

June 8, 2004

Michael Marinelli, Esquire
Attorney, Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463-0002

AOR 2004-23

**Re: US Oncology, Inc. Good Government Committee
Advisory Opinion Request**

2004 JUN 10 AM 10:00
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Marinelli:

Pursuant to 2 U.S.C. § 437f, we are writing to request an advisory opinion on behalf of the U.S. Oncology, Inc. Good Government Committee ("USON-GGC"), a separate segregated fund of U.S. Oncology, Inc. ("USON"), regarding whether physician practices with which USON has entered comprehensive exclusive management service agreements constitute affiliates of USON. As affiliates, USON proposes to solicit stockholders and their families and the medical executive and administrative personnel of the physician practices managed by USON, including the physicians, nurses and other medical staff that conduct the practice of medicine at those practices, and their families for contributions to the USON-GGC.

US Oncology generally conducts its business through subsidiaries. References to USON herein should be read to include such subsidiaries. USON provides management services on an exclusive basis to each of its affiliated physician practices. Employees at the practice locations providing business services, such as billing, collection, personnel services, general management and administrative office services are generally employees of USON. Employees at the practice location who actually provide patient care services are, in all cases, employees of the physician practice. In no case does USON have an ownership or similar interest in the physician practice.

Michael Marinelli, Esquire

June 8, 2004

Page Two

USON contracts with cancer care physician practices nationwide, providing a network of more than 865 physicians across 27 states with comprehensive business management services including services relating to medical oncology management, outpatient cancer center operations, and cancer research and development. The business aspects of modern medical practice are increasingly complex. Generally, physicians have been required to assume this increasing burden, while also trying to keep up with the latest developments in medicine. USON's management services are intended to allow physicians to focus on what they do best—practice medicine—and to enable physician practices to deliver a full continuum of outpatient cancer care including professional medical services, chemotherapy infusion and radiation oncology services, stem cell transplantation, clinical laboratory, diagnostic radiology, clinical research, pharmacy services and patient education, all in a high-quality, cost effective manner.

USON enters into exclusive long-term management services agreements ("MSAs") with its affiliated physician practices generally with initial terms of 25-40 years. Under the MSA, USON manages business aspects of the practice. As consideration for its services, USON is reimbursed for costs incurred in providing management services and receives a service fee from the practice, which is generally either (and usually) a percentage of earnings before income taxes, or a fixed fee plus a percentage fee, subject to certain adjustments. In some cases, USON receives a fixed fee.

The following characterizes the relationship between USON and its physician practices and establishes the basis for our claim of affiliation, the factors of which are set forth in 11 C.F.R. § 100.5(g)(4)(ii).

Decision-making

Under the MSA, USON provides the practice with office space, equipment, furnishings and supplies and furnishes administrative staff necessary for the practice to operate. When USON affiliates with a new physician practice, it generally purchases these assets from that practice and often hires the existing administrative staff of the practice.

Michael Marinelli, Esquire

June 8, 2004

Page Three

USON and the practice jointly make certain decisions regarding management of the non-medical aspects of the practice through a "Policy Board" that is established under the MSA. The Policy Board is responsible for developing and implementing management and administrative policies for the overall operation of the non-medical aspects of the practice. USON and the practice each designate members to the Policy Board. Each of those designees has the authority to represent its respective party on all matters before the Policy Board. Regardless of the number of representatives on the Policy Board, the practice representatives collectively cast one vote and the USON representatives collectively cast one vote, so USON and the practice each has equal input into Policy Board decisions. A deadlock results in no action being taken.

USON does not, however, in any way control, direct or influence the practice of medicine by the affiliated physician practice.¹ In addition, because USON does not have any ownership interest in the affiliated practices, USON does not have the power to designate the affiliated practices' board of directors or officers.

The physician practice may only provide medical services under the USON arrangement and USON agrees to provide management services only to its managed practice within a specified geographical area. Practice physicians generally are bound by non-competition covenants whereby they agree not to compete with their practice in the practice of medicine and agree not to compete with USON in the business of managing medical practices.

Personnel Issues

As noted above, USON provides all of the non-medical staff and equipment and supplies necessary for the practice to operate. In many cases, personnel of the practice when it first enters into an affiliation with USON are hired by USON. USON also administers compensation and benefits of the practice's medical personnel. USON and the affiliated practices share a USON-administered benefits package (including healthcare insurance), which is utilized by the medical practice and management company employees.

¹ Despite the broad list of topics subject to the Policy Board's jurisdiction, the physician representatives of the practice alone make decisions in certain areas. These areas are: the types and levels of medical services to be provided; the recruitment of physicians to the practice; the acquisition of or merger with any other medical practice in the practice area; fee schedules, marketing and advertising of the services performed at the practice facilities; and "any other function or decision that the parties agree is medical related."

Michael Marinelli, Esquire

June 8, 2004

Page Four

Regional Vice Presidents, Executive Directors and Practice Administrators are USON employees (selected in coordination with the practices) and play key decision-making roles regarding the manner in which USON provides administrative services to practices. The Practice Administrator is the senior on-site decision-maker for all non-clinical administrative activities of USON under the MSA. USON does not control, direct or influence the practice of medicine by the affiliated physician practices. However, the Practice Administrator has an advisory role regarding administration of clinical staff with final decisions on hiring, firing, evaluation and promotion being the responsibility of the clinical manager involved in the process, such as the nurse manager. Under the MSA, USON can assist with assessment of the financial impact of personnel decisions as well as other non-clinical factors. USON also provides comprehensive recruiting services, including market intelligence regarding compensation and related issues, that would inform a practice's decision regarding hiring.

On a nationwide level, USON also conducts meetings and activities of a national policy board ("NPB"), which includes at least one physician from each practice, as well as representatives from USON. NPB members serve in an advisory capacity, making recommendations that are adopted or rejected by the practices, with non-medical recommendations subject to Policy Board action. The NPB has no binding authority, but it does facilitate communication between USON and the practices, and allows physicians to participate and take advantage of the breadth and scope of USON's network of managed practices. In addition, if USON wishes to propose an initiative on a national level, it can do so through the NPB to avoid having to replicate its discussion before every practice. The NPB also includes committees in areas such as research and radiation that serve to provide feedback and advice to USON management regarding the development of business aspects of these areas.

Michael Marinelli, Esquire

June 8, 2004

Page Five

Ongoing financial support and provisioning of goods and funds

USON (through its subsidiaries) pays all office expenses on an ongoing basis and is reimbursed by the practice. Among its ongoing expenditures on behalf of the practices, USON provides significant funds, goods and services for such purposes as: information technology; operation and capital investment for communication support, database management, research and accounting; staff training; front office and pharmacy personnel; legislative and regulatory compliance, audit and advocacy services; a clinical research organization and related activities; and payer contracting and consulting and marketing. It also provides funds in significant amounts on an ongoing basis to support a practice's financing of medical equipment and ongoing capital in the practice.²

The following examples illustrate the ways in which USON helps provide financial support, goods and funds to the practices:

(1) Each month, USON purchases accounts receivable generated by the practice during the month by paying the practice an amount equal to (a) expected collections on those accounts, less (b) the amount of any expenses incurred by USON during the month in connection with its management services and the amount of USON's management fees, both of which it retains. The effect of this is that the practice receives cash when the accounts receivable are accrued rather than when they are collected. Because the amount USON pays already reflects deductions or most operational expenses and USON's fees, what is paid to the practice is used primarily to pay its physicians. If the practice were not affiliated with USON, it would have to obtain this working capital financing from another source, such as a bank, or would have to wait to pay physicians, etc., until the money from the receivables was collected. This is a key, ongoing financial flow from USON to the practices. The effect of this is that every dollar the practice receives comes from USON (because USON is responsible for collecting receivables from the various payers).³

² Regarding the purchase of medical equipment, the model MSA provides that the business manager "shall have no authority in regard to medical equipment issues. The BM [Business Manager] may, however, advise [the practice] on the relationship between its medical equipment decisions and the overall administrative and financial operation of the practice. All medical and non-medical equipment acquired for the use of the [practice] shall be owned by the BM." MSA, section 4.1.

³ For regulatory reasons, governmental receivables are not purchased; instead, payment to the practice is a loan secured by the receivable, but USON is responsible for the billing and collection functions and the economic effect is largely the same.

Michael Marinelli, Esquire

June 8, 2004

Page Six

(2) USON funds capital expenditures made on behalf of the practice, including significant expenditures like buying a new cancer center or piece of major medical equipment or minor expenses like new chairs for a patient waiting room, USON pays for that expenditure (or arranges financing through a lease or other vehicle) and USON owns that asset for the exclusive use of the practice in question. USON is then reimbursed for that asset in the form of a capital charge and depreciation charge over the life of the asset.

Thus USON finances both the short-term working capital needs of the practice and the long-term capital expenditure needs of the practice.

Stock ownership

Some physicians in the practices own stock in USON but it is not a universal attribute of the physicians.

Role in development

USON's network development staff plays a significant role in practice mergers and statewide practice development. For example, where new entities or locations must be established, USON helps with organization matters such as applying for provider numbers, procuring and negotiating office space and undertaking similar formation-related tasks.

Analysis under 11 C.F.R. § 100.5(g)(4)(ii)

In light of the discussion above, USON believes that its relationship with its physician practices satisfies a number of the factors of affiliation set forth in 11 C.F.R. § 100.5(g)(4)(ii) and that USON and the physician practices are affiliated. These factors include:

ShawPittman LLP

Michael Marinelli, Esquire

June 8, 2004

Page Seven

- The creation of policy boards comprised of representatives of USON and the respective physician practices to determine management and administrative policies of each practice's operation, on which USON has an equal voice. 11 C.F.R. § 100.5(g)(4)(ii)(B) and (C).
- The mutually exclusive services relationship between USON and the physician practices. 11 C.F.R. § 100.5(g)(4)(ii)(C).
- The formal and ongoing relationship under which employees of each entity provide management input to the other. 11 C.F.R. § 100.5(g)(4)(ii)(E).
- The acquisition of employees from the practices by USON upon establishment of a management service agreement. 11 C.F.R. § 100.5(g)(4)(ii)(F).
- The ongoing exchange of goods and services, and funds between USON and its physician practices. 11 C.F.R. § 100.5(g)(4)(ii)(G) and (H).
- The role that USON plays in the development of the physician practices within its network. 11 C.F.R. § 100.5(g)(4)(ii)(I).

USON believes it would be appropriate to solicit the stockholders and their families and the executive and administrative personnel of the physician practices and their families, including the physicians, nurses and other medical staff that administer the medical functions of the practices, for contributions to the USON-GGC. Accordingly, USON requests the Commission's opinion on the matter.

We have enclosed copies of an organizational chart describing the relationship between USON and its physician practices and a USON management service agreement. Should you need additional information, please do not hesitate to contact me at (202) 663-8118 or thomas.spulak@shawpittman.com.

Respectfully,



Thomas J. Spulak

Enclosures

Advisory Opinion Analysis

11 CFR 114.5(g)(1): "A corporation or a separate segregated fund established by a corporation is prohibited from soliciting contributions to such fund from any person other than its stockholders and their families and its executive or administrative personnel and their families. A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. For purposes of this section, the factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation."

11 CFR 100.5(g)(4)(ii): "In determining [affiliation], the Commission will consider the circumstantial factors described in paragraphs (g)(4)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization."

NOTE: The following assessment of the applicability of the FEC's affiliation factors to US Oncology and its network practices is based on a review of the interaction between US Oncology and the *business* functions and personnel of its network practices, not between US Oncology and the physician groups of those practices. This distinction is essential since every practice's physician group and practice of medicine lie within the sole control of each practice's physician group, not with the practice's professional corporation or US Oncology.

11 CFR 100	Federal Factors	US Oncology-Physician Practices
(g)(4)(ii)(B)	<p>"Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;</p>	<p>Practices enter into Management Service Agreements ("MSAs") with US Oncology. As noted, below, the MSAs also provide for specified termination provisions and contain restrictive covenants.</p> <p><u>Long-Term Management Relationship.</u> Under the Physician Practice Management ("PPM") model, US Oncology enters into long-term management affiliations with physician practices in which:</p> <ul style="list-style-type: none"> • a subsidiary of US Oncology enters into a 40-year management services agreement with a physician practice pursuant to which the subsidiary exclusively manages the business aspects of the practice; • the practice pays management fees to the subsidiary, usually a percentage of earnings or of revenue after certain adjustments; • the parties cannot terminate the management services agreement without cause or upon mutual agreement prior to the 40-year anniversary of the agreement; and • the management subsidiary initially purchases all of the practice's nonmedical assets and hires the nonmedical employees and continues to provide all of the nonmedical staff, equipment and supplies necessary for the practice to operate. <p><u>Participation in Governance.</u> US Oncology has the ability to participate in the governance of the non-medical aspects of the practices that it manages through the Policy Board that is established under the MSA. The Policy Board is responsible for developing and implementing management and administrative policies for the overall operation of the non-medical aspects of the practice.</p> <p>Each of US Oncology and the practice designates its representatives to the Policy Board, and each of those members has the authority to make decisions on behalf of the respective party. Regardless of the number of representatives on the Policy Board, the practice's representatives collectively cast one vote and US Oncology's representatives collectively cast one vote. A deadlock results in no action being taken.</p>

