

FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
BETWEEN
THE BOARD OF REGENTS
ON BEHALF OF
THE UNIVERSITY OF NEVADA,
LAS VEGAS AND ITS SCHOOL OF MEDICINE
AND UNLV MEDICINE

THIS AGREEMENT is made effective this ____ day of _____, 2019 (the “Effective Date”) by and between The Board of Regents (“BOR”) of the Nevada System of Higher Education (“NSHE”), a constitutional entity of the State of Nevada, for and on behalf of the University of Nevada, Las Vegas (the “University” or “UNLV”) and its School of Medicine (“UNLVSOM”), and UNLV Medicine, a Nevada non-profit corporation (hereinafter referred to as “UNLV Medicine”). The University and UNLV Medicine are sometimes collectively referred to below as “the Parties” and individually as “the Party.”

RECITALS

- A. University is a state institution of higher education established by the Nevada Constitution, Article 11, Section 4, with the power and duty to operate, manage, control, and maintain *inter alia*, UNLVSOM, whose mission is to teach medicine, to engage in research, and to provide clinical services to the community.
- B. Medical education requires a balance of basic science and clinical science instruction. Access to and experience with a broad patient population is integral to the medical school curriculum and critical to the undergraduate and graduate medical education and research programs of UNLVSOM.
- C. Clinical patient care maintains and increases the skills of the faculty and also provides a setting for the education of students. Clinical patient care also generates revenues that are critical to the mission of the University.
- D. University recognize that, because of changing health care markets, the success of UNLVSOM depends, to a large extent, on the ability of its employed faculty physicians and other faculty health care professionals (“UNLVSOM Faculty”) to provide clinical services in a manner that is cost- effective, coordinated, patient outcome and satisfaction focused, and is supportive and complementary of the missions of the University and UNLVSOM.

- E. UNLV Medicine is a not-for-profit corporation existing under and by virtue of Chapter 82 of the Nevada Revised Statutes (Nonprofit Corporations Act) and is organized exclusively for charitable, educational, and scientific purposes and to benefit and support the teaching and the clinical service missions of the UNLV SOM Faculty.
- F. UNLV SOM wishes to collaborate with UNLV Medicine to develop and maintain comprehensive academic and research affiliations with regional academic medical center(s) and health system(s).
- G. On March 3 and 4, 2016, BOR approved University's request to establish the UNLV SOM faculty practice plan, a tax exempt 501(c)(3) non-profit corporation.
- H. The Parties desire to set forth the terms upon which UNLV Medicine will serve as the faculty practice plan of UNLV SOM, including, but not limited to, the manner in which University is to provide support for UNLV Medicine and the terms that will assure UNLV Medicine provides to University all such information as University may require to verify that UNLV Medicine is fulfilling its purposes and is responsive and attentive to the needs of University.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants of the Parties and the mutual benefits to be gained by the performance hereof, the UNLV SOM and UNLV Medicine agree as follows:

1. **Term and Termination.** This Agreement shall begin on the Effective Date and may be terminated only upon mutual written agreement of the Parties or pursuant to Section 10(h) of this Agreement.
2. **Organization, Purpose and Governance of UNLV Medicine.**
 - (a) **Organization.**
 - (i) UNLV Medicine is organized and operated as a Nevada non-profit corporation that is legally separate from UNLV and the UNLV SOM, pursuant to Chapter 82 of the Nevada Revised Statutes. It shall obtain and maintain status as a tax-exempt, charitable organization under State and Federal income tax laws.
 - (ii) In accordance with the Articles of Incorporation, upon the dissolution of UNLV Medicine, any remaining assets of UNLV Medicine, following payment of all liquidating expenses, debts, and other obligations of UNLV Medicine, shall be distributed to University.
 - (b) **Purpose.** UNLV Medicine is a separate legal entity formed by NSHE to provide health care services and supplies to the public in support of the teaching, research, patient care and/or clinical missions of UNLV SOM. UNLV Medicine is an associated practice plan of NSHE serving as the centralized faculty practice plan for the UNLV SOM Faculty and is authorized to engage in the business activities permitted by applicable law and regulations and Title 4, Chapter 10,

Section 35 of the Board of Regents Handbook of NSHE. UNLV Medicine is authorized to bill, collect, and disburse all patient revenues and other clinically-related service revenues earned by the operations of UNLV Medicine. As a condition of employment with UNLV SOM, all UNLV SOM Faculty engaged in clinical practice, whether part-time or full-time, are required to sign a Member Practice Agreement with UNLV Medicine, which assigns UNLV Medicine the rights to bill and collect on behalf of the UNLV SOM Faculty, as detailed in Section 4(b) of this Agreement.

(c) Governance.

(i) As an associated practice plan, UNLV Medicine may operate and conduct its day-to-day business and operational affairs, consistent with its Bylaws and best governance and business practices. Subject to the reserved powers of NSHE and its Individual Members as defined and set forth in its Bylaws, UNLV Medicine may, to the extent not otherwise prohibited herein, prescribe its own rules and procedures, as applicable to Internal Revenue Service 501(c)(3) organizations, related to accounting, financing, purchasing, personnel, management, and general operations (“Internal Rules of Operation”) in order to successfully compete in the health care marketplace.

(ii) UNLV Medicine shall be governed by a Board of Directors which shall be selected in accordance with the provisions of UNLV Medicine’s Bylaws. The President and CEO of UNLV Medicine shall be appointed as set forth in the UNLV Medicine Bylaws.

