TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO

PAUL L. FOSTER SCHOOL OF MEDICINE

PHYSICIAN EMPLOYMENT AGREEMENT

J1 Waiver

This Physician Employment Agreement (“Agreement”) is entered into at **El Paso** (*City*), **El Paso** County, Texas by and between **Provider Name, M.D./D.O.** (“Physician”) and Texas Tech University Health Sciences Center at El Paso Paul L. Foster School of Medicine (“University”).

# RECITALS

WHEREAS, University desires to employ Physician as a faculty member (non-tenure track) at the rank of **Faculty Rank**, position class code **PClass Code**, in the Department of **Department Name** (1.0 FTE) at **Paul L. Foster School of Medicine** to provide the benefits of Physician’s expertise in the area of clinical practice and generally improving access to quality health care to patients, including the poor and disadvantaged; and,

WHEREAS, Physician will be employed as a/n **Specialty** (specialty; e.g., General Internist, Pediatric Cardiologist, Adult Infectious Disease Specialist, etc.); and,

WHEREAS, Physician desires to be employed by University for the purpose of providing the above described services; and,

WHEREAS, Physician understands and acknowledges the critical importance of University’s need to promote and maintain quality professional medical care, to maintain high standards of patient care and patient relations, to maintain accreditation and licensing with both governmental agencies and private entities, and to strengthen University’s responsibilities of teaching, research, service and patient care activities in its mission of educating and training medical students and residents,

NOW THEREFORE, for and in consideration of the mutual covenants and conditions set forth below, University and Physician covenant and agree as follows:

**I. DUTIES**

1.1 Physician agrees to engage in the full-time duties **(minimum of 40 hours per week of direct patient care only)** as a medical practitioner.  Concurrently, Physician agrees to serve as a faculty member of University in a designated health services shortage area, maintaining the highest principles of medical ethics. Physician also agrees to comply with the rules, regulations, policies and procedures of the University; the Department(s) of appointment; the requirements of §214(*l*) of the Immigration and Nationality Act of 1952, as amended, and with Texas State-30 J-1 waiver regulations; and the Medical Practice Income Plan (MPIP); and, to meet his/her responsibility faithfully and industriously in the provision of medical care and clinical services. Physician agrees that grant and research funds become the property of the University. Physician agrees that educational activities and scholarly work are important roles for faculty of the University and will devote time and effort to each following his/her obligations to the J-1 Waiver program.

Duties will be performed at:

**40 hours per week of direct patient care will be performed at the following MUA/HPSA locations:**

**Facility Name:**

**Address:**

**Shortage ID:**

**Telephone:**

**[***If applicable:* **Additional Hours over the 40 hour J-1 Waiver Requirement (MUA/HPSA locations not weekly assignments but will be tracked)**

**Facility Name:**

**Address:**

**Shortage ID:**

**Telephone:]**

1.2 Competition with University. Physician agrees that during the period of appointment/employment s/he shall not engage in any other gainful medical practice or competitive activity of any type or do anything which would disadvantage University, without the prior written consent of University.

1.3 Applications, Licensure, Certifications. Physician agrees to provide complete, accurate and current information on all applications for employment and credentialing as deemed necessary by University. Prior to commencement of employment and as a condition of continued employment with University, Physician shall: (1) obtain and maintain all the requisite licenses/certifications required by the state of Texas and such other governmental and professional boards and bodies having authority over Physician, including, a current Texas medical license, and a current DEA registration to prescribe controlled substances; and (2) have been credentialed, received medical staff appointments and privileges, and be in good standing with admitting privileges at hospital(s) designated by University. If at the time Physician is appointed as a faculty and does not have a current unrestricted Texas medical license but receives a Faculty Temporary License, s/he must obtain from the Texas Medical Board a permanent unrestricted Texas medical license no later than twelve (12) months from the date Physician begins employment. Failure to obtain an unrestricted Texas medical license by this date will result in the Physician receiving notice of non-renewal. Continued employment with University is contingent upon having an unrestricted Texas medical license, a current DEA registration to prescribe controlled substances, obtaining and maintaining appropriate board certification as further defined in the PLFSOM Professional Staff bylaws (and maintaining hospital and medical staff privileges as required by University. In the event Physician fails to be credentialed by TTUHSC’s at El Paso affiliated hospital(s) within a reasonable time, as determined by the Dean of the Paul L. Foster School of Medicine, this Agreement will become null and void.

