CONTRACT FOR SPECIALIZED MEDICAL EDUCATION SERVICES

This agreement (the "Agreement") for specialized medical education services entered into by and between The Texas A&M University Health Science Center (hereinafter referred to as "TAMHSC"), a health-related institution under the administration of Texas A&M University, a member of The Texas A&M University System (hereinafter referred to as "TAMUS"), an agency of the State of Texas, on behalf of the College of Medicine (hereinafter referred to as "COM"), and American Anesthesiology of Texas, Inc. (referred to herein as "PRACTICE"). TAMHSC and PRACTICE are each individually sometimes referred to as a "Party" and collectively sometimes referred to as the "Parties".

WHEREAS, COM is a component of TAMHSC, a state-supported institution of higher education, and operates comprehensive professional education programs for the study of medicine, at both the undergraduate and graduate levels;

WHEREAS, COM is accredited by the Liaison Committee on Medical Education and is a member of the Association of American Medical Colleges and therefore is required to maintain a curriculum meeting standards as set forth by those governing bodies;

WHEREAS, PRACTICE enjoys a reputation for quality health care and education and training for health professionals; and

WHEREAS, PRACTICE is authorized to provide clinical services for the treatment and care of patients at St. Joseph Hospital (hereinafter referred to as the "Facility") and the Facility entered into an Affiliation Agreement with TAMHSC, on behalf of COM, dated June 29, 2012 to provide clinical medical education teaching environment and teaching support services to COM medical students.

NOW, THEREFORE, PRACTICE and TAMHSC mutually agree as follows:

1. SERVICES:

   A. PRACTICE is duly licensed by the State of Texas and shall assist in the administration of specialized medical education programs of COM and shall provide clinical medical training to COM medical students in the Facility. PRACTICE shall perform such other duties as may from time to time be agreed to between the Parties.

   B. The professional services rendered under this Agreement to COM will be assessed for quality assurance and compliance by the Vice Dean of Medicine-Bryan-College Station Campus.

2. CONSIDERATION:

   A. As compensation for providing its facilities and personnel to assist SCHOOL in the furtherance of its mission and purpose, SCHOOL agrees to pay PRACTICE the following:

   The sum of One Hundred Dollars and no cents ($100.00) per unit where student(s) is supervised directly by PRACTICE as outlined in Exhibit A. Total amount not to exceed $50,000 dollars and No cents.

   (12) monthly payments of Two Thousand Five Hundred dollars and no cents ($2,500.00), for a total commitment of Thirty Thousand Dollars and No Cents ($30,000) for the services of Mark Brauer, M.D. in the role of Anesthesiology Director as outlined in Exhibit B.

   Total value for this agreement not to exceed Eighty Thousand Dollars and No Cents ($80,000).
B. All sums due PRACTICE shall be paid by COM within 30 days upon receipt of certification of completion of scheduled units by PRACTICE. Certification will be provided to COM by authorized representative of PRACTICE. Payment will be made in accordance to the State of Texas procurement guidelines.

3. TERM:

This Agreement, upon acceptance by both Parties, shall be effective from June 1, 2016 through May 31, 2017.

4. PAYMENT:

For the purposes of this Agreement, COM shall pay to PRACTICE each month the funds allocated to it by terms of this Agreement to pay for expenses arising from the delivery of the services specified and described herein.

5. USE OF PRACTICE SERVICES:

To preclude the possibility of denying or delaying the care and treatment of any patient, PRACTICE services will be used by COM only to the extent that there will be no reduction in the services to PRACTICE patients.

6. DISPUTE RESOLUTION:

The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMHSC and PRACTICE to attempt to resolve any claim for breach of contract made by PRACTICE that cannot be resolved in the ordinary course of business. PRACTICE shall submit written notice of a claim of breach of contract under this Chapter to the Vice President for Finance and Administration of TAMHSC, who shall examine PRACTICE’s claim and any counterclaim and negotiate with PRACTICE in an effort to resolve the claim.

7. PERFORMANCE:

The Dean of Medicine shall be responsible for the academic programs of COM. It will be the responsibility of the Vice Dean of Medicine-Bryan-College Station Campus to provide a written evaluation of performance of PRACTICE in the fulfillment of theses duties to the Dean of Medicine.

8. TERMINATION:

Except as otherwise provided herein, either Party may terminate this Agreement at any time upon sixty (60) days written notice to other Party, provided, however, that all students enrolled in a course of study or rotation at the Facility at the time of notice of termination shall be given the opportunity to complete their clinical education at the Facility. Such students must complete their clinical program within one (1) year of the date of termination of this Agreement. This Agreement will automatically terminate should PRACTICE not be authorized to provide clinical services at the Facility.

9. INDEPENDENT CONTRACTOR:

The Parties hereby acknowledge that they are independent contractors, and neither of the Parties nor any of their respective agents, representatives, students or employees shall be construed to be the agent, representative, student or employees of the other Party. In no event shall this Agreement be construed as establishing a partnership, joint venture, joint enterprise or similar relationship between the Parties. PRACTICE shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits of its employees.

10. COMPLIANCE WITH FEDERAL LAW

A. PRACTICE will comply with all applicable federal, state, and local laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by TAMHSC.
B. In compliance with federal law, including provisions of Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, TAMHSC and PRACTICE will not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability or military service in their administration of policies, programs, or activities, admission policies, other programs and employment.

