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 Baylor Scott & White Health (hereinafter referred to as “BSWH”), acting for and on behalf of its affiliate, Scott & White Hospital – Round Rock d/b/a Baylor Scott & White Medical Center-Lakeway (hereinafter referred to as “S&WL”) TAMHSC and S&WL 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, BSWH entered into a AAMC Uniform Clinical Training Agreement and Implementation Letter (the “Affiliation Agreement”) with TAMHSC , on behalf of COM, dated September 1, 2014 to provide a clinical medical education teaching environment and teaching support services to COM medical students;

WHEREAS, BSWH and S&WL are all affiliates of the Baylor Scott & White Health System (“BSWH”);

WHEREAS, S&WL has the use and benefit of certain BSWH facilities and personnel committed to the mission of the education of health professionals in accordance with the terms of the Affiliation Agreement; and

WHEREAS, BSWH and its affiliates enjoy a reputation for quality health care and education and training for health professionals.

NOW, THEREFORE, S&WL and TAMHSC mutually agree as follows:

1. SERVICES:

   A. S&WL agrees to provide services of time and effort of professional staff members of SW&L duly licensed by the State of Texas to assist in the administration of specialized medical education programs of COM as set forth by the Dean of Medicine.

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

2. CONSIDERATION:

   A. COM shall pay S&WL the sum of One Hundred Dollars and No Cents ($100.00) per Unit where student(s) is supervised directly by S&WL Physicians, as outlined in Exhibit A, for this contract period in accordance to the terms of this Agreement from available state appropriations.

   B. All sums due S&WL shall be paid by COM within 30 days upon receipt of certification of completion of scheduled units by S&WL. Certification will be provided to COM by authorized representative of S&WL. 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 November 1, 2016 through midnight on May 31, 2017.

4. PAYMENT:

For the purposes of this Agreement, COM shall pay to S&WL 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 S&WL’s SERVICES:

To preclude the possibility of denying or delaying the care and treatment of any patient, S&WL services will be used by COM only to the extent that there will be no reduction in the services to S&WL 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 S&WL to attempt to resolve any claim for breach of contract made by S&WL that cannot be resolved in the ordinary course of business. S&WL 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 S&WL’s claim and any counterclaim and negotiate with S&WL 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-Round Rock Campus to provide a written evaluation of performance of S&WL in the fulfillment of theses duties to the Dean of Medicine and S&WL.

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 S&WL at the time of notice of termination shall be given the opportunity to complete their clinical education at S&WL. Such students must complete their clinical program within one (1) year of the date of termination of this Agreement.

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. S&WL 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. S&WL 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 S&WL 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 shall direct its students to comply with the policies and procedures of S&WL including those governing the use and disclosure of individually identifiable health information under federal law, specifically 45 CFR parts 160 and 164. Solely for the purpose of defining the student's role in relation to the use and disclosure of S&WL's protected health information, such students are defined as members of S&WL's workforce, as that term is defined by 45 CFR 160.103, when engaged in activities pursuant to this Agreement. However, such students are not and shall not be considered to be employees of S&WL.

11. FERPA

For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), TAMHSC hereby designates S&WL as a school official with a legitimate educational interest in the educational records of the students whom S&WL encounters to the extent that access to the records are required by S&WL to carry out the services under this Agreement. S&WL 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:
Texas A&M Health Science Center
College of Medicine
Attn: Associate Dean for Finance & Administration
8447 State Highway 47
Bryan, TX 77807-3260
Phone: (979) 436-0208
Fax:
Email: COM-Contracts@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 S&WL:
Scott & White Memorial Hospital
Office of the General Counsel
2401 S 31st Street
Temple, TX 76508
Phone: 254-724 3001
Fax: 254-724-5729
Email: john.cunningham@bswhealth.org

13. INDEMNIFICATION

TAMHSC, to the extent allowed by the Constitution and laws of the State of Texas, and S&WL each agree to indemnify and hold the other harmless from and against any and all losses, claims, demands, damages, liabilities and costs directly or indirectly arising from or related to such indemnifying party's negligence or willful misconduct or that of its officers, employees, affiliates, contractors and agents, except in all cases to the extent arising from the negligence or intentional misconduct of the indemnified party or their respective officers, employees, affiliates, contractors or 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*, S&WL 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 S&WL 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*, S&WL agrees that any payments owing to S&WL under this Agreement may be applied directly toward certain debts or delinquencies that S&WL 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 S&WL and TAMHSC may terminate this Agreement without further duty or obligation hereunder. S&WL acknowledges that appropriation of funds is beyond the control of TAMHSC.

D. Non-Waiver: S&WL 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: S&WL 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. 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.

G. 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.

H. 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 within the control of such Party and which by due diligence it is unable to prevent or overcome.

I. 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.

J. 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.

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

L. Audits: S&WL 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*. S&WL agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested.
M. Entire Agreement: This Agreement and Exhibit A 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

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Vice President for Finance and Administration

Date: ________________________________

APPROVED AND ACCEPTED:

BAYLOR SCOTT & WHITE HEALTH

Robert A. Probe, MD
CMO

Date: ________________________________