

UPMC PRACTICE SOLUTIONS PARTICIPATION AGREEMENT

This UPMC Practice Solutions Participation Agreement sets forth the terms and conditions pursuant to which _____ (the "Practice"), and the physician(s) listed on the signature page of this Agreement, as such listing may be amended from time to time, (the "Physician(s)"), agree to participate in the UPMC Practice Solutions program (the "Program"). By entering into this Agreement, the Practice, the Physician(s) and UPMC believe that they will advance their common objective of making high-quality, cost-effective health care services available to the Western Pennsylvania community.

The parties executing the signature page of this Agreement, intending to be legally bound hereby, agree as follows:

1. Services; Engagement and Responsibilities of UPMC. UPMC will make available to participating Practices and Physician(s) those services selected by the Practice on Schedule I attached for which the Practice and the individual Physician(s) are eligible. Practice hereby engages UPMC as an independent contractor to provide the services chosen by Practice as set forth in Schedule I (the "Services") and UPMC hereby accepts such engagement and agrees to provide said services in accordance with the terms of this Agreement, and in accordance with any separate additional agreements required in connection with any particular services (the "Services Agreements"). UPMC shall provide said Services through employees and/or independent contractors of UPMC who are qualified and, as applicable, appropriately licensed and certified to perform all functions assigned to them in connection with the provision of Services. Said Services shall be provided at such dates and times as are mutually agreeable to the parties.

2. Responsibilities and Eligibility of Participating Practices and Physician(s).

- a. Practice and its Physician(s) will complete an application in the form set forth as Appendix A attached hereto and shall enter into separate Services Agreements with UPMC as necessary, and fulfill all applicable requirements thereof, required in connection with UPMC's provision of Services hereunder.
- b. In order to be eligible to participate generally in the Program and receive the Services described herein, each Physician shall: (i) be duly licensed to practice medicine in the Commonwealth of Pennsylvania; (ii) be a provider in good standing with the Medicare and Medicaid programs; (iii) not be the subject of any indictment or proceeding related to the commission of a crime, the potential loss of or denial or revocation of a medical license, or suspension or termination from the Medicare, Medicaid, Tricare, or Pennsylvania Medical Assistance Programs, or from government contracting programs; and, (iv) not have been convicted of or indicted for the commission of a felony. Upon request from UPMC, each Physician and/or the Physician's Practice shall provide to UPMC, with respect to each such Physician, written evidence of such Physician's licensure, participating provider status and credentialing.

- c. In order to be eligible for specific Services that are included within the Program, each Physician may have to meet additional eligibility criteria or qualifications, as set forth in Schedule I or the separate Services Agreement for such Services.
- d. UPMC shall have the right to approve Practices and Physician(s) who may participate in the Program and shall immediately terminate the continued participation in the event that a Practice or Physician fails to meet or maintain the requirements of this Section 2 or of the applicable Services Agreement; provided, however, that such approval or termination shall not be based upon the volume or value of referrals or other business generated between the parties, it being expressly acknowledged that nothing in this Agreement shall be interpreted or construed or applied in any manner to require or suggest that either party, directly or indirectly, refer any patient to, or engage in any other additional business with, the other party.

3. Financial arrangements. Reimbursement due UPMC for Services provided pursuant to this Agreement, if any, shall be as specified in Exhibit A and any applicable Services Agreement.