3. **UNLV Medicine and UNLV SOM Relationship**

(a) Exclusive Contracting and Billing Entity. Unless otherwise agreed to by the Parties, UNLV Medicine shall be the primary entity through and under which the UNLV SOM Faculty provide clinical services to patients and bill for clinically related professional services. UNLV Medicine shall have the sole and exclusive right to enter into contractual arrangements on behalf of UNLV SOM Faculty for the provision of clinically related professional services, including clinical consulting and medical-legal consulting.

(b) Member Practice Agreement

(i) UNLV SOM agrees that it will require, as a condition of employment, that all eligible UNLV SOM Faculty shall execute a Member Practice Agreement with UNLV Medicine as a condition of their employment with UNLV SOM.

(ii) UNLV SOM agrees that it will assist UNLV Medicine in enforcing the terms of the Member Practice Agreement entered into by members of UNLV Medicine by requiring adherence to said agreements as a condition of continued employment with UNLV SOM, consistent with the policies of NSHE.

(iii) UNLV Medicine agrees that it will strictly enforce the terms of its Member Practice Agreement, report promptly to UNLV SOM in the event any individual fails or refuses to abide thereby, and join with UNLV SOM in any appropriate action, in law or equity, necessary to secure compliance.

(c) HIPAA. NSHE is a “Hybrid Covered Entity,” as such term is defined under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and has designated UNLV SOM as health care components of NSHE. UNLV Medicine shall enter into an Organized Health Care Arrangement with NSHE for purposes of HIPAA.

4. **Roles and Responsibilities.**

(a) UNLV Medicine and University, in whole or in part by and through UNLV SOM, shall have the following roles and responsibilities pursuant to this Agreement. These roles and responsibilities are not meant to be an all-inclusive list and may be modified at any time upon execution of an amendment to this Agreement, or other written agreement, between UNLV Medicine and UNLV SOM.

(b) UNLV Medicine. UNLV Medicine shall have the following roles and shall accept responsibility in carrying out its purpose under this Agreement as follows:

(i) Financial. UNLV Medicine shall have the authority for the financial responsibility of the corporation, subject to the provisions regarding financial transaction, financial reporting and accounting practice required of an associated practice plan under the BOR Handbook. To the extent that the Parties negotiate financial support agreements, such as a line of credit, those agreements shall be separately negotiated and agreed upon by and among UNLV Medicine, UNLV SOM, University and/or NSHE. UNLV Medicine shall comply with all requirements related to financial accounting as a result of its status as a NSHE associated practice plan.

(ii) Compliance. UNLV Medicine shall be responsible for establishing rules of practice, quality measures, compliance programs and other standards with those persons providing services through UNLV Medicine, including UNLV SOM employed faculty, resident physicians, and/or staff for the provision of services and assignment of clinical revenues. UNLV Medicine shall be responsible for maintaining compliance by the UNLV SOM Faculty in the professional clinical services they provide, including but not limited to: General Billing and Coding pursuant to Centers for Medicare and Medicaid Services (CMS) requirements; planned audits and evaluations as described in yearly Office of the Inspector General (OIG) Work Plans; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); Electronic Health Records (EHR) administration; the Stark Law and Anti-Kickback Statute; the False Claims Act; the Affordable Care and Patient Protection Act of 2010 (ACA); open payment laws; physician conflicts of commitment and consulting arrangements; and other compliance areas as determined necessary in furtherance of the purpose of this Agreement. Compliance responsibilities are further outlined in the UNLV Medicine Compliance Program Plan (“Plan”).

(iii) Employment. The Parties recognize the need for UNLV Medicine to employ and assume full responsibility and control for certain clinical and administrative staff engaged in carrying out the UNLV Medicine clinical practices and permitted business operations. This includes the ability of UNLV Medicine to employ full or part-time support staff whose primary functions are to assist UNLV SOM Faculty in the provision of clinical services that generate professional fee and contract income. UNLV Medicine shall not, however, employ in whole or in part and UNLV SOM Faculty or other University faculty.

(iv) Faculty Physician Compensation. UNLV Medicine shall develop and administer a physician compensation plan in accordance with applicable laws and regulations for the adoption by UNLV SOM for the UNLV SOM Faculty, subject to approval by the President of UNLV or his or her delegate.

(v) Business Management Functions. UNLV Medicine shall provide a full range of business management services to University healthcare practitioners or healthcare organizations, as agreed by UNLV SOM and approved by the President of UNLV or his or her delegate, including but not limited to, the following:

(1) Entering into contractual arrangements, including partnerships or joint ventures with hospitals, physician practice groups, managed care organizations, networks of health care providers, government agencies or other healthcare organizations or entities;

(2) Securing appropriate sites for faculty members to provide patient care and to determine whether a faculty member can practice;

(3) Providing the full range of scheduling and management functions necessary for UNLV SOM Faculty to maintain a clinical practice, including responsibility for the electronic medical records systems required by UNLV SOM Faculty, subject to the terms and conditions applicable to UNLV Medicine as an authorized user of the EMR Access Agreement entered into by NSHE and UNLV SOM, as amended.

