

Medical Education Assistance Corporation Professional Services Agreement

THIS AGREEMENT, made and entered this ____ day of July 2020, by and between MEDICAL EDUCATION ASSISTANCE CORPORATION, a non-profit professional corporation organized under the laws of the State of Tennessee, hereinafter referred to as "First Party," and _____, M.D., a faculty member of East Tennessee State University, James H. Quillen College of Medicine, hereinafter referred to as "Second Party."

WITNESSETH:

THAT WHEREAS First Party, a non-profit professional corporation having been organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954 which includes without limitation providing the general public with health care services, desires to employ Second Party to assist in a professional capacity in the fulfillment of the aforesaid purposes:

AND WHEREAS First Party has entered into a contract with East Tennessee State University to provide certain services in regard to the planning, development, and operation of its College of Medicine commensurate with the aforesaid purposes;

AND WHEREAS Second Party has also entered into a contract with the aforesaid University for the same or similar purposes;

AND WHEREAS Second Party, understanding and accepting the conditions of employment set forth herein, desires to be employed by First Party to assist in a professional capacity as aforesaid,

NOW, THEREFORE in consideration of the premises and of the mutual covenants herein contained, and of other good and valuable consideration, the parties do hereby covenant and agree together as follows:

1. Employment Period. First Party herein employs Second Party as of _____, 2019 until the employment of the Second Party is terminated. Second Party will devote his/her entire knowledge and best skill to the provision of health care services to such patients as shall seek such health care services under general rules from time to time promulgated by First Party through its Board of Directors.

2. Acceptance of Employment. Second Party hereby agrees to devote to his/her employment by First Party such time and services as may be necessary, and agrees that he/she will not engage in any other gainful patient care occupation during the term of his/her employment hereunder without the prior consent of the Dean of the College of Medicine and President of First Party; provided that this clause shall not be construed to prevent Second Party from personally, and for his/her own account, receiving royalties, honoraria fees for professional services in legal actions, reserve duties or other forms of investment for his/her own account and for his/her own benefit. **3. Principles of Medical Ethics.** Second Party pledges the active and industrious practice of his/her profession in First Party's interest, his/her faithful adherence to the principles of Medical Ethics of the American Medical Association, and his/her careful avoidance of all personal acts, habits, and usages which might injure in any way, directly or indirectly, the professional or personal reputation of First Party or any other professional persons employed by it, including himself/herself. And Second Party hereby specifically agrees and covenants that any breach of this pledge by him/her shall entitle First Party to discharge him/her from employment and terminate this agreement with or without notice, more particularly, though not by way of limitation, if any of the following events occur: (a) his/her being held guilty of professional misconduct by any professional organization having jurisdiction; (b) the withholding by him/her of any professional or other fees due the First Party in breach of this agreement; or (c) his/her bankruptcy, insolvency, the making of an assignment for the benefits of creditors, or the administration of his/her assets in any kind of creditors' proceedings, voluntary or involuntary.

4. Assurance Prohibited. Second Party hereby specifically agrees that he/she will not give any person an undertaking or assurance, express or implied, that he/she or any other professional employee of First Party will be personally responsible for or be employed in the care of such person, and acknowledges that First Party has exclusive authority to assign duties to him/her or other professional employees, which authority First Party may exercise either by the promulgation of general regulations or by individual direction of its Board of Directors or other authorized agent.

5. Professional Responsibility. First Party undertakes that in the specific areas of diagnosis and/or treatment Second Party's professional responsibility shall be unchallenged, and First Party will not, through its Board of Directors or any of its officers and employees, direct, supervise, or control Second Party in his/her professional care of any individual patient; provided that always this clause shall not

prevent First Party from (a) promulgating general regulations governing the rendering of health care services to patients, or (b) relieving Second Party of the care of any individual patient when in the opinion of First Party the Second Party is not observing such regulations. **6. Internal Professional Assistance.** First Party hereby specifically undertakes to make available to Second Party the advice and assistance of all or any of its other professional employees in the diagnosis and/or treatment of any case. Second Party hereby specifically undertakes to advise and assist, on request, any other professional employee of First Party in the diagnosis and/or treatment of any case. **7. Outside Professional Assistance.** First Party agrees that Second Party may, in his/her sole discretion, seek advice and assistance from other professionals not employed by First Party. Second Party agrees that if he/she desires such advice or assistance of an outside professional, he/she will follow such procedure, if any, as may be prescribed by First Party for obtaining the same.