1.4 Re-Structure of Duties. Physician acknowledges that the University may, as it deems necessary, re-define or re-structure the Physician’s area(s) of duty or department(s) of appointment.

1.5 Independent Judgment of Physician. In meeting the above conditions, Physician shall be free to exercise his/her own independent professional judgment regarding the treatment of any particular patient. University shall not interfere with the traditional physician-patient relationship and at all times will permit Physician to exercise his/her own medical judgment in the evaluation and treatment of patients.

**II. SPECIFIC DUTIES**

2.1 The Chair of the Department of **Department Name**, or subsequent Department of appointment, will direct the general and specific duties and assignments to be performed by Physician. In the event Physician has a dual appointment in more than one department, the Dean shall determine the primary department of appointment for professional and administrative purposes.

**III. TERM**

3.1 The term of employment under this agreement shall start within ninety (90) days of the physician’s receipt of the waiver and employment authorization from the USCIS and is expected to commence on or about, **Start Date**, and shall continue for three (3) full years from the effective date, a total of not less than thirty-six (36) months in accordance with Federal law.

Separate and apart from the Physician Employment Agreement, Physician agrees to annually sign and return the State of Texas-mandated Faculty Memorandum for Non-Tenure Acquiring Rank, which applies to all Texas faculty on non-tenure track (*see* HSCEP OP 60.08), unless before the date for reappointment, Physician provides University written notice of separation, as set forth in Article V herein below. Refusal or failure to timely sign and return the Faculty Memorandum for Non-Tenure Acquiring Rank promulgated by state law shall be deemed as timely notice to the University of Physician’s resignation. Physician acknowledges that failure to sign the Faculty Memorandum for Non-Tenure Acquiring Rank subjects the Physician to damages as outlined in Article V herein below.

**IV. COMPENSATION**

4.1 Salary. During the term of this Agreement, annual salary for the first year in the amount of **$Salary** shall be pro-rated monthly and may be paid from a number of funding sources by University. Compensation for subsequent years of employment will be negotiated annually by the Dean of the Paul L. Foster School of Medicine. For payroll purposes, salary and benefits must come from funds currently available in the fiscal year. The salary indicated above may include compensation in addition to the base salary. During the term of this appointment and upon written notice, the University may reduce or eliminate such additional compensation based on the following, including but not limited to, (1) if University does not receive grant or contract funds supporting the compensation, and/or (2) if delegated duties/responsibilities cease, for which a current stipend is paid.

4.2 Augmentation and/or Special Augmentation. In addition to salary, Physician may be eligible for augmentation and special augmentation, also referred to as bonuses, which constitute other compensation. Augmentation is derived from monies in the TTUHSC at El Paso Paul L. Foster School of Medicine Medical Practice Income Plan. Any and all augmentation is discretionary and not guaranteed, as set forth in the MPIP Bylaws and departmental policies in effect at that time.

4.3 Benefits. Benefits shall be provided as outlined in the “Faculty Benefit Statement,” along with any subsequent addenda, if applicable, which is included herein as Attachment “A,” and incorporated herein by reference.

**V. SEPARATION**

5.1.1 Notice of Resignation. Physician shall give written notice of resignation for cause (and not by mutual agreement) to University (applicable Chair and Dean) a minimum of four (4) months prior to the end of the academic year, i.e., four (4) months prior to August 31, or April 30.

5.1.2     Damages for Failure to Fulfill Term or to Timely Notify.  If, as noted in Section 5.1.1 above, Physician fails to give timely written notice to the Chair and/or Dean of his/her intention to resign before the current term of the Agreement ends, Physician shall be liable for payment to University for all travel/relocation/moving expenses provided by University from initial date of appointment.  For purposes of determining the term of the Agreement, all academic appointments are considered to run through August 31 of the then current academic year.  This section shall apply irrespective of Sections VII and VIII here in below, et seq.

5.1.3 Forfeiture Resulting from Failure to Timely Notify. Notwithstanding Section 5.1.2 here in above, if physician fails to give timely notice of termination of employment as provided above in Section 5.1.1 et seq., s/he shall forfeit augmentation/special augmentation funds or bonuses then available for disbursement, if any, effective from the date of notice of resignation to the last day of employment.