(4) Coding and billing for bills that are submitted on behalf of UNLV SOM faculty members, under UNLV Medicine's Medicare and Medicaid numbers, and under UNLV Medicine payer agreements;

(5) Establishing, managing and operating one or more networks of healthcare providers;

(6) Acquiring physician practices or the practices of other healthcare providers in a manner consistent with the goals of UNLV SOM faculty retention, recruitment, and program development;

(7) Negotiating agreements with supply chain vendors;

(8) Acquiring real and personal property; and

(9) Subject to any applicable BOR Handbook requirements or other NSHE policies, including those related to associated practice plans, creating nonprofit subsidiary corporations or other non-profit entities as may be necessary or desirable to carry out any or all of the above.

(c) UNLV Medicine and University.

(1) Affiliated Hospitals. The academic and research activities of UNLV SOM, including the teaching of medical students and the administration, supervision and training of residents and fellows of UNLV SOM, and the clinical care activities of

UNLV Medicine, including medical directorships, call coverage and service agreements, often occur in hospitals that have entered into affiliation agreements with UNLV SOM and/or UNLV Medicine, respectively. UNLV SOM and UNLV Medicine shall exercise reasonable efforts to ensure that their respective affiliation agreements with these hospitals and/or health systems are coordinated. Any affiliation agreement with a hospital or health system approved by the UNLV Medicine board of directors shall be approved in advance by the UNLV SOM Dean. Any affiliation agreement (UNLV SOM or UNLV Medicine) shall include provisions that ensure adequate space is available to properly conduct patient care activities. UNLV SOM and UNLV Medicine shall work together to enforce those provisions with affiliated hospitals to, among other things: (1) protect their respective brands and financial viability; and (2) ensure faculty members and residents have proper and appropriate space to conduct their clinical, teaching and research activities with the support for required educational accreditation matters.

(d) University. University, in whole or in part by and through UNLV SOM, shall have the following rules and responsibilities in carrying out the purpose as outlined in this Agreement.

(i) Budget. As the employer of the UNLV SOM Faculty, UNLV SOM shall be responsible for all salary and payroll administration for UNLV SOM faculty and staff. UNLV SOM use its operating budget to provide salary and benefit support for its UNLV SOM Faculty attributable to their work performed in carrying out the UNLV SOM academic and research activities. It also shall provide support for support staff and respective support expenses attributable to the UNLV SOM academic and research activities. This work includes the performance of activities for UNLV SOM in the respective areas of UNLV SOM administration, GME, UME, research, and education.

(ii) Financial. UNLV SOM shall be financially responsible for supporting and maintaining UNLV SOM academic and business operations and shall be responsible for any other operating expense item that is allocated to UNLV SOM in this Agreement and any other written agreements between the Parties that may be mutually agreed hereafter.

(iii) Compliance. UNLV SOM shall be responsible for supporting and maintaining compliance in the following areas: Research and Laboratories; Export Controls; Technology Transfer; Grants and Contracts administration; non-clinical Environmental Health and Safety; Human Resources for its employees, which shall exclude all UNLV Medicine employees; and all other compliance areas required in order for UNLV SOM to maintain federal and state compliance as an institution of higher education.

(iv) Employment. UNLV SOM shall be responsible for employing and providing salary support and benefits to all UNLV SOM Faculty and other employees. UNLV Medicine shall report to UNLV SOM any employment-related concerns relating to UNLV SOM Faculty and staff for resolution by UNLV SOM. UNLV SOM shall be responsible for employee discipline and promotion and tenure of UNLV SOM Faculty and other employees.

(v) Research. UNLV SOM shall be responsible for oversight of all research, including clinically-based sponsored research. All grants and contracts that support research conducted by University or UNLV SOM Faculty or personnel, including but not limited to all grants and contracts where University or UNLV SOM Faculty or personnel are Principal

Investigators, shall be negotiated between the third-party and the University or UNLVSOM (and not UNLV Medicine), consistent with the then-current University and UNLVSOM policies and practices.

(vi) Facilities, Goods, and Services. UNLV Medicine may access and use University's facilities for UNLV Medicine activities, subject to availability and applicable UNLVSOM or University policies. University will provide UNLV Medicine with access to certain University goods and services via supply chain mechanisms, as agreed upon by the Parties. UNLV Medicine will pay for such facilities, goods and services at the agreed upon rates. Similarly, the University, including UNLVSOM, may access and use UNLV Medicine's facilities for University activities, subject to availability and applicable policies. UNLV Medicine will provide the University, including UNLVSOM, with access to certain UNLV Medicine goods and services, as agreed upon by the Parties and in compliance with all rules, policies and procedures as set forth in writing by the University, and consistent with NSHE policies and procedures. The University will pay for such facilities, goods and services at the agreed upon rates.

(e) Shared Resources and Services.

(i) Contractual Relationships between the Parties. The Parties may contract with one another for the provision of or reimbursement for services and program related expenses necessary and proper to meet the purposes of this Agreement.

(ii) Transactions between the Parties shall meet reasonable standards for ordinary business transactions between a school of medicine and associated faculty practice plan, including proper documentation and approvals, and shall be subject to a separately negotiated amendment to this Agreement or other schedule or exhibit, which shall be attached to this Agreement as an Addendum. Special attention shall be given to avoiding direct or indirect conflicts of interest between UNLV/UNLVSOM and UNLV Medicine and those with whom UNLV Medicine does business.