8. Fees for Professional Services. All fees received by Second party for professional services rendered by Second Party to patients accruing to him/her by virtue of this employment shall be turned over to First Party as its sole property. Second Party hereby expressly agrees and covenants that the compensation and other benefits received by him/her under this Agreement shall satisfy and discharge in full all his/ her claims upon First Party for compensation in respect of the professional services rendered by him/her. Second Party acknowledges that his/her services in the employment of First Party in no way confers upon him/her any ownership, interest in, or personal claim upon any fees charged by First Party for his/her services, whether the same are collected during his/her employment or after the termination thereof, and he/she hereby disclaims and renounces any such interest or claim.

9. Compensation. Second Party's compensation allocation shall be determined from time to time by the First Party's Board of Directors. Funds collected in the name of the Second Party for professional services rendered shall be payable at such time, or times, as the First Party's cash funds permit. All funds collected in the name of the Second Party for professional services rendered shall be distributed as follows: (a) the first allocation shall include, but not be limited to, any expenses that can be directly attributed to the Second Party, (b) a second allocation, which is in excess of direct physician expenses, shall be made to the Second Party's compensation in a percentage to be determined from time to time by the Board of Directors.

10. Fringe Benefits. Subject to due performance of his/her services and responsibilities hereunder and his/her observance of all the requirements herein set forth, Second Party shall enjoy all the benefits provided by First Party for its professional employees; including participation in any profit sharing, pension, salary continuation, disability insurance, life insurance, or other benefit plans as such plan may from time to time be amended.

11. Vacation. Second Party shall not be entitled to paid vacation in conjunction with his/her employment with First Party.

12. Professional Leave of Absence. Second Party shall not be entitled to paid leave for the purpose of attending post-graduate instructional courses, examination for additional professional qualifications, and/or professional conventions, meetings, etc., as speaker, exhibitor, discussant, or auditor, unless specifically provided for by First Party's Board of Directors.

13. Sick Leave. Second Party shall not be entitled to paid sick leave in conjunction with his/her employment with First Party.

14. Adjustment of Compensation. If Second Party is unable, due to sickness, to devote such time to the employment as was expected, but is able to devote at least a part of his/her time thereto and does so, First Party's Board of Directors may adjust his/her compensation appropriately.

15. Termination of Employment. Second Party agrees that termination for purposes of this Agreement shall be defined as the last day the full-time faculty member engages in patient care activities. Termination date shall be determined by Second Party's Department Chairman. Second Party shall not have any rights under this Agreement after his/her retirement or termination either voluntarily or involuntarily provided, however, that he/she shall continue to receive payments for a period of six months after such termination, from collections made in his/her name subject to negotiated terms in effect at the time of his/her termination. First Party shall not be required to make contributions to any pension fund or other fringe benefit program requiring employer contribution during the six month period following termination.

16. Incorporation by Reference. Second Party hereby agrees that First Party's Charter and By-Laws, First Party's Agreement with the University, Second Party's Contract with the University, together with all currently effective rules and regulations of First Party, are hereby appertained in this Agreement.

17. Modifications. Second Party agrees that all new general rules and regulations, and all resolutions of First Party's Board of Directors governing the employment of professional employees generally, shall modify this agreement as if they had been included in it and had been made a part of it: provided, however, that no new rules, regulations, or resolution affecting the Second Party only shall modify this Agreement unless his/her consent be endorsed thereon.

18. Covenants. Second Party for himself/herself hereby agrees and covenants that (a) he/she will not personally make, draw, accept, or endorse any promissory note, bill of exchange, lease, contract, or other engagement for the payment of money or its equivalent by First Party, nor pledge the credit of First Party in any manner whatsoever except as he/she may be authorized by First Party's Board of Directors to do so; (b) any breach of this clause by him/her shall entitle First Party to recover from him/her any expense in which it may be involved as a result of such breach; and (c) the Second Party hereby consents to a judgment for such recovery in the court having jurisdiction.

19. Malpractice Insurance. First Party agrees to provide to Second Party professional liability insurance for the term of his/her employment in an amount agreed to by the Second Party and his/her Chairperson.

20. Office Space, Equipment, and Other Expenses. First Party agrees to provide to Second Party such office space, equipment, and other appropriate expenses as may be necessary for him/her to perform his/her services as outlined herein and as determined and approved by the Board of Directors. Second Party agrees to pay all other professional expenses not covered by First Party.

21. Certification of Membership. By the signature of its officer below, First Party hereby certifies that Second Party is a member of First Party and entitled to all rights and privileges appertaining thereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date and year first above written.

Faculty Member:

, M.D.