5.2        Damages.  Physician shall refund/reimburse/pay University for 5.1.2 under this Agreement within sixty (60) days of separation from University.  Failure to timely refund, reimburse or pay any monies owing to University, which results in legal action, will subject Physician to all costs associated with the collection thereof, including, but not limited to, interest, court costs, expenses and attorney’s fees.

**VI. TERMINATION OF AGREEMENT**

6.1 University may terminate this Agreement for cause for any of the following including, but not limited to, Physician’s failure to maintain an accepted quality of medical care as determined by University; Physician’s failure to maintain a current unrestricted license to practice medicine in the state of Texas; Physician's failure to maintain a current unrestricted license to prescribe controlled substances; Physician's failure to maintain board certification in the area(s) of Physician's specialty; Physician’s failure to maintain medical staff appointments and privileges as required by University; Physician's disruptive conduct in the workplace; Physician's failure to conduct himself/herself with professional decorum; any sanction imposed on Physician as a result of the commission of any felony or misdemeanor involving moral turpitude; or Physician’s failure to maintain provider status, i.e., "exclusion" by Medicaid, Medicare or other third party payers and managed care plans designated by University. Other grounds for dismissal for cause are referenced in TTUHSC Operating Policy 60.01. As noted in Section 1.3 hereinabove, if Physician is not credentialed by affiliated hospital(s), this Agreement is deemed null and void.

**VII. CONFIDENTIALITY**

7.1 Physician acknowledges that University has, and will have, confidential information including, but not limited to, the following: inventions, equipment, products, prices, costs, discounts, future plans, business affairs, trade secrets, technical matters, patient lists, copyrights and other information which are valuable, special and unique assets of University. Physician agrees that s/he will not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate in any manner any information to any third party or use such information in any manner without the prior written consent of University or unless required by applicable federal or state law. Physician shall, in accordance with applicable federal or state law, retain the right to disclose information for research purposes without prior written approval. Physician will protect the information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement and will entitle University to seek legal and/or equitable relief. Damages to University which result in legal action will subject Physician to all costs associated with the collection thereof, including, but not limited to, interest, court costs, expenses and attorney's fees. The confidentiality of this Agreement shall remain in full force and effect after the termination of Physician's employment.

**VIII. WAIVER**

8.1 The Dean of the Paul L. Foster School of Medicine, at his/her sole discretion may, by written instrument, waive the restriction on competition and/or the notice of separation requirements.

**IX. VACATION AND SICK LEAVE**

9.1 Physician shall earn vacation and sick leave as provided by state law and University policy. Vacation leave must be taken at a time mutually convenient to University and Physician and must be approved in writing and in advance by the Department Chair/Dean. In addition, all leave must be reported and approved in accordance with state law and University policy.

**X. MEMBERSHIP IN MEDICAL PRACTICE INCOME PLAN**

10.1 Execution of the MPIP agreements, which are included as Attachments “B-1" and "B-2”, respectively, and incorporated herein by reference, is required as a condition precedent to employment, and such attachments shall be executed simultaneously with this Agreement.

**XI. TERMINATION FOR DISABILITY**

11.1 University shall have the ability to terminate this Agreement if, at any time during his TTUHSC at El Paso faculty appointment, Physician becomes permanently disabled and, in the opinion of University, is no longer able to perform the essential functions of the position with or without reasonable accommodation.

**XII. COMPLIANCE WITH UNIVERSITY RULES**

12.1 Physician agrees to comply with all University rules, regulations, policies, procedures and state and federal laws. Physician recognizes his/her responsibility to obtain and become familiar with such rules, regulations, policies, procedures and applicable laws.

**XIII. CONFLICT OF INTEREST**

13.1 Physician shall adhere to and abide by all statutes, laws, TTU System *Regents' Rules*, and TTUHSC policies including, but not limited to, conflicts of interest or the appearance of impropriety. Prior to engaging in any activity which might be considered by a University official as a conflict of interest or improper, Physician shall first disclose the matter to the department Chair and Dean of the TTUHSC at El Paso Paul L. Foster School of Medicine to obtain a determination regarding whether such activity complies with institutional principles.

**XIV. PATIENT MATTERS**

14.1 Continuation of Patient Care. Physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after this Agreement or employment has been terminated.

14.2 Patient Lists. Physician will not be denied access to a list of patients whom s/he has treated within one year of separation from University.Upon submitting a written request to the Dean of the Paul L. Foster School of Medicine, Physician will be given access to this information. Except by mutual consent of the Parties to the Agreement, this request shall not require such list or medical records, referred to in Section 14.3 herein below, to be provided in a format different from that by which such records are maintained.