(iii) Legal Services. Pursuant to BOR Handbook Title 4, Chapter 10, Section 35, UNLV Medicine is an associated practice plan, but a separate legal entity incorporated under the laws of the State of Nevada. The parties agree that, subject to a separate, written agreement, UNLV Medicine shall use and reimburse the UNLV Office of General Counsel ("OGC") for legal services and representation. With prior approval from the OGC, and consistent with requirements under NSHE Procedures and Guidelines, UNLV Medicine may also engage independent legal counsel, at its own cost, where necessary to carry out the purposes of UNLV Medicine, including where a conflict of interest with UNLV or UNLVSOM exists, specialized expertise is necessary, or OGC workload requirements necessitate engagement of independent legal counsel. Where independent legal counsel has been approved pursuant to the foregoing, UNLV Medicine need not disclose to UNLV or UNLVSOM prior to consulting independent counsel. UNLV Medicine, UNLV, UNLV SOM and OGC shall coordinate and collaborate, as appropriate, in carrying out or otherwise implementing advice received from independent counsel (including, if appropriate, by entering into a Joint Legal Representation Agreement, a Memorandum of Understanding, or other written agreement). Independent legal counsel retained by UNLV Medicine shall not represent UNLV or UNLVSOM in any matters relating to UNLV and/or UNLVSOM management or operations, including, but not limited to, matters involving employment, academic affairs, real estate, facilities, procurement, and other contracting where such representation would

give rise to a conflict of interest, or upon mutual agreement, without first obtaining a written waiver of the conflict from the appropriate Party.

5. **Independent Organizations.**

(a) UNLV, UNLV SOM, and UNLV Medicine acknowledge that each is an independent entity and agree neither shall be liable, nor shall be held out by the other as liable, for any of the other's contracts, obligations, torts, or other acts or omissions, or those of the other's trustees, directors, officials, employees, agents, or representatives.

(b) Neither Party shall act as the agent or representative of the other Party or otherwise purport to act on such other Party's behalf, except as otherwise expressly authorized in writing by a duly designated representative of such Party.

(c) Nothing contained herein shall be construed to provide that any member of UNLV or UNLV SOM's Faculty, residents, or student body is acting as an agent of UNLV Medicine, or that any UNLV Medicine employees are acting as agents of UNLV or UNLV SOM, when providing care to patients in UNLV or UNLV SOM facilities or as a part of an approved UNLV or UNLV SOM program.

(d) In accordance with the Nevada Limited Waiver of Sovereign Immunity, NRS 41.0305, *et. seq.*, when acting in the performance of their duties and within the scope of their employment or training, including clinical services provided to UNLV Medicine under this Agreement or other contracts by and between the Parties, UNLV SOM Faculty members, resident physicians and staff shall be considered public employees of University, and the cost of defense and payment of claims or judgments shall be made on their behalf through insurance policies or University funds maintained for that purpose unless the public employee is determined to have acted in a willful or wanton manner. UNLV Medicine employees (non-physician, non-faculty clinical staff hired to provide administrative and clinical support services) shall be covered by professional liability coverage obtained by UNLV Medicine through NSHE Risk Management Services, and UNLV Medicine shall reimburse UNLV SOM for those UNLV Medicine employees in a frequency as mutually agreed upon between UNLV Medicine and UNLV SOM.

(e) The Parties agree that neither Party, including such Party's directors, officers, employees, and agents, shall take any action that would impair or impinge upon the independence, discretion, business judgment, and fiduciary obligations of the directors and officers of the other Party, except as required by or provided for in this Agreement, NSHE policies, or in other agreements entered into by the Parties.

(f) Anything herein to the contrary notwithstanding, the Parties commit their best efforts to assure that no action will be taken pursuant to this Agreement that impairs UNLV Medicine's status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or as a supporting organization under Section 509(a)(3) of the Code. In this regard, interpretation and construction of all terms of this Agreement shall be made in order to give effect to and to preserve UNLV Medicine's aforementioned status.

(g) No term of this Agreement shall be interpreted or construed so as to impose financial accountability for either Party upon the other Party, to obligate either Party to finance the deficits of or to provide financial support to the other Party, except as otherwise

required of UNLV Medicine under Section 7 of this Agreement, or to otherwise obligate either Party in any manner for a debt of the other Party.

6. **Limitation of Activities Relative to Fundraising and Research.** All third-party gifts made to the University or UNLVSOM through UNLV Medicine shall be deposited by UNLV Medicine with University's Foundation, consistent with the then-current University policy. Additionally, grants and contracts that support research conducted by University or UNLVSOM employees, including but not limited to all grants and contracts where University or UNLVSOM employees are Principal Investigators, shall be negotiated between the third-party and the University or UNLVSOM (and not UNLV Medicine), consistent with the then-current University and UNLVSOM policies and practices. Notwithstanding the foregoing, UNLV Medicine may enter into contracts for and collect the revenues from the consulting and the medical-legal activities of UNLVSOM Faculty.

7. **Investment and Disbursement of UNLV Medicine Funds and Assets.**

(a) **Salary and Benefits Support.**

(i) To the extent funds are available, UNLV Medicine will transfer to UNLVSOM each month the amount of funds necessary to fund the clinical service component performed on behalf of UNLV Medicine by UNLVSOM Faculty, including the salary, benefits and incentive payments as determined and budgeted according to the physician compensation plan approved by UNLVSOM and UNLV Medicine.

(ii) Solely upon the written consent by the Dean of UNLVSOM, certain clinical faculty members may be compensated under a different salary arrangement in which there is no guaranteed portion of salary. The salary may fluctuate entirely on the clinical income generated by that clinical faculty member. This is limited to physicians who are considered adjunct faculty members by virtue of the designation of letter of appointment, letter of appointment with benefits, or part-time faculty members.