11 CFR 100	Federal Factors	US Oncology-Physician Practices
		<p>US Oncology does not, however, in any way control, direct or influence the practice of medicine by the affiliated physician practice. In addition, because US Oncology does not have any ownership interest in the affiliated practices, US Oncology does not have the power to designate the affiliated practices' board of directors or officers.</p> <p><u>Additional Note:</u> Practices can only operate in accordance with their MSA with US Oncology. However, US Oncology's services, resources, staff, and policies are solely utilized by the practices with whom US Oncology enters into MSAs (i.e., US Oncology and practices have a mutually exclusive relationship).</p>
(g)(4)(ii)(C)	<p>"Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;</p>	<p>As noted in the response to subsection (g)(4)(ii)(B) above and as illustrated by the attached typical practice organization chart, the management subsidiary established by US Oncology pursuant to the MSA, hires all the nonmedical employees of a practice and thereafter provides all of the nonmedical staff necessary for the practice to operate.</p> <p>Regional Vice Presidents, Executive Directors and Practice Administrators are US Oncology employees (selected in coordination with the practice(s)) and play key decisionmaking roles regarding practice business functions. Within a practice, the Practice Administrator is the senior decision making staffer for all non-clinical activities. US Oncology does not, however, in any way control, direct or influence the practice of medicine by the affiliated physician practice. In addition, because US Oncology does not have any ownership interest in the affiliated practices, US Oncology does not have the power to designate the affiliated practices' board of directors or officers.</p>
(g)(4)(ii)(E)	<p>"Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;</p>	<p>US Oncology staff are responsible for the business aspects of the practices, plus front office, and other functions. These employees are not practice staff but do operate in conjunction with practice staff.</p> <p>In addition, as described in the response to subsection (g)(4)(ii)(B) above, US Oncology has the ability to participate in the governance of the non-medical aspects of the practices through its membership on the practices' Policy Board.</p> <p>Finally, some physicians serve as members of the network's National Policy Board ("NPB"), and some physicians are employed as US Oncology medical directors. Although any physician can be a member of the NPB and a medical director, only a minority of the network's physicians serve in such capacities at any point in time. NPB members include US Oncology officers and physicians who are practice officers, and they serve in an advisory role that makes recommendations which are adopted or rejected by the practices, with non-medical recommendations subject to Policy Board action.</p>

11 CFR 100	Federal Factors	US Oncology-Physician Practices
(g)(4)(ii)(F)	"Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;	As noted above, the administrative and other non-clinical employees of a practice prior to affiliation become the employees of US Oncology after affiliation. As a result, practice staff are then limited to physicians, nurses, lab technicians, and other clinical support staff.
(g)(4)(ii)(G)	"Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;	US Oncology (through its wholly-owned subsidiaries) pays all office expenses on an ongoing basis and is reimbursed by the practices. Among its ongoing expenditures on behalf of its affiliated practices, US Oncology provides significant funds, goods and services, for such purposes as: IT operating and capital investments (estimated at greater than \$5 million/year) for communication, support, database management, research, and accounting; staff training; front office personnel; legislative and regulatory compliance, audit, and advocacy services; a clinical research organization and related activities; payer contracting and consulting; and marketing.
(g)(4)(ii)(H)	"Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;	In addition to the ongoing expenditures described in the response to subsection (g)(4)(ii)(H), US Oncology provides funds in significant amounts on an ongoing basis to support practices' financing of medical equipment and ongoing capital investment in the practices.
(g)(4)(ii)(I)	"Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and	US Oncology's network development staff has played a significant role in practice mergers and statewide practice formation. For example, in many cases, US Oncology personnel help organize the practices, apply for provider numbers, procure and negotiate for office space, and undertake similar formation-related tasks.

Summary of US Oncology Management Structure

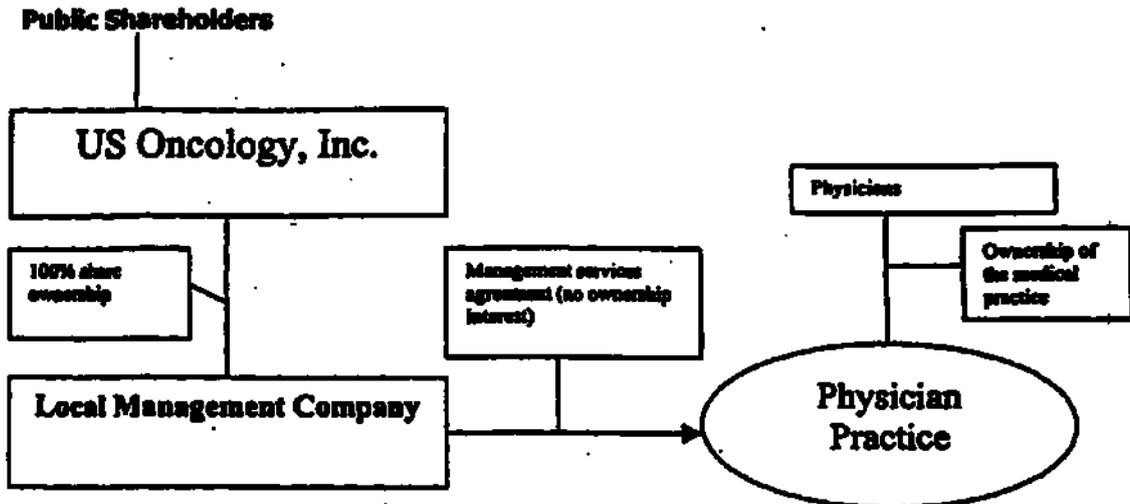
US Oncology, Inc. is a publicly traded company (Nasdaq: USON).

US Oncology owns a 100% interest in each of its management companies.

The management companies enter into comprehensive management services agreements with physician practices throughout the country.

These agreements are exclusive and generally have terms of 40 years.

The physician practices are not owned by US Oncology, but are instead owned by some or all of the physicians who practice medicine at those practices.



MANAGEMENT SERVICES AGREEMENT

[REDACTED]

ARTICLE III. RESPONSIBILITIES OF THE POLICY BOARD	8
3.1 Formation and Operation of the Policy Board.	8
3.2 Duties and Responsibilities of the Policy Board.	8
3.3 Medical Decisions.	9
ARTICLE IV. COVENANTS AND RESPONSIBILITIES OF BUSINESS MANAGER	10
4.1 Office and Equipment.	10
4.2 Medical Supplies.	11
4.3 Support Services.	11
4.4 Quality Assurance, Risk Management, and Utilization Review.	11
4.5 Licenses and Permits.	12
4.6 Personnel.	12
4.7 Contract Negotiations.	12
4.8 Billing and Collection.	12
4.9 New LLC Account.	14
4.10 Fiscal Matters.	16
4.11 Reports and Records.	17
4.12 Recruitment of New LLC Physicians.	18
4.13 Confidential and Proprietary Information.	18
4.14 Business Manager's Insurance.	18
4.15 No Warranty.	19
ARTICLE V. COVENANTS AND RESPONSIBILITIES OF New LLC	19
5.1 Organization and Operation.	19
5.2 New LLC Personnel.	20
5.3 Professional Standards.	20
5.4 Medical Services.	21
5.5 Code of Business Conduct.	21
5.6 Peer Review/Quality Assurance.	21
5.7 New LLC's Insurance.	21
5.8 Confidential and Proprietary Information.	21
5.9 Noncompetition.	22
5.10 Name, Trademark.	24
5.11 Peer Review.	24
ARTICLE VI. FINANCIAL ARRANGEMENT	24
6.1 Definitions.	24
6.2 Management Fee.	24
6.3 Adjustments.	25
6.4 Reasonable Value.	25
6.5 Payment of Management Fee.	26
6.6 Accounts Receivable.	25
6.7 Disputes Regarding Fees.	26

ARTICLE VII. TERM AND TERMINATION	27
7.1 Initial and Renewal Term.	27
7.2 Termination.	27
7.3 Effects of Termination.	29
7.4 Repurchase Obligation.	29
7.5 Repurchase Option.	30
7.6 Closing of Repurchase.	30

ARTICLE VIII. MISCELLANEOUS	31
8.1 Administrative Services Only.	31
8.2 Status of Contractor.	31
8.3 Notices.	31
8.4 Governing Law.	32
8.5 Assignment.	32
8.6 Arbitration.	33
8.7 Waiver of Breach.	34
8.8 Enforcement.	34
8.9 Gender and Number.	34
8.10 Additional Assurances.	34
8.11 Consents, Approvals, and Exercise of Discretion.	35
8.12 Force Majeure.	35
8.13 Severability.	35
8.14 Divisions and Headings.	35
8.15 Amendments and Management Services Agreement Execution.	35
8.16 Entire Management Services Agreement.	35

EXHIBITS

Exhibit 4.8	Form of Power of Attorney
Exhibit 5.1	Form of Articles of Organization
Exhibit 5.1A	Form of Employment Agreement (Member)
Exhibit 5.1B	List of Members
Exhibit 5.1C	Form of Employment Agreement (Non-Member)
Exhibit 5.1D	Form of Regulations
Exhibit 5.5	Code of Business Conduct

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT, effective as of June 4, 1999, is by and between American Oncology Resources, Inc., a Delaware corporation ("Business Manager"), and [REDACTED] limited liability company ("New LLC").

RECITALS

A. New LLC is a validly existing [REDACTED] professional limited liability company, formed for and engaged in the conduct of a medical practice and the provision of medical services to the general public in and around the [REDACTED] metropolitan area through individual physicians who are licensed to practice medicine in the State of [REDACTED] and who are employed or otherwise retained by New LLC.

B. Business Manager is in the business of managing the nonmedical aspects of medical practices.

C. New LLC desires to focus its energies, expertise and time on the practice of medicine and on the delivery of medical services to patients, and to accomplish this goal it desires to delegate the increasingly more complex business functions of its medical practice to persons with business expertise.

D. New LLC wishes to engage Business Manager to provide such management, administrative and business services as are necessary and appropriate for the day-to-day administration of the nonmedical aspects of New LLC's medical practice in the Practice Territory (as defined below), and Business Manager desires to provide such services all upon the terms and conditions hereinafter set forth.

E. New LLC and Business Manager have determined a fair market value for the services to be rendered by Business Manager, and based on this fair market value, have developed a formula for compensation for Business Manager that will allow the parties to establish a relationship permitting each party to devote its skills and expertise to the appropriate responsibilities and functions.

F. Business Manager is willing to commit significant resources to New LLC based upon the representations and warranties of New LLC that the current members of New LLC will continue to practice medicine for New LLC in the Practice Territory for five (5) years from the effective date of this Management Services Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions hereinabove and hereinafter set forth, the parties agree as follows:

ARTICLE I. DEFINITIONS

For the purposes of this Management Services Agreement, the following terms shall have the following meanings ascribed thereto, unless otherwise clearly required by the context in which such term is used.

Section 1.1 Adjusted Gross Revenue. The term "Adjusted Gross Revenue" shall mean the sum of Professional Services Revenue and Ancillary Revenue.

Section 1.2 Adjustments. The term "Adjustments" shall mean any adjustments on an accrual basis for uncollectible accounts, Medicare, Medicaid and other payor contractual adjustments, discounts, workers' compensation adjustments, professional courtesies, and other reductions in collectible revenue that result from activities that do not result in collectible charges.

Section 1.3 Ancillary Revenue. The term "Ancillary Revenue" shall mean all other revenue actually recorded each month (net of Adjustments) that is not Professional Services Revenues or Subcontractor Capitation Revenues, and shall include, without limitation, any amounts received by New LLC as damages or buy-out under any Physician's employment agreement.

Section 1.4 Base Management Fee. The term "Base Management Fee" shall mean the amount set forth in Section 6.1.

Section 1.5 Budget. The term "Budget" shall mean an operating budget and capital expenditure budget for each fiscal year as prepared by Business Manager and adopted by New LLC.

Section 1.6 Business Manager. The term "Business Manager" shall mean American Oncology Resources, Inc., a Delaware corporation, or any entity that succeeds to the interests of such corporation and to whom the obligations of Business Manager are assigned and transferred.

Section 1.7 Business Manager Consent. The term "Business Manager Consent" shall mean the consent granted by Business Manager's representatives to the Policy Board created pursuant to Article III herein. When any provision of this Management Services Agreement requires Business Manager Consent, Business Manager Consent shall not be unreasonably withheld and shall be binding on Business Manager.

Section 1.8 Business Manager Expense. The term "Business Manager Expense" shall mean the general and administrative costs of American Oncology Resources, Inc. ("AOR").

Section 1.9 Capitation/Case Rate Revenues. The term "Capitation/Case Rate Revenues" shall mean all revenues from managed care organizations, third party payors, or employers where such payment is made based on a per member, case rate, or other similar basis (*i.e.*, all payments that are not made based on a fee for service reimbursement methodology) for the partial or total medical needs of a subscribing patient. Capitation/Case Rate Revenues shall

include any associated plan payments received, such as patient co-payments, incentive bonuses, or incentive fund penalties. All Capitation/Case Rate Revenues shall be allocated as follows:

(a) Professional Services Capitation: the portion of payments designated for physician services currently performed by New LLC (e.g., office and hospital visits, chemotherapy administration, pharmaceuticals, laboratory, radiation, etc.). Professional Services Capitation shall be Professional Services Revenues; and

(b) Subcontractor Capitation Revenues: the portion of payments designated for physician or other medical services that will be Subcontractor Costs (e.g., reinsurance, hospitalization, surgical procedures, stem cell harvesting, radiation therapy, etc.), including incentive bonuses or penalties, will first be allocated to cover subcontractor services, including an estimate for incurred but not reported claims. Subcontractor Capitation Revenues shall not be Professional Services Revenues or Ancillary Revenue, but shall be revenues of New LLC.

The final allocation methodology is subject to approval by the Policy Board.

Section 1.10 Confidential Information. The term "Confidential Information" shall mean any information of Business Manager or New LLC, as appropriate (whether written or oral or stored magnetically or electronically), including all notes, studies, patient lists, information, computer data (however stored), forms, business or management methods, marketing data, fee schedules, or trade secrets of Business Manager or of New LLC, as applicable, whether or not such Confidential Information is disclosed or otherwise made available to one party by the other party pursuant to this Management Services Agreement. Confidential Information shall also include the terms and provisions of this Management Services Agreement and any transaction or document executed by the parties pursuant to this Management Services Agreement. Confidential Information does not include any information that (i) is or becomes generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by the receiving party or its affiliates, advisors, or Representatives); (ii) is or becomes available to the receiving party on a nonconfidential basis from a source other than the furnishing party or its affiliates, advisors, or Representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy to the furnishing party of which the receiving party has knowledge at the time of such disclosure; or (iii) has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement with or other obligation of secrecy to the furnishing party.

Section 1.11 GAAP. The term "GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity or other practices and procedures as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of the determination. For purposes of this Management Services Agreement, GAAP shall be applied on an accrual basis in a manner consistent with the historical practices of the person to which the term applies.