4. Term and Termination.

- a. The term of this Agreement shall commence on the Effective Date set forth on the signature page and continue until terminated by either party upon thirty (30) days' prior written notice to the other party, except with respect to Services requiring the execution of separate agreements in which case the terms and conditions of those separate Services Agreements will control.
- b. This Agreement may be terminated by UPMC immediately in the event that the Practice or an individual Physician no longer meets the qualifications for eligibility hereunder, or breaches the Practice's and Physician's representations and warranties set forth herein or in the separate Services Agreement.
- c. Practice and UPMC agree that, in the event legislation is enacted or regulations are promulgated or a decision of a court is rendered which, in the opinion of legal counsel, affects or may affect UPMC's tax-exempt status or the legality of this Agreement or any part thereof, or in the opinion of legal counsel materially and adversely affects the ability of its client to perform its obligations or receive the benefits intended hereunder ("Adverse Change In Law"), then, within fourteen (14) days following written notice by such counsel to the other party of such Adverse Change In Law, the parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the parties to the extent possible in light of the Adverse Change In Law. If, despite good faith attempts, the parties cannot reach agreement upon an amendment within sixty (60) days after commencing negotiation, then this Agreement may be terminated by either party as of the earlier of (i) the effective date of the Adverse Change In Law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one party to the other.
- d. In the event that this Agreement is terminated prior to the expiration of one (1) year from the Effective Date, the parties shall be precluded from entering into another contract for the Services furnished hereunder until after the expiration of one (1) year from the Effective Date.

5. Representations and Warranties of UPMC. UPMC represents and warrants to Practice and its Physicians, upon execution and throughout the term of this Agreement, as follows:

- a. UPMC is not bound by any agreement or arrangement that precludes it from entering into, or fully performing the Services required under, this Agreement;
- b. UPMC is not, and never has been determined to be, a Sanctioned Provider as defined in **Appendix B** attached hereto, by any federal, state or local government, regulatory body or agency; and,
- c. UPMC shall perform the Services required hereunder in accordance with all applicable federal, state, and local laws, rules and regulations.

6. Representations and Warranties of Practice and Its Physician(s)s. Practice and its Physician(s) represent and warrant to UPMC, upon execution and throughout the term of this Agreement, as follows:

- a. Practice and its Physician(s) are not bound by any agreement or arrangement that precludes it from entering into this Agreement;
- b. Practice and its Physician(s) are not, and never have been determined to be a Sanctioned Provider as defined in **Appendix B** attached hereto, by any federal, state or local government, regulatory body or agency; and
- c. Practice and its Physician(s) shall perform their obligations hereunder in accordance with all applicable federal, state, and local laws, rules and regulations.

7. Confidential Information. UPMC and Practice recognize and acknowledge that, by virtue of entering into this Agreement, each may have access to certain information of the other party that is confidential and constitutes valuable, special and unique property of such party. Each party agrees that neither it nor any of its staff will at any time, either during or subsequent to the term of this Agreement, disclose to another, use, copy or permit to be copied, without the express prior written consent of the party whose confidential information is to be disclosed, except pursuant to their duties hereunder, any confidential or proprietary information of the other party, including, but not limited to, information which concerns a party's patients, costs, prices and treatment methods at any time used, developed or made by such party and which is not otherwise available to the public, except to the extent required by law.

8. HIPAA Compliance. Each of the parties hereby represents and warrants and covenants that it is presently taking and will continue to take all actions necessary to assure that it shall, on or before each applicable compliance date and continuously thereafter, comply with Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, including without limitation, the Standards for Electronic Transactions and Code Sets (45 CFR Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160 and 164) and such other regulations that may, from time to time, be promulgated thereunder, and including the amendments thereto pursuant to the Health Information Technology for Economic and Clinical Health

("HITECH") Act, part of the American Recovery and Reinvestment Act of 2009 ("ARRA"), and regulations promulgated thereunder. The parties acknowledge, however, that to the extent that any of the Services result in UPMC being a "Business Associate" of the Practice or the Physician(s) under The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the parties agree to execute and comply with all provisions of the Business Associate Agreement set forth in an exhibit to the applicable Services Agreement.

9. Independent Contractor Relationship. None of the provisions of this Agreement shall create or be construed to create any relationship between the parties other than that of independent entities contracting for the sole purpose of effecting the provisions of this Agreement. Neither UPMC nor Practice, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other. Practice shall have no responsibility or liability for withholding of taxes from any payment made to UPMC under this Agreement.