14.3 Patient Medical Records. Upon written authorization of the patient, Physician will be given access to medical records of Physician's patients. Copies will be provided for a reasonable fee as established by the Texas Medical Board under the Medical Practice Act, Section 159.008, Texas Occupations Code.

14.4 Documentation Requirements. Physician agrees to comply with all federal and state laws, regulations, and requirements for documentation by teaching physicians for the purposes of billing third party payers.

**XV. RETURN OF PROPERTY**

15.1 Property of University. Upon termination of employment, Physician agrees to deliver all property including, but not limited to, keys, records, notes, data, modems, supplies, and electronic and other equipment of any nature in Physician's possession or under Physician's control, all of which is University property or related to University business.

**XVI. OTHER PROVISIONS**

16.1 Entirety. This written Agreement, and any attachments incorporated herein by reference, contains the entire Agreement between the Parties and supersedes any and all other agreements between the Parties. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery of this Agreement, except such representations as are specifically set forth in this Agreement, and each of the Parties acknowledges that such Party has relied on his/her own judgment in entering into the Agreement. The Parties further acknowledge that any statements or representations that may have previously been made by either of them, or their representatives, to the other are void and of no effect and that neither of them has relied thereon in connection with such Party's dealings with the other.

16.2 Amendment. This Agreement and any attachments incorporated herein by reference, may be modified or amended only if such amendment is made in writing and signed and dated by the signatory Parties hereto, or their designees. Any amendment to this Agreement shall comply with State and Federal J-1 visa waiver requirements.

16.3 Severability. This Agreement and any attachments incorporated herein by reference, shall be enforceable to the fullest extent permitted by law, and, if for any reason any portion of this Agreement is held invalid, such invalidity shall not affect the enforceability of the Agreement as limited or modified by a court of competent jurisdiction.

16.4 Waiver. The failure of either Party to enforce any provision of this Agreement or any attachments incorporated herein by reference, shall not be construed as a waiver or limitation on that Party’s right to subsequently enforce and compel compliance with every provision of this Agreement.

16.5 Jurisdiction and Venue. This Agreement and any attachments incorporated herein by reference, shall be governed by the laws of the state of Texas, and venue of any dispute shall be in El Paso County, Texas.

16.6 Notice. Physician shall at all times during his employment have on file in the clinical department and the Department of Human Resources a current mailing address (street address and, if applicable, post office box number). All notices required under this Agreement, shall be in writing and shall be deemed delivered when delivered in person; deposited in the United States mail, certified, return receipt requested; or delivered by overnight express mail, addressed as follows:

UNIVERSITY:

**Texas Tech University Health Sciences Center at El Paso**

**Paul L. Foster School of Medicine**

**ATTENTION: Richard A. Lange, M.D., M.B.A.**

**Medical Education Building**

**5001 El Paso Drive, MSC 11001**

**El Paso, TX  79905**

PHYSICIAN:

**Name**

**Address**

**City, ST Zip**

16.7 Change of Address. The Parties' addresses may be changed from time to time by providing written notice in the manner set forth above (*see* Section 17.6).

16.8 Understanding of Agreement. Physician acknowledges that s/he has had the opportunity to consult with legal counsel, as desired, has read and understands this Agreement, the terms and conditions contained herein, and the attachments incorporated herein by reference.

16.9 Effective Date of Agreement. The effective date of this Agreement shall be the date appearing above in Article III "Term", unless otherwise amended in writing by the Parties.

**TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO**

**PAUL L. FOSTER SCHOOL OF MEDICINE**

I have reviewed and agree with the employment agreement as stated and have initialed any changes or additions, which have been discussed and agreed to by the Physician, department chair, Regional Dean (if applicable) and the Dean of the Paul L. Foster School of Medicine.