Section 1.12 Governmental Receivables. The term "Governmental Receivables" shall mean accounts receivable of New LLC which are paid for by any healthcare program (i) for which the United States of America, any agency or instrumentality of the United States of America, or any individual state of the United States of America, serves as a third party payor, including, but not limited to, Medicare, Medicaid, and CHAMPUS, and (ii) for which applicable federal or state law require that payments by such third party payors be paid or made to New LLC as a healthcare provider. The term "Governmental Receivables" shall not, however, refer to payments from private insurers under contract to provide benefits under the Federal Employee Health Benefit Program.

Section 1.13 Management Fee. The term "Management Fee" shall mean Business Manager's compensation established as described in Article VI hereof.

Section 1.14 Management Services. The term "Management Services" shall mean the business, administrative, and management services to be provided for New LLC, including without limitation the provision of equipment, supplies, support services, nonmedical personnel, office space, management, administration, financial record-keeping and reporting, and other business office services.

Section 1.15 Management Services Agreement. The term "Management Services Agreement" shall mean this Management Services Agreement by and between New LLC and Business Manager and any amendments hereto as may be adopted as provided in this Management Services Agreement.

Section 1.16 Medical Services. The term "Medical Services" shall mean medical care and services, including but not limited to the practice of hematology, oncology, diagnostic radiology and all related subspecialties and health care services provided by New LLC through New LLC's Physicians and other health care providers that are retained by or professionally affiliated with New LLC.

Section 1.17 New LLC. The term "New LLC" shall mean ~~the New LLC~~ limited liability company.

Section 1.18 New LLC Account. The term "New LLC Account" shall mean the bank account of New LLC, other than the New LLC Lockbox Account, established as described in Sections 4.8 and 4.9.

Section 1.19 New LLC Consent. The term "New LLC Consent" shall mean the consent granted by New LLC's representatives (or either representative) to the Policy Board created pursuant to Article III herein. When any provision of this Management Services Agreement requires New LLC Consent, New LLC Consent shall not be unreasonably withheld and shall be binding on New LLC.

Section 1.20 New LLC Expense. The term "New LLC Expense" shall mean an expense incurred by Business Manager or New LLC and for which New LLC, and not Business

Manager, is financially liable. New LLC Expense shall mean such items as salaries or other professional services compensation, benefits, and other direct costs (including professional dues, subscriptions, continuing medical education expenses, and travel costs for continuing medical education or other business travel but excluding business travel requested by Business Manager or AOR, which shall be an Office Expense) of Physicians and Physician Extenders. In addition, in the event New LLC incurs consulting, accounting or legal fees without coordinating such engagement through Business Manager, all fees and expenses so incurred shall be New LLC Expenses.

Section 1.21 New LLC Lockbox Account. The term "New LLC Lockbox Account" shall mean the bank account of New LLC, (other than the New LLC Account) established as described in Section 4.9(a).

Section 1.22 Non-Governmental Receivables. The term "Non-Governmental Receivables" means accounts receivable of New LLC that are not Governmental Receivables.

Section 1.23 Office. The term "Office" shall mean any office space, clinic, facility, including satellite facilities, that Business Manager shall own or lease or otherwise procure for the use of New LLC.

Section 1.24 Office Expenses. The term "Office Expense" shall mean all operating and nonoperating expenses incurred by Business Manager in the provision of services to New LLC or by New LLC in connection with the provision of medical services, except to the extent any expense is expressly designated as a Business Manager Expense or a New LLC Expense. Without limitation, Office Expense shall include:

(a) the salaries, benefits, and other direct costs of all employees of Business Manager at the Office and the salaries, benefits, and other direct costs of the nonphysician employees of New LLC, but not the salaries, benefits, or other direct costs of the Physicians or Physician Extenders (which are, without limitation, New LLC Expenses);

(b) the direct cost of any employee or consultant that provides services at or in connection with the Office for improved clinic performance, such as management, billing and collections, business office consultation, accounting and legal services, but only when such services are coordinated with the approval of the Policy Board;

(c) reasonable recruitment costs and out-of-pocket expenses of Business Manager or New LLC associated with the recruitment of additional physician and other employees of New LLC;

(d) malpractice insurance expenses for Physicians, Business Manager employees, and nonphysician employees; comprehensive and general liability and vicarious liability insurance covering the Office and employees of New LLC and Business Manager at the Office;

(e) the expense of using, leasing, purchasing or otherwise procuring the Office and related equipment, including depreciation;

(f) the cost of capital (whether as actual interest on indebtedness incurred on behalf of New LLC or as reasonable imputed interest on capital advanced by Business Manager) to finance or refinance obligations of New LLC, purchase medical or nonmedical equipment, or finance new ventures of New LLC;

(g) the Base Management Fee;

(h) direct costs related to obtaining and maintaining Capitation/Case Rate Revenues contracts for professional medical services or health care service contracts with medical or health care providers and the amount of Subcontractor Costs;

(i) the reasonable travel expenses associated with attending meetings, conferences or seminars to benefit New LLC (excluding the corporate staff of AOR); and

(j) the cost of medical supplies (including but not limited to drugs, pharmaceuticals, products, substances, items, or medical devices), office supplies, inventory, and utilities.

Section 1.25 Performance Fee. The term "Performance Fee" shall mean the amount, if any, payable to Business Manager in accordance with the provisions of Section 6.2 hereof.

Section 1.26 Physician. The term "Physician" shall mean each individually licensed professional who is employed or otherwise retained by or associated with New LLC, each of whom shall meet at all times the qualifications described in Section 5.2 and Section 5.3.

Section 1.27 Physician Extenders. The term "Physician Extenders" shall mean physician assistants and all other "physician extenders" who can bill for their own services who are employed or otherwise retained by or associated with New LLC.

Section 1.28 Policy Board. The term "Policy Board" shall refer to the body responsible for developing and implementing management and administrative policies for the overall operation of New LLC's facilities.

Section 1.29 Practice Territory. The term "Practice Territory" shall mean the geographic area within a radius of thirty (30) miles of any current or future facility from which New LLC provides Medical Services, representing the geographic boundaries of the medical practice conducted by New LLC.

Section 1.30 Professional Services Revenues. The term "Professional Services Revenues" shall mean the sum of (i) all professional fees actually recorded each month on an accrual basis under GAAP (net of Adjustments) as a result of professional medical services and related health care services rendered by the Physicians whether rendered in an outpatient or

inpatient setting, and (ii) Professional Services Capitation allocated to Professional Services Revenues.

Section 1.31 Representatives. The term "Representatives" shall mean a party's officers, directors, managers, employees, or other agents or representatives.

Section 1.32 State. The term "State" shall mean the State of .

Section 1.33 Subcontractor Costs. The term "Subcontractor Costs" shall mean the amounts due third parties for providing medical services pursuant to Capitation/Case Rate Revenues contracts.

Section 1.34 Term. The term "Term" shall mean the initial and any renewal periods of duration of this Management Services Agreement as described in Section 7.1.

ARTICLE II. APPOINTMENT AND AUTHORITY OF BUSINESS MANAGER

Section 2.1 Appointment. New LLC hereby appoints Business Manager as its sole and exclusive agent for the management, and administration of the business functions and business affairs of New LLC, and Business Manager hereby accepts such appointment, subject at all times to the provisions of this Management Services Agreement.

Section 2.2 Authority. Consistent with the provisions of this Management Services Agreement, Business Manager shall have the responsibility and commensurate authority to provide Management Services for New LLC. Subject to the terms and conditions of this Management Services Agreement, Business Manager is hereby expressly authorized to provide the Management Services in any reasonable manner Business Manager deems appropriate to meet the day-to-day requirements of the business functions of New LLC. Business Manager is also expressly authorized to negotiate and execute on behalf of New LLC contracts that do not relate to the provision of Medical Services. New LLC shall give Business Manager thirty (30) days prior notice of New LLC's intent to execute any agreement obligating New LLC to perform Medical Services or otherwise creating a binding legal obligation on New LLC. Unless an expense is expressly designated as a Business Manager Expense in this Management Services Agreement, all expenses incurred by Business Manager in providing services pursuant to this Management Services Agreement shall be an Office Expense. The parties acknowledge and agree that New LLC, through its Physicians, shall be responsible for and shall have complete authority, responsibility, supervision and control over the provision of all Medical Services and other professional health care services performed for patients, and that all diagnoses, treatments, procedures, and other professional health care services shall be provided and performed exclusively by or under the supervision of Physicians as such Physicians, in their sole discretion, deem appropriate. Business Manager shall have and exercise absolutely no control or supervision over the provision of Medical Services.

Section 2.3 Patient Referrals. Business Manager and New LLC agree that the benefits to New LLC hereunder do not require, are not payment for, are not in any way contingent upon, and are not intended to induce or encourage the referral, admission, or any other arrangement for

the provision of any item or service offered by Business Manager to patients of New LLC in any facility, laboratory, infusion center, or health care operation controlled, managed, or operated by Business Manager.

Section 2.4 Internal Management of New LLC. Matters involving the internal management, control, or finances of New LLC, including specifically the allocation of professional income among the members and Physician employees of New LLC, tax planning, and investment planning, shall remain the responsibility of New LLC and the members of New LLC.

Section 2.5 Practice of Medicine. The parties acknowledge that Business Manager is not authorized or qualified to engage in any activity that may be construed or deemed to constitute the practice of medicine. To the extent any act or service herein required by Business Manager should be construed by a court of competent jurisdiction or by the ~~Board~~ Board of Medical Examiners to constitute the practice of medicine, the requirement to perform that act or service by Business Manager shall be deemed waived and unenforceable.

ARTICLE III. RESPONSIBILITIES OF THE POLICY BOARD

Section 3.1 Formation and Operation of the Policy Board. The parties hereby establish a Policy Board which shall be responsible for developing and implementing management and administrative policies for the overall operation of New LLC's facilities. The Policy Board shall consist of four (4) members. Business Manager shall designate, in its sole discretion, two (2) members of the Policy Board. New LLC shall designate, in its sole discretion, two (2) Physician members of the Policy Board. Each party's representative to the Policy Board shall have the authority to make decisions on behalf of the respective party. At least five days notice shall be provided for all Policy Board meetings, but the advance notice requirements may be waived in writing or by attending the meeting for any special or emergency meetings of the Policy Board. Except as may otherwise be provided, a majority of the members of the Policy Board, present in person or by telephone, shall constitute a quorum, provided at least one representative of both Business Manager and New LLC are present. Voting shall be by block, such that the New LLC representatives to the Policy Board shall collectively cast one vote and the Business Manager representatives to the Policy Board shall collectively cast one vote. Under such block voting, a deadlock shall result in no action being taken.

Section 3.2 Duties and Responsibilities of the Policy Board. The Policy Board shall have the following duties, obligations, and authority:

(a) **Capital Improvements and Expansion.** Any renovation and expansion plans and capital equipment expenditures with respect to New LLC's facilities shall be reviewed and approved by the Policy Board and shall be based upon economic feasibility, physician support, productivity and the current market conditions.

(b) **Marketing and Advertising.** All marketing and other advertising of the services performed at New LLC's facilities shall be reviewed and recommended to New LLC by the Policy Board, with the ultimate decisions made by New LLC.

(c) Patient Fees: Collection Policies. As a part of the annual operating budget, in consultation with New LLC and Business Manager, the Policy Board shall review and recommend to New LLC the fee schedule and collection policies for all physician and ancillary services rendered by New LLC, with the ultimate decisions made by New LLC.

(d) Ancillary Services. The Policy Board shall approve New LLC-provided ancillary services based upon the pricing, access to and quality of such services.

(e) Provider and Payor Relationships. Decisions regarding the establishment or maintenance of relationships with institutional health care providers and third party payors shall be approved by the Policy Board in consultation with New LLC. The Policy Board shall review and approve discounted fee schedules, including capitated fee arrangements, and shall approve allocations of Capitation/Case Rate Revenues.

(f) Strategic Planning. The Policy Board shall develop long-term strategic planning objectives.

(g) Capital Expenditures. The Policy Board shall determine the priority of major capital expenditures.

(h) Physician Hiring. The Policy Board shall recommend to New LLC the number and type of physicians required for the efficient operation of New LLC's facilities. The Policy Board shall review and approve any variations to the restrictive covenants in any physician employment contract.

(i) Fee Dispute Resolution. Upon submission by New LLC of a dispute concerning a set-off or reduction in Management Fees, the Policy Board shall consider, develop, and implement a resolution to New LLC and Business Manager.

(j) Grievance Referrals. The Policy Board shall consider and make recommendations to New LLC regarding grievances pertaining to matters not specifically addressed in this Management Services Agreement as referred to it by New LLC.

Section 3.3 Medical Decisions. Despite the above listing of activities and areas of interest, all medical decisions will be made solely by physicians, but nonphysician members of the Policy Board may participate in the discussion process. The physician members of the Policy Board shall review and resolve issues relating to:

- (a) Types and levels of Medical Services to be provided;
- (b) Recruitment of physicians to New LLC, including the specific qualifications and specialties of recruited physicians;

- (c) Acquisition of or merger with any other medical practices in the Practice Territory;
- (d) Fee schedules;
- (e) Marketing and advertising of the services performed at New LLC's facilities; and
- (f) Any other function or decision that the parties agree is medical related.

The Policy Board meetings shall be held as mutually agreed, but at least quarterly, in a mutually agreeable place. Meetings shall be open to any member in New LLC.

ARTICLE IV. COVENANTS AND RESPONSIBILITIES OF BUSINESS MANAGER

During the Term, Business Manager shall provide all Management Services as are necessary and appropriate for the day-to-day administration of the business aspects of New LLC's operations, including without limitation those set forth in this Article IV, in accordance with all law, rules, regulations and guidelines applicable to the provision of Management Services.

Section 4.1 Office and Equipment

(a) Subject to Section 4.1(b), as necessary and appropriate, taking into consideration the professional concerns of New LLC, Business Manager shall lease, acquire or otherwise procure an Office in a location or locations reasonably acceptable to New LLC and shall permit New LLC to use the Office. Any Office procured by Business Manager for the use by New LLC shall be procured at commercially reasonable rates. Any move from New LLC's present practice location(s) shall be done only after Business Manager has received New LLC's Consent.