C. TAMHSC agrees to comply, and TAMHSC shall ensure that the students comply, with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8 (“HIPAA”), and the requirements of any regulations promulgated thereunder, including, without limitation, the federal privacy regulations as contained in 45 CFR Parts 160 and 164 (the “Federal Privacy Regulations”) and the federal security standards as contained in 45 CFR Part 164 (the “Federal Security Regulations”). TAMHSC agrees not to use or further disclose, and TAMHSC shall ensure that the students not use or further disclose, any protected health information, as defined in 42 U.S.C. § 1320d and 45 CFR § 164.501(collectively, the “Protected Health Information”), concerning a patient other than as permitted or required by this Agreement or otherwise authorized under HIPAA.

11. FERPA

For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), TAMHSC hereby designates PRACTICE as a school official with a legitimate educational interest in the educational records of the students whom PRACTICE encounters to the extent that access to the records are required by PRACTICE to carry out the services under this Agreement. PRACTICE agrees to maintain the confidentiality of the education records in accordance with the provisions of FERPA.

12. NOTICES

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email (to the extent a facsimile number or email address is set forth below) or other commercially reasonably means and will be effective when actually received. Each Party can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

For COM:
Office of the Vice Dean
Bryan-College Station Campus
8441 Hwy 47 Suite 4100
Bryan, TX 77807
Phone: 979-845-1805
Fax: 979-862-8310
Email: ruiz@medicine.tamhsc.edu

With a copy to TAMHSC:
Texas A&M Health Science Center
Vice President for Finance & Administration
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

For PRACTICE:
American Anesthesiology of Texas, Inc.
Attn: General Counsel
1301 Concord Terrace
Sunrise FL 33323
Phone: 954-384-0175
Fax: 954-858-0436
Email: Michelle_Erskine@pediatricx.com
13. INDENIFICATION

TAMHSC, to the extent allowed by the Constitution and laws of the State of Texas, and PRACTICE each agree to indemnify and hold the other harmless from and against any and all losses, claims, demands, damages, liabilities and costs caused by such indemnifying party's negligence or that of its officers, employees, affiliates, contractors and agents. Under no circumstances shall either Party be liable to the other Party for any special, indirect or consequential damages, including without limitation, lost profits or cost of capital.

14. MISCELLANEOUS:

A. Delinquent Child Support Obligation: Under Section 231.006, Texas Family Code, PRACTICE certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. The foregoing clause shall remain inapplicable unless or until PRACTICE becomes a sole proprietorship, or has a partner, shareholder, or owner or with a partnership of at least 25%.

B. Payment of Debt or Delinquency to the State: Pursuant to Section 2252.903, Texas Government Code, PRACTICE agrees that any payments owing to PRACTICE under this Agreement may be applied directly toward certain debts or delinquencies that PRACTICE owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

C. Loss of Funding: Performance by TAMHSC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMHSC will issue written notice to PRACTICE and TAMHSC may terminate this Agreement without further duty or obligation hereunder. PRACTICE acknowledges that appropriation of funds is beyond the control of TAMHSC.

D. Non-Waiver: PRACTICE expressly acknowledges that TAMHSC is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMHSC of its right to claim such exemptions, privileges, and immunities as may be provided by law.

E. Public Information Act: PRACTICE acknowledges that TAMHSC is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement.

F. Prerequisites: TAMHSC shall assign to PRACTICE only those students who have satisfactorily completed the prerequisite didactic and clinical portion of their post graduate medical training to ensure that such students are appropriately credentialed, including but not limited to, being appropriately credentialed, licensed or otherwise qualified to participate in the medical education program.

G. Background Check: TAMHSC shall ensure that all students covered under the Agreement successfully complete a criminal background investigation at the expense of TAMHSC. TAMHSC shall administer and maintain all records of the criminal background check, making them available to PRACTICE upon request. The criminal background should cover all jurisdictions in which the students are currently residing and previously resided in the last seven (7) years. The criminal background should include searches of the Federal Criminal District Court Records Search - National; US Criminal Records Indicator Search and FACIS Level III which should include Statewide Criminal Records Search and Sex Offender Registry. Failure to do so may be deemed a material breach of the Agreement and grounds for immediate termination and denial of further students.

H. Governing Law: This Agreement shall be construed under and in accordance with the laws of the State of Texas without reference to the conflicts of laws principles thereof.

I. Venue: This Agreement is performable in Brazos County, Texas. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against TAMHSC shall be in the County in which the primary office of the chief executive officer of TAMHSC is located. At the execution of this Agreement such county
is Brazos County, Texas.

J. Force Majeure: Neither Party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably with the control of such Party and which by due diligence it is unable to prevent or overcome.

K. Execution and Modification: This Agreement is binding only when signed by both Parties. Any modifications or amendments must be in writing and signed by both Parties.

L. Severability: If any of the provisions of this Agreement in the application thereof to any person or circumstance is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

M. Assignment: This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both Parties.

N. Audits: PRACTICE understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. PRACTICE agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested.

O. Entire Agreement: This Agreement and Exhibit A & B constitute the entire Agreement between the Parties and supersedes any prior agreement or understanding, written or oral, between the Parties with regard to the subject matter covered by this Agreement.

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

APPROVED AND ACCEPTED:
THE TEXAS A&M UNIVERSITY HEALTH SCIENCE CENTER ON BEHALF OF THE COLLEGE OF MEDICINE

Barry C. Nelson, Ph.D.
Vice President for Finance and Administration

Date: ____________________________

APPROVED AND ACCEPTED:
AMERICAN ANESTHESIOLOGY OF TEXAS, INC.

Eric Mason
Vice President

Date: ____________________________