptly all materials bearing any WHHS Marks, and cease any and all use of the WHHS Marks; and

(iv) The UCSF Licensees shall immediately turn over to the University, or certify to the destruction of, all of the intellectual property of the University and shall retain no copy or record of any of the forgoing other than archival copies of materials for historical records, and the WHHS Licensees shall immediately turn over to WHHS, or certify to the destruction of, all of the

intellectual property of WHHS and shall retain no copy or record of any of the forgoing other than archival copies of materials for historical records.

## 10. INDEMNIFICATION

(a) By UCSF Licensees. The UCSF Licensees will indemnify and hold harmless UCSF, its directors, officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or unintentional acts or omissions of the UCSF Licensees.

(b) By WHHS Licensees. The WHHS Licensees will indemnify and hold harmless WHHS and their directors, officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or unintentional acts or omissions of the WHHS Licensees.

## 11. WARRANTIES; DISCLAIMER OF ADDITIONAL WARRANTIES

(a) By UCSF. UCSF represents and warrants as of the Effective Date and throughout the term that:

(i) The University, including its operating division UCSF, is a corporation described in Article IX, Section 9 of the California Constitution. The University is qualified for exemption from taxation as an organization described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and has received a determination of such tax-exempt status from the Internal Revenue Service, which determination has not been revoked, rescinded or modified. The University, including UCSF, shall make good faith efforts to maintain its status under California law and as an organization exempt from taxation under Section 501(c)(3) of the Code.

(ii) The execution, delivery and performance of this Agreement have been duly authorized by UCSF. UCSF has full power and authority to enter into, consummate and perform this Agreement and carry out all of the terms and provisions of this Agreement. This Agreement is a legal, valid and binding obligation of UCSF, enforceable against UCSF in accordance with its terms, except insofar as enforcement thereof may be limited by bankruptcy, moratorium, insolvency or similar laws affecting creditor's rights and general equitable principles.

(iii) UCSF has all necessary rights to the UCSF Marks in order to grant to the UCSF Licensees the applicable licenses under this Agreement, and the UCSF Marks, and the UCSF Licensees' use of the UCSF Marks pursuant to this Agreement, do and will not infringe, violate, dilute or misappropriate any rights, including intellectual property rights, of any third party.

(b) By WHHS. WHHS represents and warrants as of the Effective Date and throughout the term that:

(i) WHHS is a local health care district, duly organized under the laws of the State of California.

(ii) The execution, delivery and performance of this Agreement have been duly authorized by WHHS. WHHS has the full power and authority to enter into, consummate and perform this Agreement and carry out all of the terms and provisions of this Agreement. This Agreement is a legal, valid and binding obligation of WHHS, enforceable against WHHS in accordance with its terms, except insofar as enforcement thereof may be limited by bankruptcy, moratorium, insolvency or similar laws affecting creditor's rights and general equitable principles.

(iii) WHHS has all necessary rights to the WHHS Marks in order to grant to the WHHS Licensees the applicable licenses under this Agreement, and the WHHS Marks, and the WHHS Licensees' use of the WHHS Marks pursuant to this Agreement, do and will not infringe, violate, dilute or misappropriate any rights, including intellectual property rights, of any third party.

(c) By Cancer JV. Cancer JV represents and warrants as of the Effective Date and throughout the term that:

(i) Cancer JV is a limited liability company duly organized under the laws of the State of California.

(ii) The execution, delivery and performance of this Agreement have been duly authorized by Cancer JV. Cancer JV has full power and authority to enter into, consummate and perform this Agreement and carry out all of the terms and provisions of this Agreement. This Agreement is a legal, valid and binding obligation of Cancer JV, enforceable against Cancer JV in accordance with its terms, except insofar as enforcement thereof may be limited by bankruptcy, moratorium, insolvency or similar Laws affecting creditor's rights and general equitable principles.

(d) EACH LICENSEE UNDER THIS AGREEMENT ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE RIGHTS GRANTED HEREUNDER ARE PROVIDED WITHOUT ANY WARRANTY, ON AN "AS IS" BASIS, AND THAT NO PARTY TO THIS AGREEMENT IS PROVIDING ANY OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

## 12. **LIMITATION OF LIABILITY**

(a) UCSF WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUFFERED OR INCURRED BY LICENSEE AS A RESULT OR CONSEQUENCE OF THE USE OF THE UNIVERSITY MARKS EVEN IF UCSF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



(b) WHHS HAS NO LIABILITY OR RESPONSIBILITY FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUFFERED OR INCURRED BY LICENSEE AS A RESULT OR CONSEQUENCE OF THE USE OF THE WHHS MARKS, EVEN IF WHHS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 13. NOTICES

For any notices required or permitted under this Agreement, such notice will be deemed to have been properly given if in writing and either personally served or forwarded by certified mail, postage prepaid, and addressed as follows:

To UCSF or the University:

UCSF Medical Center  
500 Parnassus Avenue  
San Francisco, CA 94143  
Attention: Chief Executive Officer