(b) In the event New LLC is the lessee of the Office under a lease with an unrelated and nonaffiliated lessor, Business Manager may require New LLC to assign such lease to Business Manager upon receipt of consent from the lessor. New LLC shall use its best efforts to assist in obtaining the lessor's consent to the assignment. Upon request, New LLC shall execute any instruments and shall take any acts that Business Manager may deem necessary to accomplish the assignment of the lease. Any expenses incurred in the assignment shall be Office Expenses.

(c) Business Manager shall provide all nonmedical equipment, fixtures, office supplies, furniture and furnishings deemed reasonably necessary by Business Manager for the operation of the Office and reasonably necessary for the provision of Medical Services.

(d) Business Manager shall provide, finance, or cause to be provided or financed medical related equipment as required by New LLC. Subject to economic

feasibility. New LLC shall have final authority in all medical equipment selections, and Business Manager shall have no authority in regard to medical equipment issues. Business Manager may, however, advise New LLC on the relationship between its medical equipment decisions and the overall administrative and financial operations of the practice. All medical and nonmedical equipment acquired for the use of New LLC shall be owned by Business Manager.

(e) Business Manager shall be responsible for the care, custody and control, including the repair and maintenance, of the Office, consistent with Business Manager's responsibilities under the terms of any lease or other use arrangement, and for the repair, maintenance, and replacement of all equipment other than such repairs, maintenance and replacement necessitated by the negligence or willful misconduct of New LLC, its Physicians or other personnel employed by New LLC, the repair or replacement of which shall be a New LLC Expense and not an Office Expense.

(f) Business Manager will not purchase any product, supply, equipment or other tangible property required by New LLC from any affiliate of Business Manager except upon commercially fair and reasonable terms that are comparable to the terms Business Manager would obtain in a comparable transaction with an entity not affiliated with Business Manager.

Section 4.2 Medical Supplies. Business Manager shall order, procure, purchase and provide on behalf of and as agent for New LLC all reasonable medical supplies unless otherwise prohibited by federal and/or State law. Business Manager, working in conjunction with New LLC and the Policy Board, shall use commercially reasonable efforts to obtain the best commercially available price for medical supplies. Furthermore, Business Manager shall ensure that the Office is at all times adequately stocked with the medical supplies that are necessary and appropriate for the operation of New LLC and required for the provision of Medical Services. The ultimate oversight, supervision and ownership for all medical supplies is and shall remain the sole responsibility of New LLC. As used in this provision the term "medical supplies" shall mean all drugs, pharmaceuticals, products, substances, items or devices whose purchase, possession, maintenance, administration, prescription or security requires the authorization or order of a licensed health care provider or requires a permit, registration, certification or other governmental authorization held by a licensed health care provider as specified under any federal and/or State law.

Section 4.3 Support Services. Business Manager shall coordinate, supervise or otherwise arrange for all printing, stationery, forms, postage, duplication or photocopying services, and other support services as are reasonably necessary and appropriate for the operation of the Office and the provision of Medical Services therein.

Section 4.4 Quality Assurance, Risk Management, and Utilization Review. Business Manager shall assist New LLC in New LLC's establishment and implementation of procedures to ensure the consistency, quality, appropriateness, and medical necessity of Medical Services provided by New LLC, and shall arrange for administrative support for New LLC's overall quality assurance, risk management and utilization review programs. Business Manager shall

perform these tasks in a manner to ensure the confidentiality and nondiscoverability of these program actions to the fullest extent allowable under State and federal law.

Section 4.5 Licenses and Permits. Business Manager shall, on behalf of and in the name of New LLC, coordinate all development and planning processes, and apply for and use reasonable efforts to obtain and maintain all federal, State, and local licenses and regulatory permits required for or in connection with the operation of New LLC and equipment (existing and future) located at the Office, other than those relating to the practice of medicine or the administration of drugs by Physicians retained by or associated with New LLC.

Section 4.6 Personnel. Except as specifically provided in Section 5.2(b) of this Management Services Agreement, Business Manager shall, consistent with the Budget, employ or otherwise retain and shall be responsible for selecting, hiring, training, supervising, and terminating, all management, administrative, clerical, secretarial, bookkeeping, accounting, payroll, billing and collection and other nonprofessional personnel as Business Manager deems reasonably necessary and appropriate for Business Manager's performance of its duties and obligations under this Management Services Agreement. Business Manager shall have sole responsibility for determining the salaries and providing such fringe benefits, and for withholding, as required by law, any sums for income tax, unemployment insurance, social security, or any other withholding required by applicable law or governmental requirement. Consistent with reasonably prudent management policies, Business Manager shall seek and consider the advice, input and requests of New LLC in regard to personnel matters.

Section 4.7 Contract Negotiations. Upon the request of New LLC, Business Manager shall advise New LLC with respect to and negotiate, either directly or on New LLC's behalf, as appropriate, all contractual arrangements with third parties as are reasonably necessary and appropriate for New LLC's provision of Medical Services, including, without limitation, negotiated price agreements with third party payors, alternative delivery systems, or other purchasers of group health care services. No contract or arrangement regarding the provision of Medical Services shall be entered into without New LLC Consent.

Section 4.8 Billing and Collection. On behalf of and for the account of New LLC, Business Manager shall assist in the establishment and maintenance of credit and billing and collection policies and procedures, and shall timely bill and collect all professional and other fees for all billable Medical Services provided by New LLC, or Physicians employed or otherwise retained by New LLC. Business Manager shall advise and consult with New LLC regarding the fees for Medical Services provided by New LLC; it being understood, however, that New LLC shall establish the fees to be charged for Medical Services and that Business Manager shall have no authority whatsoever with respect to the establishment of such fees. In connection with the billing and collection services to be provided hereunder, and throughout the Term (and thereafter as provided in Section 7.3), subject to certain limitations herein and to the limited power of attorney granted by New LLC in accordance with Section 4.9(b), New LLC, in accordance with the applicable Medicare and Medicaid reassignment rules, hereby grants to Business Manager an exclusive special power of attorney and appoints Business Manager as New LLC's exclusive true and lawful agent and attorney-in-fact, and Business Manager hereby accepts such special power of attorney and appointment, for the following purposes:

(a) To bill New LLC's patients, in the name of New LLC and on behalf of New LLC, for all billable Medical Services provided by New LLC to patients.

(b) To bill, in New LLC's name and on New LLC's behalf, all claims for reimbursement or indemnification from Blue Shield/Blue Cross, insurance companies, Medicare, Medicaid, and all other third party payors or fiscal intermediaries for all covered billable Medical Services provided by New LLC to patients.

(c) To ensure the collection and receipt in Business Manager's name and for Business Manager's account all Non-Governmental Receivables purchased by Business Manager, and to deposit such collections in an account selected by Business Manager and maintained in Business Manager's name.

(d) To effect the transfer from the New LLC Account to an account designated by Business Manager the amounts equal to the value of the Governmental Receivables in consideration of the loans made by Business Manager to New LLC, all as more particularly described in Section 6.6.

(e) To cause the Governmental Receivables to be deposited by electronic funds transfers, or otherwise directly, into the New LLC Lockbox Account and to monitor payments with respect thereto.

(f) To administer (to the extent permitted by law and subject to the terms of this Agreement) the collection policies in connection with New LLC's accounts receivable including, but not limited to, (i) extending the time of payment of any such accounts for cash, credit or otherwise; (ii) discharging or releasing the obligors of any such accounts; (iii) with the consent of the Policy Board, suing, assigning or selling at a discount such accounts (to the extent permitted by law and subject to the terms of this Agreement) to collection agencies; or (iv) with the consent of the Policy Board, taking other measures to require the payment of any such accounts.

(g) With respect to Non-Governmental Receivables, to deposit all amounts collected in New LLC's name and on behalf of New LLC into the New LLC Account. With respect to Governmental Receivables, to cause all amounts to be collected in New LLC's name and on behalf of New LLC and to be deposited, in accordance with Section 4.9(a), into the New LLC Lockbox Account. New LLC has an unrestricted right to remove Business Manager for any reason as a signatory to New LLC's Account. New LLC covenants to transfer and deliver to Business Manager for deposit into the New LLC Account or itself to make such deposit of all Non-Governmental Receivables. New LLC covenants to deposit or effect the deposit of all Governmental Receivables in accordance with the provisions of Section 4.9(a). Upon receipt by Business Manager of any Non-Governmental Receivables, Business Manager shall immediately deposit the same into the New LLC Account. Business Manager shall disburse such deposited funds from New LLC's Account to creditors or other persons on behalf of New LLC, maintaining records of such receipt and disbursement of funds as directed by New LLC.

(h) To endorse in the name of New LLC, and deposit into the Business Manager account (if the accounts receivable have been purchased or loaned by Business Manager) or the New LLC account any Non-Governmental Receivables in the form of notes, checks, money orders, insurance payments, and any other instruments. Business Manager shall not convert to its own use and/or control any Governmental Receivables and all such payments shall be directed to the New LLC Lockbox Account in accordance with Section 4.9(a). The parties intend that this billing and collection arrangement does not result in a reassignment of Medicare Part B payments to New LLC under 42 U.S.C. § 1395u(b)(6), 42 CFR § 424.80 and Medicare Carriers Manual § 3060, or in a reassignment of Medicaid payments to New LLC under 42 U.S.C. § 1396a(a)(32), 42 CFR § 447.10 and under the Texas Human Resources Code 32.036.

(i) To sign checks, drafts, bank notes or other instruments on behalf of New LLC (excluding those which relate to Governmental Receivables), and to make withdrawals from the New LLC Account for payments specified in this Agreement and as requested from time to time by New LLC.

Upon request of Business Manager, New LLC shall execute and deliver to the financial institution wherein the New LLC Account is maintained, such additional documents or instruments as may be necessary to evidence or effect the special and limited power of attorney granted to Business Manager by New LLC pursuant to this Section 4.8 or pursuant to Section 4.9 of this Management Services Agreement. The special and limited power of attorney granted herein shall be coupled with an interest and shall be irrevocable except with Business Manager's written consent or as specifically provided herein. The irrevocable power of attorney shall expire on the later of when (i) this Management Services Agreement is terminated, (ii) all accounts receivable purchased or received as collateral on loans by Business Manager have been collected or (iii) all Management Fees due to Business Manager have been paid. If Business Manager assigns this Management Services Agreement in accordance with its terms, then New LLC shall execute a power of attorney in favor of the assignee and in the form of Exhibit 4.8 attached hereto.

Section 4.9 Administration

(a) **New LLC Lockbox Account**. All payments with respect to Governmental Receivables will be directed to a lockbox account established in the name of and maintained by New LLC (or the applicable Division) in accordance with the provisions of this Section 4.9(a) (the "New LLC Lockbox Account"). All funds deposited into the New LLC Lockbox Account will be swept on a daily basis, or at such other frequency as determined by Business Manager (but in no event more frequently than daily), into the applicable New LLC Account. New LLC shall enter into an agreement with a bank chosen by New LLC in consultation with Business Manager in form and substance satisfactory to New LLC and Business Manager, to cause the bank (i) to establish and service the New LLC Lockbox Account in the name of New LLC and under the control of New LLC, (ii) to collect, receive, take possession of, endorse in the name of New LLC, and otherwise negotiate for and on behalf of New LLC payments with respect to

Governmental Receivables, and to deposit the same into the New LLC Lockbox Account, and (iii) to sweep the proceeds of such account on a daily basis, or on such other schedule as determined by Business Manager (but in no event more frequently than daily), into the New LLC Account or such other account of New LLC designated by Business Manager. The bank in which the New LLC Lockbox Account is located shall be a bank that is not providing financing to New LLC or acting on behalf of another party in connection with such financing. The instruction of New LLC to said bank shall be revocable at the sole instruction of New LLC; provided, however, that if New LLC modifies or revokes such instructions, it shall be in default of this Agreement

(b) New LLC Account. All payments with respect to Non-Governmental Receivables which are not directed to the New LLC Lockbox Account will be deposited directly into the New LLC Account and maintained in accordance with the provisions of this Section 4.9(b). Business Manager shall have access to the New LLC Account(s) solely for the purposes stated herein. In connection herewith and throughout the Term (and thereafter as provided in Section 7.3), New LLC hereby grants to Business Manager an exclusive special power of attorney for the purposes herein and appoints Business Manager as New LLC's exclusive true and lawful agent and attorney-in-fact, and Business Manager hereby accepts such special power of attorney and appointment, to deposit into the New LLC Account all Non-Governmental Receivables collected by Business Manager, and to make withdrawals from the New LLC Account for payments specified in this Agreement and as requested from time-to-time by New LLC. Notwithstanding the exclusive special power of attorney granted to Business Manager hereunder, New LLC may, upon reasonable advance notice to Business Manager, draw checks on the New LLC Account; provided, however, that New LLC shall not draw checks on the New LLC Account nor request Business Manager to do so if the balance remaining in the New LLC Account after such withdrawal would be insufficient to enable Business Manager to pay on behalf of New LLC any Office Expense and/or other obligations of New LLC. Disbursements made without prior consent of New LLC shall be consistent with the type and amount of expenditures authorized by the Budget. Limits on authority to sign checks and purchase orders shall be mutually agreed upon by Business Manager and New LLC's representatives on the Policy Board.

(c) Priority of Payments. Each month Business Manager shall apply funds that are in the New LLC Account in the following order of priority:

- (i) to Business Manager, Office Expenses, except the Base Management Fee;
- (ii) to New LLC, New LLC Expenses;
- (iii) to Business Manager, the Base Management Fee;
- (iv) to Business Manager, any Performance Fee to which Business Manager is entitled; and

(v) the remaining balance shall be paid as directed by New LLC.

Section 4.10 Fiscal Matters.

(a) Annual Budget.

(i) **Initial Budget.** The initial Budget shall be agreed upon by the parties before the execution of this Management Services Agreement. To ensure that New LLC receives the full amount of the charges for the provision of professional services, in the initial Budget, New LLC shall retain for New LLC Expenses ██████████ of the Adjusted Gross Revenue. The initial Budget shall set forth the criteria under which Business Manager shall be entitled to receive the Performance Fee and the Budget shall also set forth the amount of the Performance Fee.