(iii) UNLV Medicine shall reimburse UNLVSOM for the services of UNLVSOM Faculty as follows:

(1) On the first day following each month of clinical service, UNLV Medicine will reimburse UNLVSOM for each UNLVSOM Faculty member's contracted base salary amount plus benefits attributable to the clinical service component. The base salary and benefits amounts are fixed amounts.

(2) UNLV Medicine will also reimburse UNLVSOM for each UNLVSOM Faculty member's incentive payment, in accordance with the approved UNLV Medicine physician compensation plan. UNLV Medicine will pay UNLVSOM for such incentive payments on the first day of the month after the determination that each faculty member's incentive was met.

(b) UNLV SOM Dean's Fund. In accordance with UNLV Medicine's Bylaws, and in furtherance of UNLV Medicine's purpose, UNLV Medicine shall pay to UNLV SOM what is referred to as a "Dean's Fund" amount, which, pursuant to applicable University policies shall be expended by the Dean of UNLV SOM for the following non-exclusive purposes:

- (i) to finance new academic programs in UNLV SOM;
- (ii) to strengthen existing academic programs in UNLV SOM;
- (iii) to assist in the recruitment of new faculty members, Directors of Centers, Division Heads or Department Chairs;
- (iv) to support short-term internal UNLV Medicine loans designed to cover departmental deficits generated in UNLV Medicine cost centers;
- (v) to support program development at affiliated institutions; and
- (vi) for any expenses necessary and proper to the operation of UNLV SOM and University's missions.

The expenditure of Dean's Fund money must be consistent with UNLV Medicine's charitable purpose and University's mission.

(c) Dean's Fund Amount. UNLV Medicine shall calculate the amount to be paid to the Dean's Fund as outlined in Schedule A, attached hereto and incorporated herein by reference. This amount shall be paid twenty-five (25) days after each month's conclusion. No payment to the Dean's Fund for the preceding month will be made as long as there is any outstanding debt owned by UNLV Medicine to the University and/or NHSE. Any Dean's Fund amount due but not paid because of the aforementioned restriction will be forfeited by UNLV SOM. Once the debt described in Section 7(c) of this Agreement has been paid in full, or University and/or NHSE has/have been removed as guarantors, the Dean's Fund amount shall be reinstated and the calculation pursuant to Schedule A will begin for the month following the extinguishing of the debt.

(d) Operational Support. It is permissible for UNLV Medicine to transfer cash or other assets to UNLV Foundation, a 501(c)(3) non-for-profit entity, for the restricted purpose of providing additional, voluntary support to the UNLV SOM for expenditures as described in Section 7(b) of this Agreement. However, such transfers are voluntary and UNLV Medicine is under no obligation to provide such voluntary support. This voluntary support is also under the same restriction applicable to any Dean's Fund payment described in Section 7(c) of this Agreement.

8. **Financial Transactions and Accounting Practices.**

(a) UNLV Medicine shall have in place an accounting system to assure financial activities are carried out and reported in accordance with generally accepted business and accounting practices.

(b) UNLV Medicine shall have an annual audit conducted by an independent certified public accountant. The UNLV Medicine Board of Directors may request that

the scope of the external audit be expanded to include compliance testing of the required policies and procedures of this Agreement.

(c) University's President or his or her designee may inspect and audit UNLV Medicine's books and records at reasonable times upon request.

(d) UNLV Medicine's Board of Directors and UNLV Medicine's officers and staff shall be subject to the following restrictions in addition to UNLV Medicine's Conflict of Interest policies:

(1) Business transactions involving UNLV Medicine and the personal or business affairs of a UNLV Medicine Board member, officer, or staff member shall be approved in advance by the Board. In addition, Board members and UNLV Medicine's officers shall comply with the other terms and provisions of the University, UNVLSOM, and UNLV Medicine's Policy on Conflicts of Interest.

(2) In accordance with UNLV Medicine's Policy on Conflicts of Interest, no Board member, officer, or staff member of UNLV Medicine shall accept from any source any gift or gratuity that is offered, or reasonably appears to be offered, because of the position held with UNLV Medicine by the individual, nor shall an offer of a gift or gratuity be extended by such an individual on a similar basis. A gift or gratuity means any payment to the extent that consideration of equal or greater value is not received. It does not include informational materials, such as books, reports, calendars, or other unsolicited promotional material. A gift does not include modest entertainment, such as a meal or refreshments in connection with meetings, conferences, or public ceremonies, or home hospitality. This provision applies to the individual and does not apply to gifts offered to or by UNLV Medicine as an organization.

9. **Reporting Requirements.** UNLV Medicine shall furnish the following reports to University by delivering annually, but not later than September 15th of each calendar year, a copy of such reports for the offices of the Board of Regents of the Nevada System of Higher Education, the University President, and the University Controller. These reports shall include, but not be limited to:

(a) The Audit and Financial Report of Independent auditors to include a statement of material changes in position, a statement of Revenue and Expenses, a Balance Sheet, and any Management Letters.

(b) Summary of Dean's Fund Expenditures.

(c) Financial Plan for Following Fiscal Year.