10. Access to Books and Records. The parties agree that if this Agreement is determined to be a contract within the purview of Section 1861(v)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated in implementation thereof at 42 CFR Part 420, the parties shall make available to the Comptroller General of the United States, the Department of Health and Human Services and their duly authorized representatives, their books, documents and records and such other information as may be required pursuant to the Act and/or those regulations.

11. Miscellaneous.

- a. No term or provision of this Agreement may be waived, changed, discharged, modified or terminated orally, by course of dealing, or in any other manner other than by an instrument in writing signed by all of the parties.
- b. This Agreement and duly executed amendments thereto, and any applicable Services Agreements, constitute the entire agreement of the parties with respect to the subject matter hereof. In the event of a conflict between the terms of this Agreement and any applicable Services Agreement, the terms of the Services Agreement will prevail.
- c. No portion of this Agreement is assignable or delegable by the Practice or any Physician. UPMC may assign all or any part of its obligations or rights under this Agreement, following written notice to the Practice, to an affiliate of UPMC.
- d. All notices, requests, demands and other communications provided for shall be in writing and shall be addressed to the respective parties at the address set forth on the signature page of this Agreement.
- e. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
- f. Any waiver by either party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

- g. This Agreement shall inure to the benefit of the parties and their respective successors and assigns.

12. Disclaimer. Neither this Agreement nor UPMC's consent to provide or arrange for the provision of Services hereunder (i) take into account the volume or value of referrals, if any, by the Practice or the Physicians to UPMC or any of its hospitals or other health care facilities, or (ii) constitute in any way an inducement for the referral of patients to UPMC's hospitals or other health care facilities. Nothing contained in this Agreement or any Services Agreement: (a) is payment for, conditioned upon, or in any way related to the existence, volume or value of referrals between the parties to this Agreement or their affiliates, or (b) is payment for, conditioned upon, or in any way related to the volume or value of any other business which may be generated between the parties to this Agreement or their affiliates. The parties agree that any referral made by either party or their affiliates shall be made in such party's independent professional judgment, and with regard only to the best interest of the patient.

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Signature Page

Effective Date: _____

UPMC

By: Robert Blosat
Senior VP, Clinical Operations
U.P.M.C. - Physician Services Division

(Signature here)

PRACTICE

Name of Practice: _____

By: _____
(Please print name here)
Title: _____

(Signature here)

PHYSICIAN(S)
(Please print names)

(Signatures)

Address for Notice to Practice and Physician(s)

Please return to:

UPMC PRACTICE SOLUTIONS
Natasa Sokolovich, Senior Director
UPMC Physician Services Division
Forbes Tower, Suite 10070
Pittsburgh, PA 15213
(412) 864-2105

With a copy to:

Office of Physician Relations
Iroquois Building, Suite 200
3600 Forbes Avenue
200 Lothrop Street
Pittsburgh, PA 15213

Schedule I

PRACTICE SOLUTIONS AVAILABLE SERVICES (subject to eligibility requirements)

The Practice hereby selects the Services indicated below. In making a selection, the Practice represents and warrants that it and its Physician(s) meet all of the necessary eligibility requirements for that Service, and the parties acknowledge and agree that the Services will be provided only so long as the Practice and its Physician(s) remain so eligible. To obtain certain Services, the Practice and its Physician(s) may be required to enter into separate Service Agreements.

Open Access

- ___ **UPMC e-mail.** No charge access to the UPMC physician e-mail network.
- ___ **Communications Center.** No charge access to the UPMC MedCall communication center service, which provides assistance with urgent and non-urgent referrals of Physician's patients within the UPMC health system, patient transportations to UPMC facilities, consultations, and follow-up information regarding patient progress.
- ___ **CME.** Notice of UPMC continuing medical education programs made available from time to time on a fair market value fee for service basis.
- ___ **MedLink.** For eligible private practices with an existing robust EHR infrastructure, UPMC will provide a no charge link that will offer access to the electronic medical records of its patients generated from professional services provided at UPMC facilities, clinics and practices.*
- ___ **Physician Recruitment.** No charge access to the UPMC Physician Recruitment Program for assistance with recruiting efforts. Physician opportunities throughout the region are posted routinely on the UPMC Physician Opportunities website.
- ___ **Patient Education.** No charge access to printed materials developed for patient education by the UPMC Patient Education Committee.