(ii) **Process for Succeeding Budgets.** Annually and at least thirty (30) days prior to the commencement of each fiscal year of New LLC, Business Manager, in consultation with either one (1) of New LLC's representatives to the Policy Board, shall prepare and deliver to New LLC for New LLC's approval a proposed Budget, setting forth an estimate of New LLC's revenues and expenses for the upcoming fiscal year (including, without limitation, the Management Fee and Performance Fee associated with the services provided by Business Manager hereunder). New LLC shall review the proposed Budget and either approve the proposed Budget or request any changes within fifteen (15) days after receiving the proposed Budget. The Budget shall be adopted by New LLC after reasonable review and comment and may be revised or modified only in consultation with Business Manager.

(iii) **Succeeding Budgets: Special Rates.** In each succeeding Budget, unless the parties otherwise mutually agree, New LLC shall continue to retain for New LLC Expenses ██████████ of the Adjusted Gross Revenue. In each succeeding Budget, unless the parties otherwise mutually agree, the criteria for the Performance Fee and Business Manager's right to receive the Performance Fee shall be continued on the same basis. If the option is exercised pursuant to that certain Option Agreement of even date herewith between the members of New LLC and the Optionee (as defined in the Option Agreement) such that the Optionee owns more than ██████ of the equity interests of New LLC, the amount of the Performance Fee and method of determining the Performance Fee for all succeeding years shall not be changed and shall be determined exactly as specified in the last Budget approved before the exercise of the option, and New LLC shall continue to retain ██████████ of the Adjusted Gross Revenue for New LLC Expenses through the Term.

(iv) **Deadlock.** In the event the parties are unable to agree on a Budget by the beginning of the fiscal year, until an agreement is reached, the Budget for the prior year shall be deemed to be adopted as the Budget for the current year.

with each line item in the Budget increased or decreased by the percentage by which the Adjusted Gross Revenue in the current year, excluding any damages or buy-out paid or payable by any Physician or any other extraordinary income (as determined in accordance with GAAP), has increased or decreased compared to the corresponding period of the prior year.

(v) Obligation of Business Manager. Business Manager shall use commercially reasonable efforts to manage and administer the operations of New LLC as herein provided so that the actual revenues, costs and expenses of the operation and maintenance of New LLC during any applicable period of New LLC's fiscal year shall be consistent with the Budget.

(b) Accounting and Financial Records. Business Manager shall establish and administer accounting procedures, controls, and systems for the development, preparation, and safekeeping of administrative or financial records and books of account relating to the business and financial affairs of New LLC and the provision of Medical Services all of which shall be prepared and maintained in accordance with GAAP and applicable laws and regulations. Business Manager shall prepare and deliver to New LLC, within ninety (90) days of the end of each calendar year, a balance sheet and a profit and loss statement reflecting the financial status of New LLC in regard to the provision of Medical Services as of the end of such calendar year, all of which shall be prepared in accordance with GAAP consistently applied. In addition, Business Manager shall prepare or assist in the preparation of any other financial statements or records as New LLC may reasonably request.

(c) Review of Expenditures. Either one of New LLC's representatives to the Policy Board shall review all expenditures related to the operation of New LLC, but neither shall have the power to prohibit or invalidate any expenditure that is consistent with the Budget. Business Manager shall not make any expenditures not consistent with the Budget without New LLC Consent.

(d) Tax Matters.

(i) In General. Business Manager shall prepare or arrange for the preparation by an accountant approved in advance by New LLC (which approval shall not be unreasonably withheld) of all appropriate tax returns and reports required of New LLC.

(ii) Sales and Use Taxes. Business Manager and New LLC acknowledge and agree that to the extent that any of the services to be provided hereunder may be subject to any state sales and use taxes, Business Manager may have a legal obligation to collect such taxes from New LLC and to remit such taxes to the appropriate governmental authority, which taxes shall be considered an Office Expense.

Section 4.11 Reports and Records.

(a) Medical Records. Business Manager shall establish, monitor, and maintain procedures and policies for the timely creation, preparation, filing and retrieval of all medical records generated by New LLC in connection with New LLC's provision of Medical Services; and, subject to applicable law, shall ensure that medical records are promptly available to Physicians and any other appropriate persons. All such medical records shall be retained and maintained in accordance with all applicable State and federal laws relating to the confidentiality and retention thereof. All medical records shall be and remain the property of New LLC. Information extracted from patient records to create databases desired by AOR shall be the exclusive property of AOR.

(b) Other Reports and Records. Business Manager shall timely create, prepare, and file such additional reports and records as are reasonably necessary and appropriate for New LLC's provision of Medical Services, and shall be prepared to analyze and interpret such reports and records upon the request of New LLC.

Section 4.12 Recruitment of New LLC Physicians. Upon New LLC's request, Business Manager shall perform all administrative services reasonably necessary and appropriate to recruit potential physician personnel to become employees of New LLC. Business Manager shall provide New LLC with model agreements to document New LLC's employment, retention or other service arrangements with such individuals. It will be and remain the sole and complete responsibility of New LLC to interview, select, contract with, supervise, control and terminate all Physicians performing Medical Services or other professional services, and Business Manager shall have no authority whatsoever with respect to such activities.

Section 4.13 Confidential and Proprietary Information. Business Manager may share the practice statistics and information regarding New LLC, including utilization review data, quality assurance data, cost data, outcomes data, or other practice data (i) within New LLC, (ii) with direct and indirect affiliates of Business Manager, (iii) with other medical groups with whom Business Manager or any of its direct or indirect affiliates has an actual or potential management relationship, (iv) with managed care companies, insurance companies and governmental and other payors, (v) with pharmaceutical companies and clinical research companies, (vi) with universities and federally funded registries, (vii) with persons or entities conducting quality or peer review or patient satisfaction surveys, (viii) with financial analysts, lenders, underwriters and other financial institutions and (ix) with other clinical and non-clinical parties that have a contractual relationship regarding such information with Business Manager or any of its direct or indirect affiliates. In addition, Business Manager may disclose any and all information necessary or appropriate (i) in connection with any public or private offering of any security under applicable state and federal law, or (ii) in accordance with reporting requirements under the Securities Exchange Act of 1934, as amended. Notwithstanding the foregoing, Business Manager shall not disclose (i) patient identifying information (except for disclosures to university and federally funded registries regarding patients receiving stem cell transplant services) or (ii) the salary of a physician without the consent of such physician.

Section 4.14 Business Manager's Insurance. Throughout the Term, Business Manager shall, as an Office Expense, obtain and maintain with commercial carriers, through self-

insurance or some combination thereof, appropriate workers' compensation coverage for Business Manager's employed personnel provided pursuant to this Management Services Agreement, and professional, casualty and comprehensive general and vicarious liability insurance covering Business Manager, Business Manager's personnel, and all of Business Manager's equipment in such amounts, on such basis and upon such terms and conditions as Business Manager deems appropriate. Upon the request of New LLC, Business Manager shall provide New LLC with a certificate evidencing such insurance coverage. Business Manager may also carry, as an Office Expense, key person life and disability insurance on any member or Physician employee of New LLC in amounts determined reasonable and sufficient by Business Manager. Business Manager shall be the owner and beneficiary of any such insurance.

Section 4.15 No Warranty. New LLC acknowledges that Business Manager has not made and will not make any express or implied warranties or representations that the services provided by Business Manager will result in any particular amount or level of medical practice or income to New LLC.

Section 4.16 Noncompetition Covenant from Business Manager. Business Manager represents, warrants and covenants that during the Term, neither Business Manager nor any person or entity affiliated directly or indirectly with Business Manager will, anywhere in the State of Alabama, enter into a direct or indirect relationship similar to the relationship between New LLC and Business Manager with, or acquire the nonmedical assets of, any medical oncology practice group without approval of the Policy Board.

ARTICLE V. COVENANTS AND RESPONSIBILITIES OF NEW LLC

Section 5.1 Organization and Operation. New LLC, as a continuing condition of Business Manager's obligations under this Management Services Agreement, shall at all times during the Term be and remain legally organized and operated to provide Medical Services in a manner consistent with all State and federal laws, and shall maintain in full force and effect, and shall not amend in any material manner, Articles of Organization in the form of Exhibit 5.1. New LLC shall operate and maintain within the Practice Territory a full time practice of medicine specializing in the provision of oncology Medical Services, and for the first five (5) years of the Term of this Management Services Agreement, New LLC shall maintain and enforce employment agreements in the form of Exhibit 5.1A with the members of New LLC specified in Exhibit 5.1B. New LLC shall also maintain and enforce employment agreements in the form of Exhibit 5.1C with any nonmember Physician employees of New LLC. New LLC shall not amend the employment agreements in any material manner or waive any of its material rights thereunder without the prior written consent of Business Manager. Recognizing that Business Manager would not have entered into this Management Services Agreement but for New LLC's covenant to maintain employment agreements with its original members, New LLC agrees that any damages, compensation, payment, or settlement received by New LLC as damages from a Physician who terminates the employment agreement without cause or whose employment agreement is terminated by New LLC for cause shall be treated as Ancillary Revenue under this Management Services Agreement. Throughout the Term of this Management Services Agreement, New LLC shall maintain and enforce written Regulations in

the form of Exhibit 5.1D with the members of New LLC, and shall cause all new members of New LLC to execute such Regulations prior to becoming a member in New LLC. New LLC shall not amend the Regulations or waive any rights thereunder without the prior written approval of Business Manager.

Section 5.2 New LLC Personnel.

(a) Physician Personnel. New LLC shall retain, as a New LLC Expense and not as an Office Expense, that number of Physicians, as are reasonably necessary and appropriate in the sole discretion of New LLC for the provision of Medical Services. Each Physician shall hold and maintain a valid and unrestricted license to practice medicine in the State, and shall be competent in the practice of oncology, including such subspecialties as medical infusion, radiation therapy or other subspecialties that such Physician will practice on behalf of New LLC. New LLC shall enter into and maintain with each such retained Physician a written employment agreement substantially in the form of either Exhibit 5.1A for members of New LLC or consistent with Exhibit 5.1C for nonmembers and will not commit and permit to remain outstanding any breach of such employment agreement that would allow the Physician to terminate for cause. New LLC shall be responsible for paying the compensation and benefits as applicable, for all Physicians and any other physician personnel or other contracted or affiliated physicians, and for withholding, as required by law, any sums for income tax, unemployment insurance, social security, or any other withholding required by applicable law. Business Manager may, on behalf of New LLC, establish and administer the compensation with respect to such individuals in accordance with the written agreement between New LLC and each Physician. Business Manager shall neither control nor direct any Physician in the performance of Medical Services for patients.

(b) Nonphysician Health Care Personnel. All nonphysician health care personnel who provide patient care services which cannot be billed independently shall be employed by or retained by New LLC as an Office Expense and shall be under New LLC's control, supervision and direction in the performance of Medical Services for patients.

Section 5.3 Professional Standards. As a continuing condition of Business Manager's obligations hereunder, each Physician and any other physician personnel retained by New LLC to provide Medical Services must (i) comply with, be controlled and governed by and otherwise provide Medical Services in accordance with the Code of Business Conduct referenced in Section 5.5 and all applicable federal, State and municipal laws, rules, regulations, ordinances and orders, and the ethics and standard of care of the medical community wherein the principal office of each Physician is located and (ii) obtain and retain appropriate medical staff membership with appropriate clinical privileges at any hospital or health care facility at which Medical Services are to be provided. Procurement of temporary staff privileges pending the completion of the medical staff approval process shall satisfy this provision, provided the Physician actively pursues full appointment and actually receives full appointment within a reasonable time.

Section 5.4 Medical Services. New LLC shall ensure that Physicians and nonphysician health care personnel are available to provide Medical Services to patients. In the event that Physicians employed by, or members of, New LLC are not available to provide Medical Services coverage, New LLC shall engage and retain locum tenens coverage. Physicians retained on a locum tenens basis shall meet all of the requirements of Section 5.3, and the cost of providing locum tenens coverage shall be a New LLC Expense. With the assistance of Business Manager, New LLC and the Physicians shall be responsible for scheduling Physician and nonphysician health care personnel coverage of all medical procedures. New LLC shall cause all Physicians to develop and promote New LLC.

Section 5.5 Code of Business Conduct. New LLC shall adopt by resolution the American Oncology Resources, Inc. Code of Business Conduct ("Code") in substantially the form of Exhibit 5.5, and shall require the compliance of all New LLC members and employees with such Code.

Section 5.6 Peer Review/Quality Assurance. New LLC shall adopt a peer review/quality assurance program to monitor and evaluate the quality and cost-effectiveness of Medical Services provided by physician personnel of New LLC. Upon request of New LLC, Business Manager shall provide administrative assistance to New LLC in performing its peer review/quality assurance activities, but only if such assistance can be provided consistent with maintaining the confidentiality and nondiscoverability of the processes and actions of the peer review/quality assurance process of New LLC.

Section 5.7 New LLC's Insurance. New LLC shall, as an Office Expense, obtain and maintain with commercial carriers reasonably acceptable to Business Manager appropriate worker's compensation coverage for New LLC's employed personnel, if any, and professional and comprehensive general liability and vicarious liability insurance covering New LLC and each of the Physicians New LLC retains or employs to provide Medical Services. The comprehensive general liability and vicarious liability coverage shall be in the minimum amount of Two Million Dollars (\$2,000,000); and professional liability coverage shall be in the minimum amount of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) annual aggregate. The insurance policy or policies shall provide for at least thirty (30) days advance written notice to New LLC from the insurer as to any alteration of coverage, cancellation, or proposed cancellation for any cause. New LLC shall cause to be issued to Business Manager by such insurer or insurers a certificate reflecting such coverage and shall provide written notice to Business Manager promptly upon receipt of notice given to Physician of the cancellation or proposed cancellation of such insurance for any cause. Upon the termination of this Management Services Agreement for any reason, New LLC shall obtain and maintain as a New LLC Expense "tail" professional liability coverage, in the amounts specified in this section for an extended reporting period of 10 years, and New LLC shall be responsible for paying all premiums for "tail" insurance coverage. In no event shall the professional liability insurance carrier be replaced or changed without New LLC Consent.