Date

MEDICAL EDUCATION ASSISTANCE CORPORATION:

William A. Block, Jr., M.D., President

Date

22. Covenant Not to Compete . Second Party hereby acknowledges the following: First Party is engaged as a non-profit corporation in the provision of health care to patients in First Party's geographic location. In this enterprise, First Party benefits the citizens of First Party's geographic area, by making available to them health care services in addition to those provided by other professionals in private practice, which services are provided by professionals possessing the skill and knowledge requisite to be admitted to the faculty of East Tennessee State University, James H. Quillen College of Medicine. Furthermore, First Party benefits East Tennessee State University, James H. Quillen College of Medicine, and therefore the citizens of First Party's geographic location, by making available to the College of Medicine faculty an enterprise in which the faculty can maintain and improve its collective skill and knowledge in the diagnosis, treatment and care of patients and in the practice of the medical arts generally, and by providing an opportunity for residents and medical students to observe and participate in quality medical care as an essential part of their training.

Having acknowledged these benefits accruing from First Party's ongoing enterprise, Second Party further hereby acknowledges the following: First Party, in conjunction with East Tennessee State University, James H. Quillen College of Medicine, invests significant amounts of time, money and effort in recruiting health care professionals to the faculty of the College of Medicine and membership in First Party. It is essential to both First Party and the College of Medicine to maintain a membership and faculty which is appropriately varied among the specialties and sub-specialties of the medical arts, in order to meet the varied demands of the citizens of First Party's geographic location for health care services, and in order to provide to the students of the College of Medicine quality education in the medical arts in general and in the various specialties and sub-specialties of the medical arts in particular. If Second Party for any reason resigns or is terminated from his/her membership in First Party, for cause, but Second Party continues to practice his/her health care specialty or sub-specialty in First Party's geographic location, then Second Party would work irreparable harm against First Party and East Tennessee State University, James H. Quillen College of Medicine, in that, due to the limited number of patients in the geographic area, such practice by the Second Party would substantially decrease the number of patients served by the First Party which would, in turn, lessen the quality of the medical education available to residents and medical students of James H. Quillen College of Medicine. In addition, if the Second Party is allowed to engage in such practice, the Second Party will have less incentive to continue his/her relationship with the First Party which would lessen the quality of the faculty and of the medical education available through James H. Quillen College of Medicine. Finally the First Party will be irreparably harmed if the Second Party is allowed to engage in such practice, in that the Second Party will have an incentive to leave the First Party's organization before the First Party has had an opportunity to recover the time, effort and expense invested in recruiting the Second Party and establishing the Second Party in the geographic area which would deplete the First Party's resources available for recruitment of additional professionals and for other support of James H. Quillen College of Medicine.

In recognition of all of the foregoing, therefore, Second Party hereby agrees and covenants with First Party that, if Second Party resigns or is terminated from his/her membership in First Party, voluntarily or involuntarily, Second Party shall not practice any medical arts specialty or sub-specialty which he/she practices while a member of First Party, for three years immediately following Second Party's resignation or termination from membership in First Party, anywhere within First Party's geographical location. First Party's geographical location is understood and agreed to include Washington County, Virginia, and Johnson, Carter, Unicoi, Sullivan, Greene and Washington Counties, Tennessee.

Second Party further hereby agrees that his/her covenant not to compete may be enforced by a restraining order, injunction and/or decree for specific performance entered by a court of competent jurisdiction.

Second Party further hereby understands and agrees that East Tennessee State University, James H. Quillen College of Medicine is a third-party beneficiary of this covenant not to compete, and therefore is also entitled to enforce its provision. Second Party understands and agrees that his/her covenant not to compete is given in consideration of his/her employment by and membership in First Party.

It is understood and agreed by First Party and Second Party that if the position held by Second Party is discontinued for any reason not the fault, as determined by First Party in compliance with the policies and procedures of the Tennessee Board of Regents, East Tennessee State University, and the James H. Quillen College of Medicine, or choice of Second Party, this Covenant shall not apply.

This covenant not to compete shall be enforceable to the fullest extent permitted by all applicable law, and, if for any reason any portion of this covenant is held to be invalid, such invalidity shall not affect the enforceability of the remainder of this covenant, as limited or modified. Furthermore, if for any reason this entire covenant is held to be invalid, such invalidity shall not affect the enforceability of the remainder of this agreement.

I ACKNOWLEDGE THAT I HAVE READ, UNDERSTOOD AND AGREE TO THE TERMS OF THE ABOVE SECTION 22.

FACULTY MEMBER:

, M.D.

Date

MEDICAL EDUCATION ASSISTANCE CORPORATION

President, William A. Block, Jr., M.D.

Date