Limited Access

The Services listed below are available to participating Practices and Physician(s) who (1) are already, or who become, UPMC Health Plan members OR (unless otherwise noted) have Medical Staff privileges at a UPMC Hospital, (2) execute separate Managed Services Agreements or other applicable Services Agreements as necessary, (3) meet additional applicable eligibility requirements, if any, and (4) pay applicable fair market value fees therefor as set forth in such agreements.

- ___ **Answering Service.** UPMC's answering service offers trained health care operators on call 24 hours a day, seven days a week to field calls for individual practices on a fee for service basis. This system allows messages to be managed efficiently and procedures to be personalized to individual Physicians' requirements.

- **Special Purchasing Opportunities.** Upon request, UPMC shall provide physicians and practices who sign up for Practice Solutions, and who also participate in UPMC Health Plan, a list of vendors with which UPMC has arrangements with respect to designated products, which vendors can be contacted for information on potential special purchasing opportunities. The specific terms and conditions of any such purchases will be independently negotiated at arm's length between the vendors and participating practices and physicians. This particular service is not available to UPMC Medical Staff who are not also UPMC Health Plan members.

- **Practice Management or Consulting Services.** A variety of additional medical practice management or consulting services, such as billing/revenue cycle or PC Support services, are available at fair market value rate.

- **MedChart.** An electronic health record (EHR) solution package, including e-prescribing capability. This option requires that each provider pay a monthly ASP fee, (at UPMC-subsidized rates through the remainder of the "stark law" exception, currently scheduled for December 31, 2013, based upon Federal EHR guidelines). A representative from UPMC Practice Solutions will contact you to discuss setting up a pre-requisite practice and EHR assessment, after which UPMC will be able to discuss the option that will best suit your practice.*

- **Medical Malpractice Insurance.** Eligible Physicians may apply for and purchase malpractice insurance through UPMC's primary liability insurance carrier, Tri-Century Insurance Co. if they meet the carrier's qualifications.

*The MedChart- EHR option and MedLink may require the prior purchase by Practice, at Practice's sole expense, of computer hardware, or upgrades to existing hardware, internet connections, and other necessary computer infrastructure based upon the installation requirements for the EHR solution selected, or already in use.

APPENDIX A

1012.1

APPLICATION FOR PARTICIPATION ADDENDUM		
Last Name:		
First Name:		
Middle Name:	Suffix:	Degree:
Complete Business Address:		
City:	State:	Zip Code:
Hospital/Pavillion Affiliation:		
Group Practice Affiliation:		
Business Phone:	()
Additional Business Phone:	()
Business Fax:	()
Pager Number:	()
E-Mail Address:		
Social Security Number:		
Date of Application:		
Name of Initial UPMC Contact:		
Primary Practice Contact Name and Primary Contact Number:		
*(This will be the main person for us to follow-up with at your practice.)		

APPENDIX B

SANCTIONED PROVIDER

A "Sanctioned Provider" means a person or entity who:

- (a) is under indictment or prosecution for, or has been convicted of: (i) any offense related to the delivery of an item or service under the Medicare or Medicaid programs or any program funded under Title V or Title XX of the Social Security Act (the Maternal and Child Health Services Program or the Block grants to States for Social Services programs, respectively), (ii) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service, (iii) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service, (iv) obstructing an investigation of any crime referred to in (i) through (iii) above, or (v) unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
- (b) has been required or has agreed to pay any civil monetary penalty under 42 U.S.C.A. Section 1320a-7a regarding false, fraudulent, or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state or federal health care program; or
- (c) has been excluded from participation in the Medicare, Medicaid, or Maternal and Child Health Services (Title V) program, or any program funded under the Block Grants to States for Social Services (Title XX) program.