Section 5.8 Confidential and Proprietary Information. New LLC will not disclose any Confidential Information of Business Manager without Business Manager's express written authorization, such Confidential Information will not be used in any way directly or indirectly

detrimental to Business Manager, and New LLC will keep such Confidential Information confidential and will ensure that its affiliates and advisors who have access to such Confidential Information comply with these nondisclosure obligations; provided, however, that New LLC may disclose Confidential Information to those of its Representatives who need to know Confidential Information for the purposes of this Management Services Agreement, it being understood and agreed to by New LLC that such Representatives will be informed of the confidential nature of the Confidential Information, will agree to be bound by this Section, and will be directed by New LLC not to disclose to any other person any Confidential Information. New LLC agrees to be responsible for any breach of this Section by its affiliates, advisors, or Representatives. If New LLC is requested or required (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands, or similar processes) to disclose or produce any Confidential Information furnished in the course of its dealings with Business Manager or its affiliates, advisors, or Representatives, New LLC will (i) provide Business Manager with prompt notice thereof and copies, if possible, and, if not, a description, of the Confidential Information requested or required to be produced so that Business Manager may seek an appropriate protective order or waive compliance with the provisions of this Section and (ii) consult with Business Manager as to the advisability of Business Manager's taking of legally available steps to resist or narrow such request. New LLC further agrees that, if in the absence of a protective order or the receipt of a waiver hereunder New LLC is nonetheless, in the written opinion of its legal counsel, compelled to disclose or produce Confidential Information concerning Business Manager to any tribunal legally authorized to request and entitled to receive such Confidential Information or to stand liable for contempt or suffer other censure or penalty, New LLC may disclose or produce such Confidential Information to such tribunal without liability hereunder; provided, however, that New LLC shall give Business Manager written notice of the Confidential Information to be so disclosed or produced as far in advance of its disclosure or production as is practicable and shall use its best efforts to obtain, to the greatest extent practicable, an order or other reliable assurance that confidential treatment will be accorded to such Confidential Information so required to be disclosed or produced.

Section 5.9 Noncompetition. New LLC hereby recognizes and acknowledges that Business Manager will incur substantial costs in providing the equipment, support services, personnel, management, administration, and other items and services that are the subject matter of this Management Services Agreement and that in the process of providing services under this Management Services Agreement, New LLC will be privy to financial and Confidential Information, to which New LLC would not otherwise be exposed. The parties also recognize that the services to be provided by Business Manager will be feasible only if New LLC operates an active practice to which the Physicians associated with New LLC devote their full professional time and attention. New LLC agrees and acknowledges that the noncompetition covenants described hereunder are necessary for the protection of Business Manager, and that Business Manager would not have entered into this Management Services Agreement without the following covenants.

(a) During the Term of this Management Services Agreement, New LLC shall provide all of its Medical Services in affiliation with Business Manager pursuant to the terms of this Management Services Agreement.

(b) Except as specifically agreed to by Business Manager in writing, New LLC covenants and agrees that during the Term of this Management Services Agreement and for a period of five (5) years from the date this Management Services Agreement is terminated, other than if terminated by New LLC for cause, New LLC shall not directly or indirectly own (excluding ownership of less than five percent (5%) of the equity of any publicly traded entity), manage, operate, control, or be otherwise associated with, lend funds to, lend its name to, or maintain any interest whatsoever in any enterprise (i) having to do with the provision, distribution, promotion, or advertising of any type of management or administrative services or products to third parties in competition with Business Manager, in the Practice Territory; and/or (ii) offering any type of service(s) or product(s) to third parties substantially similar to those offered by Business Manager to New LLC in the Practice Territory. Notwithstanding the above restriction, nothing herein shall prohibit New LLC or any of its members from providing management and administrative services to its or their own medical practices after the termination of this Management Services Agreement, and nothing herein shall prohibit New LLC or its members from contracting with a third party manager to provide administrative or management services for its or their medical practices after termination of this Management Services Agreement as long as such relationship complies with the provisions of this Section 5.9(b).

(c) The written employment agreements described in Section 5.1 shall contain covenants of the member employees pursuant to which the members agree not to compete with New LLC within the Practice Territory for one (1) year after termination of the employment agreement.

(d) New LLC shall obtain and enforce formal written agreements from its nonmember physician employees in the form of Exhibit 5.1C, pursuant to which the employees agree not to compete with New LLC within the Practice Territory for one (1) year after termination of the employment agreement.

(e) New LLC understands and acknowledges that the foregoing provisions in Section 5.8 and Section 5.9 are designed to preserve the goodwill of Business Manager and the goodwill of the individual Physicians of New LLC. Accordingly, if New LLC breaches any obligation of Section 5.8 or Section 5.9, in addition to any other remedies available under this Management Services Agreement, at law or in equity, Business Manager shall be entitled to enforce this Management Services Agreement by injunctive relief and by specific performance of the Management Services Agreement, such relief to be without the necessity of posting a bond, cash or otherwise. Additionally, nothing in this paragraph shall limit Business Manager's right to recover any other damages to which it is entitled as result of New LLC's breach. If any provision of the covenants is held by a court of competent jurisdiction to be unenforceable due to an excessive time period, geographic area, or restricted activity, the covenant shall be reformed to comply with such time period, geographic area, or restricted activity that would be held enforceable.

Section 5.10 Name, Trademark. New LLC represents and warrants that New LLC shall conduct its professional practice under the name of, and only under the name of "[REDACTED]" and that such name is the name of New LLC under State law, and that New LLC is the sole and absolute owner of such name. New LLC covenants and promises that, without the prior written consent of Business Manager, New LLC will not:

- (a) take any action or omit to take any action that is reasonably likely to result in the change or loss of the name;
- (b) license, sell, give, or otherwise transfer the name or the right to use the name to any medical practice, physician, professional corporation, professional association, limited liability company or any other entity; or
- (c) cease conducting the professional practice of New LLC under the name.

Section 5.11 Peer Review. New LLC shall designate a committee of Physicians to function as a medical peer review committee to review credentials of potential recruits, perform quality assurance functions, and otherwise resolve medical competence issues. The medical peer review committee shall function pursuant to formal written policies and procedures.

ARTICLE VI FINANCIAL ARRANGEMENT

Section 6.1 Definitions. For purposes of this Article VI, capitalized terms used herein shall have the meanings ascribed as follows:

- (a) Fixed Amount. The Fixed Amount shall be [REDACTED] per month.
- (b) Monthly Fee. The Monthly Fee shall be the sum of (a) the Fixed Amount and (b) [REDACTED] of the Adjusted Gross Revenue and Subcontractor Capitation Revenue.
- (c) Fee Amount. The Fee Amount shall be the sum of the Monthly Fee and, for each prior month in which the Base Management Fee is less than the Monthly Fee, the sum of the amounts of any such shortfall not previously paid.
- (c) Base Management Fee. The Base Management Fee shall be the lesser of the Fee Amount or the amount of cash available to be paid by New LLC.

Section 6.2 Management Fee. New LLC and Business Manager agree to the compensation set forth herein as being paid to Business Manager in consideration of a substantial commitment made by Business Manager hereunder and that such fees are fair and reasonable. Each month, in the priority established by Section 4.9(b), Business Manager shall be paid the following:

(a) the amount of all Office Expenses (other than the Base Management Fee) paid on behalf of New LLC.

(b) the Base Management Fee.

(c) the Performance Fee if the pre-established criteria for payment of the Performance Fee set forth in the Budget have been met.

Section 6.3 Adjustments. Adjustments to the Management Fee calculation shall be made as follows:

(a) Upon termination of this Management Services Agreement, a liability for the Management Fee shall be established in an amount equal to the difference, if any, between (i) the cumulative Monthly Fees during the Term less (ii) the amounts already paid by New LLC as Base Management Fees. Upon such termination, the Base Management Fee and any cumulated but unpaid Performance Fees shall become immediately due and payable.

(b) After the fifth anniversary of this Management Services Agreement, the Fixed Amount shall increase each year by the lesser of [REDACTED] per year or the increase, if any, from the prior year in the Consumer Price Index -- Health/Medical Services ("CPI-HMS"), as published by the United States Department of Labor ("DOL"), for the [REDACTED] metropolitan area. In the event the CPI-HMS from the previous year is less than the CPI-HMS from the year prior to the previous year, the Fixed Amount shall be reduced by the percentage decrease, but in no event shall the Fixed Amount be less than [REDACTED] per month. If the DOL ceases publishing the CPI-HMS, or ceases to publish a CPI-HMS of the [REDACTED] metropolitan area, the parties shall use any other comparable index reasonably selected by Business Manager.

(c) If there are not sufficient funds to pay the Performance Fee, unpaid amounts shall accumulate and carry over from month to month until paid. No amounts carried over shall earn interest. Furthermore, the amount of the Performance Fee paid will be monitored and reconciled on an annual basis and any overpayments of the Performance Fee shall be promptly refunded by Business Manager and any underpayments of the Performance Fee shall be promptly paid by New LLC (provided, however, that if there are not sufficient funds to pay any such underpayments, unpaid amounts shall accumulate and carry over from month to month until paid).

Section 6.4 Reasonable Value. Payment of the Base Management Fee and Performance Fee is not intended to be and shall not be interpreted or applied as permitting Business Manager to share in New LLC's fees for Medical Services or any other services. Rather, such payment is acknowledged as the parties' negotiated agreement as to the reasonable fair market value of the management expertise, strategic planning, capital access, resource retention, equipment, contract analysis and support, purchasing, office space, and other management and administrative oversight services supervised, coordinated, arranged for or

otherwise facilitated by Business Manager pursuant to this Management Services Agreement, as more specifically set forth in Article IV herein, considering the nature and extent of the services required and the risks assumed by Business Manager.

Section 6.5 Payment of Management Fee. Subject to the priority of payments established by Section 4.9(b), to facilitate the payment of the Management Fee as provided in Section 6.2 hereof, New LLC hereby expressly authorizes Business Manager to make withdrawals of the Management Fee from the New LLC Account as such fee becomes due and payable during the Term and thereafter as provided in Section 7.3.

Section 6.6 Accounts Receivable. To ensure that New LLC receives the entire amount of professional fees for its services and to assist New LLC in maintaining reasonable cash flow for the payment of Office Expenses arising during the previous month, Business Manager may (i) purchase, with recourse to New LLC for the amount of the purchase, the Non-Governmental Receivables of New LLC, and (ii) may loan funds in an amount equal to the value of the Governmental Receivables of New LLC, which loan shall be secured with the proceeds of such receivables as collateral, by transferring the amount set forth below into the New LLC Account. The consideration for the purchase and loan shall be an amount equal to the Adjusted Gross Revenue recorded each month (according to GAAP on an accrual basis net of Adjustments) less the Office Expenses due to Business Manager under Section 6.2 above. Although it is the intention of the parties that Business Manager purchase and thereby become the owner of the Non-Governmental Receivables of New LLC and, in consideration of the loans described herein, receive an amount equal in value to the Governmental Receivables, in the event such purchase or loan shall be ineffective for any reason, New LLC is concurrently herewith granting to Business Manager a security interest in the proceeds of all of the accounts receivable, and New LLC shall cooperate with Business Manager and execute all documents in connection with the pledge of such accounts receivable to Business Manager. All collections in respect to the Non-Governmental Receivables purchased by Business Manager shall be received by Business Manager as the agent of New LLC and shall be endorsed to Business Manager and deposited in a bank account at a bank designated by Business Manager. All collections in respect to the Governmental Receivables shall be received by New LLC pursuant to the provisions of Section 4.9(a). Business Manager shall then have the authority to transfer from the New LLC Account to a bank account designated by Business Manager an amount equal to the value of the Governmental Receivables. To the extent New LLC comes into possession of any Non-Governmental Receivables, New LLC shall direct such payments to Business Manager for deposit into bank accounts designated by Business Manager. To the extent New LLC comes into possession of any Governmental Receivables, New LLC shall direct such payments to the New LLC Lockbox Account pursuant to Section 4.9(a) herein and Business Manager shall have the authority to transfer an amount equal to payments from the New LLC Account to an account designated by Business Manager.

Section 6.7 Disputes Regarding Fees:

(a) It is the parties' intent that any disputes regarding performance standards of Business Manager be resolved to the extent possible by good faith negotiation. To that end, the parties agree that if New LLC in good faith believes that Business Manager has

failed to perform its obligations, and that as a result of such failure, New LLC is entitled to a set-off or reduction in its Management Fees, New LLC shall give Business Manager notice of the perceived failure and request in the notice a set-off or reduction in Management Fees. Business Manager and New LLC shall then negotiate the dispute in good faith, and if an agreement is reached, the parties shall implement the resolution without further action.

(b) If the parties cannot reach a resolution within a reasonable time, New LLC shall, at its option, submit the dispute to mediation. Mediation shall be conducted in Birmingham, Alabama, in accordance with the rules of the American Health Lawyers Association Alternative Dispute Resolution Service, and if the amount in dispute is \$25,000 or less, the mediation shall be binding.

(c) If the amount in dispute is greater than \$25,000, or if the mediation process fails to resolve the dispute, the dispute shall be submitted by either party to binding arbitration as described in Section 8.6 hereof.

ARTICLE VII TERM AND TERMINATION

Section 7.1 Initial and Renewal Term: The Term of this Management Services Agreement will be for an initial period of [REDACTED] years after the effective date, and shall be automatically renewed for successive [REDACTED] year periods thereafter, provided that neither Business Manager nor New LLC shall have given notice of termination of this Management Services Agreement at least [REDACTED] days before the end of the initial term or any renewal term, or unless otherwise terminated as provided in Section 7.2 of this Management Services Agreement.

Section 7.2 Termination

(a) Termination by Business Manager. Business Manager may terminate this Management Services Agreement upon the occurrence of any one of the following events which shall be deemed to be "for cause":

(i) The revocation, suspension, cancellation or restriction of any New LLC member Physician's license to practice medicine in the State if, in the reasonable discretion of Business Manager, New LLC will not be financially viable after such revocation, suspension, cancellation, or restriction;

(ii) New LLC's loss or suspension for more than ninety (90) days of its Medicare or Medicaid provider number, and/or New LLC's restriction from treating beneficiaries of the Medicare or Medicaid programs for more than ninety (90) days;

(iii) The dissolution of New LLC or the filing of a petition in voluntary bankruptcy, an assignment for the benefit of creditors, or other action taken

voluntarily or involuntarily under any State or federal statute for the protection of debtors; or

(iv) New LLC materially defaults in the performance of any of its material duties or obligations hereunder, and such default continues for sixty (60) days after New LLC receives notice of the default.