With copies to each of:

University of California, San Francisco  
745 Parnassus Ave., 2nd Floor  
Box 0986  
San Francisco, CA 94143-0986  
Attention: Chief Campus Counsel

University of California  
1111 Franklin, 9th Floor  
Oakland, CA 94607  
Attn: Deputy General Counsel –  
Health Affairs & Technology Law

To WHHS:

Washington Hospital Healthcare System  
2000 Mowry Avenue  
Fremont, CA 94538  
Attention: Chief Executive Officer

With copies to:

Paul Kozachenko, Esq.  
Gonsalves & Kozachenko  
2201 Walnut Avenue, Suite 220  
Fremont, CA 94538

To Cancer JV: Christine Nunez, President  
WHHS & UCSF Health Cancer Services Joint Venture, LLC  
2000 Mowry Avenue  
Fremont, CA 94538  
Attention: President

Any party may change its address to which said notice must be delivered or mailed by giving written notice of such change to the other parties.

**14. WAIVERS, AMENDMENTS, AND PRECEDENCE**

This Agreement may be amended, superseded, canceled, renewed, or extended and the terms hereof may be waived only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. No waiver of any portion of this Agreement shall operate to constitute a waiver of any other provision of this Agreement. The failure of any party at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist on strict performance of the same condition, promise, agreement or understanding at a future time. In the event of any inconsistency between this Agreement and the Co-Development Agreement regarding the UCSF Licensees' use of the UCSF Marks, or the WHHS Licensees' use of the WHHS Marks, this Agreement takes precedence.

**15. GOVERNING LAW**

This Agreement is governed by the laws of the State of California. The parties hereto agree that the exclusive jurisdiction and venue for any and all actions arising out of or related to the Agreement is a court of competent jurisdiction situated in the state courts of San Francisco County, California or, as applicable, the U.S. federal court located in the Northern District of California.

**16. COUNTERPARTS**

This Agreement may be executed in counterparts (delivery of which may occur via facsimile or electronically scanned copy), each of which shall be binding as of the date first written above, and, when delivered, all of which shall constitute one and the same instrument. A facsimile signature or electronically scanned copy of a signature will constitute and will be deemed to be sufficient evidence of a party's execution of this Agreement, without necessity of further proof. Each such copy will be deemed an original, and it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**17. ASSIGNMENT**

Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of the other parties.

**18. NO THIRD PARTY BENEFICIARIES**

Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

**19. REMEDIES**

(a) Each party acknowledges that any breach of this Agreement by the other party would result in irreparable and immediate harm to the first party, for which money damages alone would be inadequate compensation. In the event of a breach or threatened breach of any provision of this Agreement by a party, in addition to all other legal and equitable remedies available to the other party, such other party shall be entitled to injunctive relief prohibiting the breaching party from acting in breach of any provision of this Agreement and/or compelling specific performance.

(b) Except as expressly limited by the terms of this Agreement, the parties hereto shall each have and retain all rights and remedies existing in their favor under this Agreement, at law or in equity, including rights to bring actions for specific performance and/or injunctive or other equitable relief (including, without limitation, the remedy of rescission) to enforce or prevent a breach or violation of any provision of this Agreement. All such rights and remedies shall, to the extent permitted by applicable law, be cumulative and the existence, assertion, pursuit or exercise of any thereof by a party shall not preclude such party from exercising or pursuing any other rights or remedies available to it.

**20. REPRESENTATION BY COUNSEL; INTERPRETATION**

The parties each acknowledge that each party to this Agreement has been represented by counsel in connection with the drafting and negotiation of this Agreement and the transactions contemplated by this Agreement, and hereby waive application of any rules of contract interpretation or construction requiring provisions to be interpreted in favor of or against the person drafting the agreement. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties.

**21. ENTIRE AGREEMENT**

This Agreement (including **Exhibit A** and **Exhibit B** and any terms incorporated herein by reference) constitutes the entire agreement of the parties with respect to the subject matter hereof. The terms and provisions of all Recitals and exhibits are hereby incorporated into and made a part of this Agreement.

*[Signature Page Follows]*

**WASHINGTON TOWNSHIP HEALTH  
CARE DISTRICT**

**UCSF:**

The Regents of the University of California, on  
behalf of UCSF

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

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

Print: Kimberly Hartz

Print: Won Ma

Title: Chief Executive Officer

Title: Vice Chancellor, Communications

**WHHS & UCSF Health Cancer Services Joint Venture, LLC:**

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

Print: Christine Nunez

Title: President

**EXHIBIT A**

**Co-Branding Plan and Communication Standards**

The parties agree that the Co-Branding Plan and Communication Standards shall be completed and attached hereto within ninety (90) days of the Effective Date of this Agreement.

**EXHIBIT B**

**WHHS Branding Guidelines**

The parties agree that the WHHS will provide updated WHHS Branding Guidelines within ninety (90) days of the Effective Date of this Agreement.