10. **General Provisions.**

(a) **Notices.** Any notices or other communications required or permitted to be sent under this agreement shall be sufficient if delivered by hand or sent by registered mail, postage prepaid, to the address set forth below or such other address as a Party may specify in writing:

To UNLV Medicine:

President
UNLV Medicine
3016 W. Charleston Blvd, Ste. 100
Las Vegas, NV 89102

with a copy to:

University of Nevada, Las Vegas School of Medicine
Dean, School of Medicine
2040 West Charleston Blvd, Ste. 329
Las Vegas, NV 89012

To University:

President
University of Nevada, Las Vegas
4505 South Maryland Pkwy
Box 451001
Las Vegas, Nevada 89154-1001

(b) Compliance with Laws. The Parties shall carry out all responsibilities as described in this Agreement in compliance with all applicable federal and state laws and regulations.

(c) Non-discrimination. UNLV Medicine shall comply with any nondiscriminatory policy set forth in the Board of Regents Requirements, including, without limitation, Section 13 of Chapter 8 of Title 4 of the NSHE Handbook.

(d) Indemnification.

(i) Indemnification by University. To the extent limited in accordance with N.R.S. 41.035 to 41.039, University shall indemnify, defend, and hold harmless UNLV Medicine from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses arising either directly or indirectly from and any act or failure to act by University or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement. University will assert the defense of sovereign immunity as appropriate in all cases, including professional liability and indemnity actions. University's indemnity obligation for actions arising from tort is limited in accordance with the provision of N.R.S. 41.035.

(ii) Indemnification by UNLV Medicine. UNLV Medicine shall indemnify, defend, and hold harmless University from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses arising either directly or indirectly from and any act or failure to act by UNLV Medicine or any of its officers or employees that may occur during or which may arise out of the performance of this Agreement or as a result of the claims of third-parties against the University, its officials, employees, or agents arising from or based upon the acts or omissions of UNLV Medicine.

(e) Insurance. University and UNLV Medicine, each agree to maintain insurance coverages ordinarily and customarily maintained by businesses engaged in similar activities. These include, but are not limited to, general liability, officers and directors errors and omissions, employment liability, workers compensation, property, professional liability, and cyber-liability breach insurance.

(i) Professional Liability Coverage. University provides professional liability coverage for its employees, physician residents, covered under approved affiliated agreements, through a combination of self-insurance and commercial insurance in amounts required by law. Upon the written request of UNLV Medicine, University shall provide UNLV Medicine with a certificate of insurance evidencing that this coverage has been obtained.

(ii) Coverage Limits. University participates in the self-insurance program of the State of Nevada and will provide a statement of participation upon request.

(iii) University Workers' Compensation. University shall maintain worker's compensation insurance or self-insurance coverage, as required, pursuant to NRS Chapters 616A-D.

(iv) UNLV Medicine Employees Not Covered By University. UNLV Medicine shall maintain adequate professional liability coverage for its employees engaged in clinical support activities. To the extent applicable, UNLV Medicine shall obtain professional liability insurance in the following minimum amounts:

(1) One Million Dollars (\$1,000,000) each professional incident;

(2) Three Million Dollars (\$3,000,000) in the Aggregate.

(3) This minimum amount may represent coverage in any combination of primary or excess amounts, and UNLV Medicine shall provide University with a certificate of insurance evidencing that this coverage has been obtained, upon written request of University.

(v) UNLV Medicine General Liability. UNLV Medicine shall obtain general liability insurance in the following minimum amounts:

(1) One Million Dollars (\$1,000,000) per occurrence;

(2) Two Million Dollars (\$2,000,000) General Aggregate;

(3) One Million Dollars (\$1,000,000) Products and Completed Operations Aggregate; and

(4) One Million Dollars (\$1,000,000) Personal and Advertising Injury.

(vi) UNLV Medicine Directors and Officers Insurance. UNLV Medicine shall maintain directors and officers insurance in the following minimum amounts:

(1) One Million Dollars (\$1,000,000) per occurrence

(2) An additional \$500,000 for UNLV Medicine executives

(vii) UNLV Medicine Workers' Compensation. UNLV Medicine shall provide University with proof of Employer's Liability limits of at least One Million Dollars (\$1,000,000) per occurrence and for occupational disease, and shall comply with provisions of NRS Chapter 616A to 616D and 617.

(viii) UNLV Medicine Crime Insurance. UNLV Medicine shall purchase crime insurance when handling money, securities, or other property. Such insurance policy shall provide coverage for employees, theft, forgery, alteration, burglary, computer fraud, counterfeit, funds transfer fraud, or fraud or any other similar risk covered by most crime insurance policies. The limit shall be One Million Dollars (\$1,000,000).

(ix) Insurance policies obtained by UNLV Medicine cannot be canceled, non-renewed, coverage and/or limits reduced or coverage materially altered that can affect University without sixty (60) days prior written notice to University.

(x) Until such time as the insurance is no longer required by University, UNLV Medicine shall provide University with renewal or replacement evidence of insurance no less than (30) days before the expiration or replacement of the required insurance.

(xi) Insurance policies obtained exclusively by UNLV Medicine shall be currently rated A.M. Best as A-IX or better.

(xii) UNLV Medicine shall provide a Certificate of Insurance ACORD form or a form substantially similar to show evidence the policies required by UNLV Medicine under this Agreement.