(b) Termination by New LLC. New LLC may terminate this Management Services Agreement upon any of the following occurrences which shall be deemed to be "for cause":

(i) In the event that, as determined in accordance with the arbitration procedures set forth in Section 8.6, Business Manager materially defaults in the performance of any of its material obligations hereunder and such default continues for sixty (60) days after Business Manager receives written notice of the default;

(ii) If there is a payment Event of Default under any subordinated promissory note issued by AOR to a member physician of New LLC in conjunction with such physician's management affiliation with AOR and if such payment Event of Default continues for ten (10) days after notice has been given to AOR; or

(iii) If AOR fails to deliver any AOR common stock deliverable to a member physician of New LLC by virtue of such physician's management affiliation with AOR and if such failure to deliver continues for ten (10) days after notice has been given to AOR.

Termination by New LLC hereunder shall require the affirmative vote of three-fourths of the outstanding membership interests of New LLC entitled to vote; provided, however, that if the option (the "Option"), which is contained in the Option Agreement between the members of New LLC and Lloyd K. Everson, M.D. (including any successors, the "Optionee"), has been exercised, termination by New LLC hereunder shall require the affirmative vote of three-fourths of the members of New LLC, other than Optionee (if there are members other than Optionee) who are entitled to vote; and if there are no members other than Optionee, termination may be effected by the affirmative vote of three-fourths of the Physician employees of New LLC whose New LLC membership interests were purchased by Optionee.

(c) Termination by Agreement. In the event New LLC and Business Manager shall mutually agree in writing, this Management Services Agreement may be terminated on the date specified in such written agreement.

(d) Legislative, Regulatory or Administrative Change. In the event there shall be a change in the Medicare or Medicaid statutes, State statutes, case laws, regulations or general instructions, the interpretation of any of the foregoing, the adoption of new

federal or State legislation, or a change in any third party reimbursement system, any of which are reasonably likely to materially and adversely affect the manner in which either party may perform or be compensated for its services under this Management Services Agreement or which shall make this Management Services Agreement unlawful, the parties shall immediately enter into good faith negotiations regarding a new service arrangement or basis for compensation for the services furnished pursuant to this Management Services Agreement that complies with the law, regulation, or policy and that approximates as closely as possible the economic position of the parties prior to the change. If good faith negotiations cannot resolve the matter, it shall be submitted to arbitration as referenced in Section 8.6.

Section 7.3 Effects of Termination. Upon termination of this Management Services Agreement, as hereinabove provided, neither party shall have any further obligations hereunder except for (i) obligations accruing prior to the date of termination, including, without limitation, payment of the Management Fees and New LLC Expenses relating to services provided prior to the termination of this Management Services Agreement, (ii) obligations, promises, or covenants set forth herein that are expressly made to extend beyond the Term, including, without limitation, indemnities and noncompetition provisions, which provisions shall survive the expiration or termination of this Management Services Agreement by Business Manager for cause, and (iii) the obligations of New LLC and Business Manager described in this Article VII. In effectuating the provisions of this Section 7.3, New LLC specifically acknowledges and agrees that unless New LLC has terminated Management Services Agreement for cause, Business Manager shall, (a) with respect to the Non-Governmental Receivables, continue to collect and receive such receivables on behalf of New LLC, and (b) with respect to Governmental Receivables, continue to effect the transfer of equivalent funds pursuant to Section 6.6, to the extent such receivables are in existence at the time this Management Services Agreement is terminated, it being understood that such receivables (or the equivalent value thereof) will represent, in part, compensation to Business Manager for management services already rendered and compensation for accounts receivable purchased by Business Manager or loans advanced to New LLC by Business Manager. Upon the expiration or termination of this Management Services Agreement for any reason or cause whatsoever, Business Manager shall immediately surrender to New LLC all books and records pertaining to New LLC's medical practice.

Section 7.4 Repurchase Obligation. Upon termination of this Management Services Agreement by Business Manager for cause or by New LLC without cause, New LLC shall:

(a) Purchase from Business Manager at book value the intangible assets, deferred charges, and all other amounts on the books of Business Manager relating to the Management Services Agreement (assuming an amortization period of ~~5~~ years) as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect amortization or depreciation of the intangible assets, deferred charges, or covenants;

(b) Purchase from Business Manager any real estate owned by Business Manager and used as an Office at the greater of the appraised fair market value thereof or the then book value thereof. In the event of any repurchase of real property, the

appraised value shall be determined by Business Manager and New LLC, each selecting a duly qualified appraiser, who in turn will agree on a third appraiser. This agreed-upon appraiser shall perform the appraisal which shall be binding on both parties. In the event either party fails to select an appraiser within fifteen (15) days of the selection of an appraiser by the other party, the appraiser selected by the other party shall make the selection of the third party appraiser.

(c) Purchase at book value all improvements, additions, or leasehold improvements that have been made by Business Manager at any Office and that relate solely to the performance of Business Manager's obligations under this Management Services Agreement;

(d) Assume all debt, and all contracts, payables, and leases that are obligations of Business Manager and that relate principally to the performance of Business Manager's obligations under this Management Services Agreement or the properties leased or subleased hereunder by Business Manager; and

(e) Purchase from Business Manager at book value all of the equipment purchased by Business Manager from the current and former physician members of New LLC or any of their affiliated entities, including all replacements and additions to such equipment made by Business Manager pursuant to the performance of its obligations under this Management Services Agreement, and all other assets, including inventory and supplies, tangibles and intangibles, set forth on the books of Business Manager as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the Office, depreciation, amortization, and other adjustments of assets shown on the books of Business Manager.

New LLC acknowledges that certain assets listed above have been pledged as collateral pursuant to that certain Loan Agreement dated [REDACTED] between AOR, as borrower, and First Union National Bank, as agent for various lenders.

Section 7.5 Repurchase Option. Upon termination of this Management Services Agreement by New LLC for cause or by Business Manager without cause, New LLC shall be released from the restrictive covenants in Section 5.9 and shall have the option but not the obligation to do all or none of the things listed in Section 7.4(b) through Section 7.4(e).

Section 7.6 Closing of Repurchase. New LLC shall pay cash for the repurchased assets. The amount of the purchase price shall be reduced by the amount of debt and liabilities of Business Manager, if any, assumed by New LLC. New LLC and any Physician associated with New LLC shall execute such documents as may be required to assume the liabilities set forth in Section 7.4 or Section 7.5 and to remove Business Manager from any liability with respect to such repurchased asset and with respect to any property leased or subleased by Business Manager. The closing date for the repurchase shall be determined by Business Manager but shall in no event occur sooner than sixty (60) days or later than one hundred eighty (180) days from the date of the notice of termination. The termination of this Management Services Agreement shall become effective upon the closing of the sale of the assets under

Section 7.4 or the delivery of assets (or the date upon which New LLC is prepared to receive the assets) under Section 7.5 and all parties shall be released from any restrictive covenants provided for in Section 5.9 on the closing date. If New LLC chooses not to purchase the assets pursuant to Section 7.5, the termination shall be effective as of the notice date given by New LLC under Section 7.2(b), at which time the parties shall be released from the restrictive covenants in Section 5.9. From and after any termination, each party shall provide the other party with reasonable access of the books and records then owned by it to permit such requesting party to satisfy reporting and contractual obligations that may be required of it.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Administrative Services Only. Nothing in this Management Services Agreement is intended or shall be construed to allow Business Manager to exercise control or direction over the manner or method by which New LLC and its Physicians perform Medical Services or other professional health care services. The rendition of all Medical Services, including, but not limited to, infusion therapy and the prescription or administration of medicine and drugs shall be the sole responsibility of New LLC and its Physicians, and Business Manager shall not interfere in any manner or to any extent therewith. Nothing contained in this Management Services Agreement shall be construed to permit Business Manager to engage in the practice of medicine, it being the sole intention of the parties hereto that the services to be rendered to New LLC by Business Manager are solely for the purpose of providing nonmedical management and administrative services to New LLC so as to enable New LLC to devote its full time and energies to the professional conduct of its medical practice and provision of Medical Services to its patients and not to administration, or practice management.

Section 8.2 Status of Contractor. It is expressly acknowledged that the parties hereto are "independent contractors," and nothing in this Management Services Agreement is intended and nothing shall be construed to create an employer/employee, partnership, or joint venture relationship, or to allow either to exercise control or direction over the manner or method by which the other performs the services that are the subject matter of this Management Services Agreement; provided always that the services to be provided hereunder shall be furnished in a manner consistent with the standards governing such services and the provisions of this Management Services Agreement. Each party understands and agrees that (i) the other will not be treated as an employee for federal tax purposes, (ii) neither will withhold on behalf of the other any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to its employees, (iii) all of such payments, withholdings, and benefits, if any, are the sole responsibility of the party incurring the liability, and (iv) each will indemnify and hold the other harmless from any and all loss or liability arising with respect to such payments, withholdings, and benefits, if any.

Section 8.3 Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be in writing and shall be served on the parties at the following respective addresses:

New LLC: [REDACTED]

[REDACTED]
[REDACTED]
with a copy to:

Business Manager:

with a copy to:

or to such other address, or to the attention of such other person or officer, as any party may by written notice designate. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be sent either (a) by hand delivery, in which case notice shall be deemed received when actually delivered, (b) by prepaid certified or registered mail, return receipt requested, in which case notice shall be deemed received five calendar days after deposit, postage prepaid in the United States Mail, or (c) by a nationally recognized overnight courier, in which case notice shall be deemed received one business day after deposit with such courier.

Section 8.4 Governing Law. This Management Services Agreement shall be governed by the laws of the State of Texas applicable to agreements to be performed wholly within the State. Texas law was chosen by the parties after negotiation to govern interpretation of this Management Services Agreement because Harris County, Texas is the seat of management for Business Manager. The federal and State courts of _____ County, [REDACTED], shall be the exclusive venue for any litigation, special proceeding, or other proceeding between the parties that may arise out of, or be brought in connection with or by reason of, this Management Services Agreement.

Section 8.5 Assignment. Except as may be herein specifically provided to the contrary, this Management Services Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns; provided, however, that New LLC may not assign this Management Services Agreement without the prior written consent of Business Manager, which consent may be withheld in its sole and absolute discretion. The sale, transfer, pledge, or assignment (other than pursuant to the Option Agreement) of any of the membership interests of New LLC or the issuance by New LLC of membership interests to any other person, or any combination of such transactions within a period of one (1) year, such that the existing members in New LLC fail to maintain a majority of the voting interests in New LLC shall be deemed an attempted assignment by New LLC, and

shall be null and void unless consented to in writing by Business Manager prior to any such transfer or issuance. Any breach of this provision, whether or not void or voidable, shall constitute a material breach of this Management Services Agreement, and in the event of such breach, Business Manager may terminate this Management Services Agreement upon twenty-four (24) hours notice to New LLC. The parties agree that AOR will assign and delegate all of its rights and obligations hereunder to its wholly owned subsidiary, AOR Management Company of Alabama, Inc. ("AOR Management"). AOR Management shall then become the Business Manager under this Management Services Agreement. In addition, Business Manager shall have the right to (i) assign its rights and obligations hereunder to any third party and (ii) collaterally assign its interest in this Management Services Agreement and its right to collect Management Fees hereunder to any financial institution or other third party without the consent of New LLC. New LLC acknowledges that Business Manager's interest in this Management Services Agreement and Business Manager's right to collect Management Fees under this Management Services Agreement have been collaterally assigned pursuant to that certain Loan Agreement dated [REDACTED] between AOR, as borrower, and [REDACTED] as agent for various lenders.

Section 8.6 Arbitration. The parties shall use good faith negotiation to resolve any controversy, dispute or disagreement arising out of or relating to this Management Services Agreement or the breach of this Management Services Agreement. Any matter not resolved by negotiation (other than claims involving any noncompetition or confidentiality covenant) shall be submitted to binding arbitration. Each party shall select one arbitrator. The two arbitrators so chosen shall then select a third arbitrator who is experienced in the matter or action that is subject to such arbitration. If such matter or action involves healthcare issues, then the third arbitrator shall have such qualifications as would satisfy the requirements of the American Health Lawyers Association Alternative Dispute Resolution Service. Each of the arbitrators chosen shall be impartial and independent of all parties to the Management Services Agreement. If either of the parties fails to select an arbitrator within twenty days or if the arbitrators chosen fail to select a third arbitrator within twenty days, then any party may in writing request the judge of the United States District Court for the _____ District of [REDACTED] senior in term of service to appoint the arbitrator or arbitrators and, subject to this Section 8.6, such arbitrators shall hear all arbitration matters arising under this Section 8.6 and, in default of such selection, may ask the American Arbitration Association.

(a) Applicable Rules.

(1) Each arbitration hearing shall be held at a place in [REDACTED] acceptable to a majority of the arbitrators. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association to the extent such rules do not conflict with the terms hereof. The decision of a majority of the arbitrators shall be reduced to writing and shall be binding on the parties. Judgment upon the award(s) rendered by a majority of the arbitrators may be entered and execution had in any court of competent jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement. The charges and expenses of the arbitrators shall be shared equally by the parties to the hearing.

(2) The arbitration shall commence within thirty (30) days after the arbitrators are selected in accordance with the provisions of this Section 8.6. The arbitrators may consult with and engage disinterested third parties to advise the arbitrators.

(3) If any of the arbitrators selected hereunder should die, resign or be unable to perform his or her duties hereunder, the remaining arbitrators or such senior judge (or such judge's successor) shall select a replacement arbitrator. The procedure set forth in this Section 8.6 for selecting the arbitrators shall be followed from time to time as necessary.

(4) As to resolution of any claim, controversy, dispute or disagreement that under the terms hereof is made subject to arbitration, no lawsuit based on such resolution shall be instituted by either of the parties other than to compel arbitration proceedings or enforce the award of a majority of the arbitrators.

(5) All privileges under Texas, [REDACTED] and federal law, including physician-patient, attorney-client and work-product privileges, shall be preserved and protected to the same extent that such privileges would be protected in a federal court proceeding applying Texas or [REDACTED] law.