**BY:**

**Physician Name, Degree Date**

**BY:**

**Name, Degree Date**

**Chair, Department of NAME**

**BY:**

**Richard A. Lange, M.D., M.B.A. Date**

**President, Texas Tech University Health Sciences Center**

**at El Paso**

**Dean, Paul L. Foster School of Medicine**

**Estimated Faculty Benefits/Compensation Statement**

FULL-TIME (> 100%)

**Name: Physician**

**DIRECT COMPENSATION**

Calculations Based on Full-time Compensation of $

**Direct Benefits Compensation Total $**

Employer Contribution to Retirement $

**TOTAL DIRECT COMPENSATION**  **$**

**INDIRECT COMPENSATION**

Employer Contribution to Social Security $

Health Insurance Premium Sharing $

MPIP Insurance Program

*Premiums paid by department, taxable income to employee*

Long Term Disability $

Term Life $

Dental $

**TOTAL INDIRECT COMPENSATION** **$**

**TOTAL DIRECT AND INDIRECT COMPENSATION $**

**Additional Support:**

Sign-on Bonus $

Reimbursement of relocation and moving $

expenses not to exceed

**TOTAL $**

1The direct compensation indicated above may include compensation in addition to the base salary. During the term of this appointment and upon written notice, the University may reduce or eliminate such additional compensation based on the following, including but not limited to, (1) if University does not receive grant or contract funds supporting the compensation, and/or (2) if delegated duties/responsibilities cease, for which a current stipend is paid.

**ATTACHMENT “A”**

**SPECIAL POWER OF ATTORNEY**

**Medical Practice Income Plan**

**TTUHSC at El Paso**

**Paul L. Foster School of Medicine**

**STATE OF TEXAS**

**COUNTY OF EL PASO**

Know all men by these presents that I, **Physician Name, Degree**, a Faculty and/or Provider of Professional Services at Texas Tech University Health Sciences Center (TTUHSC) at El Paso Paul L. Foster School of Medicine, of said state and county, have made, constituted and appointed, and hereby do make, constitute and APPOINT the Fiscal Manager for the Medical Practice Income Plan (MPIP), and/or designee, my true and lawful attorney, for me and in my name to receive all electronic transfers, endorse and negotiate all checks, drafts, bills of exchange, notes or other commercial paper, payable to me or to my order, or which may require my endorsement, received in my name for all professional services rendered by me while employed at the TTUHSC at El Paso Paul L. Foster School of Medicine, giving and GRANTING unto my said attorney full power and authority to do and perform all and every act necessary to be done to carry out the above mentioned duties as fully, to all intents and purposes, as I might or could do if personally present. I further AGREE and represent to those dealing with my said attorney in fact that this Special Power of Attorney may be voluntarily revoked in writing alone by revocation filed with the Dean of the TTUHSC at El Paso Paul L. Foster School of Medicine, El Paso County, Texas.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND ON **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.

*(Date)*

***Signed by:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**FACULTY/ PHYSICIAN** *(Signature)*

**ACKNOWLEDGMENT**

**STATE OF \_\_\_\_\_\_\_\_\_\_\_\_**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_**

This document was ACKNOWLEDGED before me on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(Date)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(Signature of Notary)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(Printed Name)*

Notary Public in and for

The State of **\_\_\_\_\_\_\_\_\_\_**

My commission expires: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ATTACHMENT “B-1”**

**ASSIGNMENT AND PLAN AGREEMENT**

**Medical Practice Income Plan**

**TTUHSC at El Paso**

**Paul L. Foster School of Medicine**

I, **Physician**, a Faculty and/or Provider of professional services at the Texas Tech University Health Sciences Center ("TTUHSC") at El Paso Paul L. Foster School of Medicine, as a condition of my employment by TTUHSC, hereby ASSIGN to the Medical Practice Income Plan ("MPIP" or "Plan") Trust Fund all fees charged by me for professional activities and patient care, with the exception of those exempted in accordance with the MPIP Bylaws.

I further AGREE that all electronic funds, monies received by me, or other accrued credits resulting from my professional activities will be promptly remitted to the Paul L. Foster School of Medicine MPIP Business Office. It is expressly understood that this Assignment and Plan Agreement (Assignment) does not apply to salary received from TTUHSC at El Paso or to reimbursement of actual expenses incurred under the Plan.

Further, I AGREE to comply with the MPIP Bylaws, as amended.

This Assignment will terminate when my membership in the Plan ends.

\*As indicated by my spouse’s signature below, if applicable, the undersigned joins this Assignment in acknowledging that such Assignment and Plan Agreement is binding upon the marital community pursuant to Texas law.

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***Chair Name, Degree Date*  *Patty McCarroll, M.B.A. Date***

***Chair, Department of NAME* *Vice President, Clinical Administration***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Physician Name, Degree Date Spouse of Physician Date***

***Provider (Must have signature or indicate “NONE”)***

**ATTACHMENT “B-2”**