(f) Dispute Resolution. The Parties are mutually committed to collaborative problem solving for resolving issues that may arise between them concerning this Agreement. In the event of a dispute, the complaining Party shall notify the other Party of the dispute and the presidents of both Parties will appoint appropriate representatives to negotiate in good faith to resolve the dispute until such time as either: (1) the dispute has been resolved; or (2) the designated representatives have concluded that continued negotiation does not appear likely to resolve the dispute. If the Parties conclude that direct negotiations are unlikely to resolve the dispute, the Parties will attempt to settle any dispute arising out of or related to this Agreement through mediation. The Parties may agree on a mediator. If they are unable to agree on a mediator, the Parties shall contact an agreed upon dispute resolution organization or service and shall use its selection process to select a mediator. Each Party shall bear its own costs of the mediation and the Parties shall share the costs of the mediator. The mediation shall be scheduled in a timely manner. The Parties shall make a good faith effort to resolve the dispute through mediation. If the Parties reach a resolution of the dispute through mediation, such resolution shall be set forth in a written agreement signed by both Parties and shall be binding on and enforceable against each Party. If a dispute is not resolved through mediation, the Parties shall be entitled to pursue any other remedy allowed by law or this Agreement.

(g) Further Cooperation. To the extent that further specific understandings and written agreements and/or documentation are necessary to implement the spirit and intent of this Agreement, the Parties hereby commit their best efforts to developing said agreements and incorporating them herein by amendment hereto.

(h) Default and Termination.

(i) In the event either Party believes the other has breached any term or condition of this Agreement, the non-breaching Party shall provide the breaching Party with written notice setting forth a description of such breach, and the breaching Party shall have a period of sixty (60) days following receipt of such notice to either cure the default or commence working in good faith on a cure that is mutually acceptable to the Parties, both in substance and in timing. At the end of such sixty (60) day period, if the breach has not been cured or addressed to the reasonable satisfaction of the non-breaching Party, the non-breaching Party must initiate the dispute resolution process described in Section 10(f) of this Agreement. At the conclusion of the dispute resolution process, if the matter remains unresolved, the breaching Party shall then be in default. If the nature of the breach is such that it cannot reasonably be cured within such sixty (60) day period, but the Parties have agreed on a cure that is mutually acceptable in both substance and timing, the cure period shall extend for so long as is necessary to cure the breach and the breaching Party shall not be in default so long as the breaching Party takes diligent actions to cure the breach. In the event of the occurrence of any default by either Party, the non-defaulting Party shall have any remedy provided in this Agreement, in law or in equity subject to the limitations on remedies described in this Agreement or by law, including, with respect to University, limitations based upon governmental immunity.

(ii) In the event of the occurrence of a default resulting from a material breach of this Agreement by UNLV Medicine, including, without limitation, any act or omission which would cause it to lose its status as a tax exempt organization or a University supporting organization, University may terminate this Agreement without further notice. University's exercise of the termination rights described in this Section 10(h)(ii) is expressly conditioned upon University's providing notice of the breach and proceeding in accordance with Section 10(h)(i) prior to the exercise of such rights. Further, if University is considering termination as a result of a default resulting from a material breach, University shall initiate the dispute resolution process described in Section 10(f) prior to exercising its termination rights. In the event of University's termination of this Agreement as a result of UNLV Medicine's default as described in this Section 10(h)(ii), the Board shall cause UNLV Medicine to be dissolved and its assets (after payment of creditors) to be transferred to University for deposit within accounts of UNLV SOM for the support of UNLV SOM's mission.

(i) Trademarks. University hereby licenses U.S. federal trademark registration no. 1,711,832 to UNLV Medicine as expressly granted in the trademark license attached hereto as Schedule B, and hereby incorporated by reference.

(j) Survival of Provisions. Notwithstanding any termination of this Agreement, the Agreement shall continue in force and effect as to any provision hereof which requires observance or performance by a Party subsequent to termination.

(k) Assignment. Neither Party shall assign any obligation hereunder or assign any interest or right herein without the prior written consent of the other Party.

(l) Force Majeure. Neither Party shall be considered to be in default as a result of its delay or failure to perform its obligations under this Agreement to the extent that such delay or failure arises out of causes beyond the reasonable control of the Party. Such causes may include, but are not limited to, acts of God or the public enemy, acts of the state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather; but, in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the Party.

(m) Entire Agreement; Amendment. This Agreement supersedes all prior oral and written understandings and agreements between the Parties hereto. The Parties acknowledge and agree that this document, together with any exhibits and all other documents expressly referred to herein, constitutes the entire agreement between the Parties regarding the subject matter hereof. Any amendments hereto shall not be valid unless set forth in a writing signed by both Parties.

(n) Waiver of Provisions. Any waiver of any term and condition hereof must be in writing and signed by the Party giving the waiver. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms and conditions hereof.

(o) Severability. Nothing contained in this Agreement shall be construed so as to require the commission of an act contrary to law and whenever there is any conflict between any provision of this Agreement and any present constitutional provision, statute, law, ordinance or regulation, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and to carry out the purposes of this Agreement.

(p) Captions. Any captions to or headings of the articles, sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of any provision of this Agreement.

(q) Construction of Agreement; Venue. The provisions of this Agreement shall be governed and construed by and enforced in accordance with the laws of the State of Nevada, without giving effect to its conflict of laws provisions. The Parties hereby consent to the exclusive jurisdiction of the federal and state courts located in Clark County in the State of Nevada. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and agreement and that they are not to be construed more liberally in favor of, or more strictly against, any Party hereto.

(r) Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Operating Agreement to be executed by their duly authorized representatives.

**The Nevada System of Higher Education,
on behalf of the University of Nevada, Las
Vegas School of Medicine**

UNLV Medicine

By: _____
Chancellor, NSHE

By: _____
President

Date: _____

Date: _____

Schedule A

INCOME DISBURSEMENT

In accordance with Section 7 and subject to the payment terms in Section 7(c) of this Agreement, the Dean's Fund Amount shall be determined as follows;

Five percent (5%) of all revenue received during a calendar month by UNLV Medicine shall be deemed to be the Dean's Fund Amount.

Revenue is considered actual cash received for patient services which has been posted to the patient accounts receivable.

Revenue also is considered the actual cash received from agreements for professional services provided to other health care facilities.

Cash collected is not considered Revenue if the amount is considered:

- 1) an overpayment for patient services (refunding is required), or
- 2) refunds, discounts, rebates or dividends received for purchasing services and supplies, or
- 3) non-patient revenues such as medical directorships, clinical administration compensation, consulting, honorariums, reimbursement received for copying medical records, as examples but not an exhaustive list, or
- 4) Investment income, or
- 5) Any compensation received by a federal or state program that recognizes the teaching effort of the UNLVSOM physician faculty through the Medicaid or Medicare programs, or any other federal program.

Notwithstanding, the Dean, in his/her sole discretion may exempt specific categories of Revenue from this calculation should she/he determine that the best interest of the practice and UNLVSOM would be served.

Should UNLV Medicine dissolve, the Dean's Fund should be calculated on the patient services collections received on the final collections after dissolution provided all debts have been paid in full.

Schedule B

TRADEMARK LICENSE AND CO-EXISTENCE AGREEMENT

This Trademark License and Co-Existence Agreement (“Agreement”) is made this day of _____, 2019 (“Effective Date”) by and between The Board of Regents of the Nevada System of Higher Education, a constitutional entity of the State of Nevada, with its principal place of business located at 4300 Maryland Parkway, Las Vegas, NV 89119 (“Licensor”) and UNLV Medicine, a Nevada non-profit corporation also with its principal place of business at 3016 W. Charleston Blvd, Ste 100, Las Vegas, NV 89102 (“Licensee”).

RECITALS

Licensor is the owner of U.S. federal registration no. 1,711,832 for “UNLV” along with all right, title, interest and goodwill in relation thereto, (collectively, the “Trademark”); and,

Licensee is in the business of offering clinical support, management services, and business development services in connection with the University of Nevada, Las Vegas School of Medicine. Licensee wishes obtain to a non-exclusive, limited license to use the Trademark in connection with Licensee and the services it provides. Licensee further wishes to file and own a U.S. federal registration for UNLV MEDICINE (the “Combined Mark”) for use in connection with Licensee and the services it provides.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements made in this License, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, fully paid, worldwide and royalty-free license to use the Trademark for and solely in connection with the promotion of and business operations of Licensee and its services and its U.S. federal application for the Combined Mark.
2. Licensing Fee. Licensee shall pay Licensor a one-time license fee in the amount of \$10.00.
3. Consent/No Contest. Licensor hereby consents to the use and registration of the Combined Mark worldwide in connection with Licensee and its services. Licensor further agrees it shall not oppose, nor seek to cancel, any application or resulting registration for the Combined Mark.
4. Co-Existence. Due to any differences in the services offered by the Licensor and Licensee, and the differences between the Trademark and the Combined Mark, Licensor and Licensee agree that, in accordance with the terms and conditions set forth herein, their respective services and marks can co-exist in commerce and on trademark registers worldwide, and that the public will be able to distinguish the marks and the services provided hereunder.

5. Trademarks Ownership/Enforcement. Licensor shall be the sole and exclusive owner of all right, title and interest in the Combined Mark, and grants to Licensee the right to use the Combined Mark as detailed Section 1 of this Agreement. Furthermore, Licensor grants to Licensee the right to any U.S. federal application and registration thereof of the Combined Mark.

6. Term. This License and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the Effective Date and shall extend for a term of thirty (30) years (the “Term”), which Term may be extended upon the mutual written agreement of the parties.

7. Survival. Sections 1, 3, 4 and 5, 6, 7, 8, 9, 10, 11, 12 and 13 shall survive the termination of this Agreement. Upon the expiration of this Agreement, all rights granted to Licensee under this Agreement shall survive forthwith.

8. Amendment. This License may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties.

9. Waiver. No term or provision hereof shall be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waive is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.

10. Severability. If any provision of this License is found invalid, illegal or unenforceable, that provision shall be amended to achieve as nearly as possible the same effect as the original provision, and the remainder of this License shall remain in full force and effect.

11. Headings. The paragraph headings contained herein are for convenience of reference only and shall not be considered as substantive parts of this License. The use of the singular or plural form shall include the other form and the use of the masculine, feminine or neuter gender shall include the other genders.

12. Governing Laws. This License shall be governed by and interpreted under the laws of the State of Nevada, other than such laws, rules, regulations, case law and statutes that may result in the application of the laws of a State other than Nevada. Licensee hereby consents to the jurisdiction and venue of any state or federal court within Nevada for purposes of any action related to the interpretation or enforcement of this Agreement.

13. Entire Agreement. This License including all Exhibits attached hereto, constitutes the entire agreement between the parties relating to the subject matter herein, and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties confirm and acknowledge the terms of this Agreement.

**The Board of Regents of the Nevada
System of Higher Education**

By: _____

Its: _____

Date: _____

UNLV Medicine

By: _____

Its: _____

Date: _____

Exhibit A

LICENSED MATERIALS

Licensors are hereby permitted to use the following Trademarks:

UNLV	U.S. Registration No. 1,711,832	Registered: September 1, 1992	First use in Commerce: January 1, 1969
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