Notwithstanding anything herein to the contrary, the terms and provisions of this Section 8.6 shall not preclude any party hereto from seeking, or a court of competent jurisdiction from granting, a temporary restraining order, temporary injunction or other equitable relief for any breach of (i) any noncompetition or confidentiality covenant or (ii) any duty, obligation, covenant, representation or warranty, the breach of which may cause irreparable harm or damage.

Section 8.7 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Management Services Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or another provision hereof.

Section 8.8 Enforcement. In the event either party resorts to legal action to enforce or interpret any provision of this Management Services Agreement, the prevailing party shall be entitled to recover the costs and expenses of such action so incurred, including, without limitation, reasonable attorneys' fees.

Section 8.9 Gender and Number. Whenever the context of this Management Services Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

Section 8.10 Additional Assurances. Except as may be herein specifically provided to the contrary, the provisions of this Management Services Agreement shall be self-operative and shall not require further agreement by the parties; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as

are reasonable and as the requesting party may deem necessary to effectuate this Management Services Agreement.

Section 8.11 Consents, Approvals, and Exercise of Discretion. Whenever this Management Services Agreement requires any consent or approval to be given by either party, or either party must or may exercise discretion, and except where specifically set forth to the contrary, the parties agree that such consent or approval shall not be unreasonably withheld or delayed, and that such discretion shall be reasonably exercised.

Section 8.12 Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Management Services Agreement or other interruption of service deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, failure of computer systems or other equipment due to the year 2000, strikes or other work interruptions by either party's employees, or any other similar cause beyond the reasonable control of either party unless such delay or failure in performance is expressly addressed elsewhere in this Management Services Agreement.

Section 8.13 Severability. The parties hereto have negotiated and prepared the terms of this Management Services Agreement in good faith with the intent that each and every one of the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective parties. Accordingly, if any one or more of the terms, provisions, promises, covenants or conditions of this Management Services Agreement or the application thereof to any person or circumstance shall be adjudged to any extent invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction or an arbitration tribunal, such provision shall be as narrowly construed as possible, and each and all of the remaining terms, provisions, promises, covenants and conditions of this Management Services Agreement or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. To the extent this Management Services Agreement is in violation of applicable law, then the parties agree to negotiate in good faith to amend the Management Services Agreement, to the extent possible consistent with its purposes, to conform to law.

Section 8.14 Divisions and Headings. The divisions of this Management Services Agreement into articles, sections, and subsections and the use of captions and headings in connection therewith is solely for convenience and shall not affect in any way the meaning or interpretation of this Management Services Agreement.

Section 8.15 Amendments and Management Services Agreement Execution. This Management Services Agreement and amendments hereto shall be in writing and executed in multiple copies on behalf of New LLC by its duly authorized officer, and on behalf of Business Manager by its duly authorized officer. Each multiple copy shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

Section 8.16 Entire Management Services Agreement. With respect to the subject matter of this Management Services Agreement, this Management Services Agreement

supersedes all previous contracts and constitutes the entire agreement between the parties. Neither party shall be entitled to benefits other than those specified herein. No prior oral statements or contemporaneous negotiations or understandings or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Management Services Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment(s) to become effective on the date stipulated in such amendment(s). The parties specifically acknowledge that, in entering into and executing this Management Services Agreement, the parties rely solely upon the representations and agreements contained in this Management Services Agreement and no others.

IN WITNESS WHEREOF, New LLC and Business Manager have caused this Management Services Agreement to be executed by their duly authorized representatives, all as of the day and year first above written.

NEW LLC:

_____ limited liability company

By: _____

BUSINESS MANAGER:

By: _____
Name: _____
Title: _____

ODMA\PCDOCS\HOUSTON\6332723

PHYSICIAN EMPLOYMENT AGREEMENT

(_____, M.D.)
(Member Employee)

THIS PHYSICIAN EMPLOYMENT AGREEMENT ("Physician Employment Agreement"), effective as of _____, is by and between _____ limited liability company ("New LLC"), and _____, M.D. ("Physician").

RECITALS:

A. New LLC is _____ professional limited liability company organized to, among other things, conduct the authorized professional services that may be performed by a doctor of medicine, duly licensed under the laws of the State of _____.

B. Physician and New LLC acknowledge that the covenants contained in this Physician Employment Agreement arise from the transactions contemplated by the Master Transaction Agreement ("Master Transaction Agreement") effective as of _____, by and among American Oncology Resources, Inc. ("AOR"), AOR Management Company of _____, Inc. ("AOR Management"), _____, New LLC, Physician and certain other physicians.

C. Physician is duly licensed to practice medicine in the State of _____.

D. New LLC desires to employ and retain Physician to provide professional medical services for New LLC's patients located in and around the _____ metropolitan area and Physician desires to accept such employment. The geographic area within a radius of thirty (30) miles of any current or future facility from which New LLC provides medical services is referred to herein as the "Practice Territory."

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter stipulated, the parties agree and covenant as follows:

ARTICLE I. EMPLOYMENT

1.1 General Terms. New LLC employs Physician, and Physician accepts employment with New LLC, to render professional medical services to the patients of New LLC, as determined by the Managers of New LLC ("Managers") in the manner and to the extent permitted by _____ law and the applicable canons of professional ethics. Physician shall maintain regular office/work hours in accordance with reasonable New LLC policies. Physician shall provide such medical services at an office located in the Practice Territory, and shall not be transferred outside the Practice Territory without Physician's consent. Except as may be otherwise provided for herein, during the term of this Physician Employment Agreement, Physician shall not, without the prior written consent of New LLC, directly or indirectly engage in any professional or business activity in the Practice Territory competitive with the business of

New LLC in the Practice Territory, duplicative of a service provided by New LLC in the Practice Territory, or materially adverse to the business of New LLC in the Practice Territory. In the performance of professional medical services hereunder, Physician shall employ Physician's own means and methods and shall exercise Physician's own professional judgment and shall not be subject to the control or direction of any other person, except that New LLC shall have and may exercise all authority accorded it under applicable law governing the practice of medicine to review and control the professional activities of Physician through peer review, protocol development and other means.

1.2 Fees Generated.

(a) Any and all Professional Fees generated hereunder during the term of this Physician Employment Agreement shall belong to New LLC. "Professional Fees" shall mean fees, compensation, or remuneration generated by Physician and medical research conducted by Physician. Professional Fees shall not include (1) fees, compensation or remuneration up to a maximum of [REDACTED] per year generated for administrative positions on hospital medical staffs or in health care organizations, medical directorships, administrative hospital services performed by Physician and any royalties, honoraria, or the like from authored documents (other than books), speeches or similar activities related to the practice of medicine or (2) any income from authored books.

(b) New LLC, at its sole discretion, but after consulting with Physician, shall establish the fees to be charged for professional services. It is specifically understood and agreed that Physician shall have no right or claim to any portion of Professional Fees, except as otherwise provided in this Physician Employment Agreement.

1.3 Managed Care Agreements. From time to time New LLC may enter into managed care or network agreements with third party payors, employers, or governmental entities that may require New LLC and/or Physician to engage in utilization review or peer review activities. Physician will fully cooperate in such activities and will comply with any and all reasonable requirements of any managed care or network agreement to which New LLC becomes a party. If required by any managed care entity or network, Physician will execute the agreement individually, notwithstanding that all fees generated by such agreement will belong to New LLC. Physician shall have no authority to, and shall not, execute agreements binding New LLC unless Physician is duly authorized by New LLC to do so.

1.4 Patients and Records of New LLC. Without superseding any patient's right to choose a provider of health or medical services, Physician acknowledges that all patients for whom professional medical services are provided by Physician shall be patients of New LLC and not of Physician. Subject to Section 6.4, during the term of this Physician Employment Agreement and, except as otherwise provided herein, for the one-year period thereafter as described in Section 6.5, Physician shall not induce, solicit, or encourage any patient who has received or is receiving health or medical services from New LLC to seek such services from another provider of hematology/oncology services of a type provided by physician employees or physician contractors of New LLC, including Physician, unless a referral is necessary because, in the good faith determination of Physician and in accordance with the applicable standards of

practice, it is in the best interest of the patient to so refer for the purpose of obtaining a second opinion or Physician and New LLC do not have the appropriate expertise to manage the patient's medical needs. Subject to applicable law, all medical, patient, business, financial, or other records, papers, and documents generated by Physician, New LLC, or employees or agents of New LLC shall belong to New LLC and Physician shall have no right to keep or retain such records, papers, or documents after this Physician Employment Agreement is terminated; provided, however, that upon the request of Physician after termination or the buyout described in Section 6.1, New LLC shall provide Physician with copies of the patient records of patients treated by Physician. Such records shall be provided at Physician's expense unless Physician's employment is terminated without cause by New LLC or for cause by Physician, in which case New LLC shall provide the copies to Physician without charge.

ARTICLE II. DUTIES

2.1 Professional Duties. Physician shall provide professional medical services exclusively to New LLC patients at facilities utilized by New LLC, or such other location in the Practice Territory as New LLC determines. Physician shall not engage in the practice of medicine except as an employee of New LLC; provided, however, that Physician shall be permitted to participate in professional associations, boards, and similar activities consistent with Physician's past practices and to the extent that it shall not interfere with Physician's obligations hereunder. Physician agrees to use Physician's best efforts in performing Physician's duties. Physician's essential duties shall also include, but not be limited to:

(a) Keeping and maintaining or causing to be kept and maintained, appropriate records, reports, claims, and correspondence necessary and appropriate in connection with all professional services rendered by Physician under this Physician Employment Agreement. All of such records, reports, claims, and correspondence shall belong to New LLC;

(b) Promoting, to the extent permitted by law and the applicable canons of professional ethics, the professional practice of New LLC;

(c) Attending, to the extent required by the policies of New LLC and the applicable canons of professional ethics, the administrative duties of the professional practice of New LLC;

(d) Performing all acts reasonably necessary to maintain Physician's professional skills at an appropriate level; and

(e) Providing professional medical care to patients of New LLC in accordance with professional standards of quality and practice protocols and policies as adopted from time to time by New LLC and disclosed to Physician.

2.2 Representations/Covenants. Physician represents and covenants that:

(a) Physician has and will use Physician's best efforts during the term hereof to maintain a valid and unrestricted license to practice medicine in the State of [REDACTED];

(b) Physician has and will use Physician's best efforts during the term hereof to maintain appropriate medical staff privileges at Managers-approved hospitals (or has applied for appropriate staff privileges) and that such privileges have not been reduced or restricted in a manner that materially interferes with Physician's performance of services to patients of New LLC;

(c) Physician has not been disciplined by any professional or peer review organization, governmental agency, or hospital medical staff for any action or omission based on quality of care within the past ten (10) years;

(d) Physician has and will during the term hereof maintain a valid and unrestricted license or registration to prescribe drugs, medications, pharmaceuticals, or controlled substances; and

(e) Physician will continue throughout the term of this Physician Employment Agreement to engage in the full-time practice of medicine in the Practice Territory with New LLC, unless New LLC materially breaches its obligations or Physician dies or becomes permanently disabled.

ARTICLE III. COMPENSATION AND BENEFITS

3.1 Salary. The salary of Physician shall be determined by the Managers. The salary shall be payable monthly in arrears.

3.2 Option. Physician, the other members of New LLC, and Lloyd K. Everson, M.D. ("Optionee") have entered into that certain Option Agreement of even date with this Physician Employment Agreement. If Optionee exercises his option under the Option Agreement within the first five years of this Physician Employment Agreement and, as a result of the exercise, Optionee owns a majority of the membership interests in New LLC, Physician's annual compensation formula shall, after exercise of the option and for the then remaining term of this Physician Employment Agreement, not be changed from Physician's compensation formula in effect immediately prior to exercise of the option.

3.3 Employment Taxes. New LLC shall withhold on behalf of Physician appropriate employment taxes.

3.4 Vacation. During the term of this Physician Employment Agreement, Physician shall be entitled to paid vacation according to the reasonable vacation policies adopted by the Managers. Physician shall schedule such vacation at times convenient for New LLC and shall comply with New LLC's policies in regard to maintenance of physician coverage.

3.5 Professional Liability Insurance. During the term of this Physician Employment Agreement, New LLC shall maintain at its sole cost and expense professional liability insurance in an amount of \$2,000,000 per occurrence and \$4,000,000 annual aggregate, or other amounts as determined by the Managers, covering Physician for Physician's acts and omissions in the performance of Physician's professional duties hereunder. In the event New LLC terminates this Physician Employment Agreement for cause or Physician terminates this Physician Employment Agreement without cause (other than retirement from the practice of medicine after the initial term of this Physician Employment Agreement), Physician shall be responsible for obtaining "tail" professional liability insurance coverage in an amount equal to the malpractice insurance carried during the term of this Physician Employment Agreement or such amount and for such period of time determined by mutual agreement of Physician and New LLC. New LLC shall be named as an additional insured under the professional liability policy, and Physician shall be responsible for paying all premiums for such "tail" insurance coverage and, upon request, shall provide New LLC with proof of professional liability coverage. If Physician terminates this Physician Employment Agreement for cause, New LLC shall be responsible for obtaining and paying for such tail insurance.

3.6 Other Benefits. New LLC shall provide and make available to Physician other benefits of employment as New LLC shall deem appropriate.

ARTICLE IV. TERM AND TERMINATION

4.1 Term. This Physician Employment Agreement shall be effective as of the date indicated above for an initial term of five (5) years, automatically renewing for successive one (1) year renewal terms unless terminated in accordance with the terms of this Physician Employment Agreement.

4.2 Termination for Cause.

(a) By New LLC. The Managers may terminate this Physician Employment Agreement immediately upon written notice to Physician promptly after the Managers learn of the event or status constituting "cause." The notice shall describe the reason for such termination, and any of the following reasons shall be deemed to be "cause":

(i) The suspension for more than 60 days, revocation, surrender, or cancellation of Physician's right to practice medicine in the State of ~~Alabama~~ or to prescribe drugs, medications, pharmaceuticals, or controlled substances;

(ii) The discipline of Physician of a material nature by the final action of any professional medical organization to such extent that Physician cannot practice medicine for more than sixty (60) days;

(iii) The revocation, material reduction, or surrender of Physician's membership on the medical staff or any other adverse action against Physician's clinical privileges at any Managers-approved hospital, or the failure of Physician to obtain full clinical privileges at any Managers-approved hospital within a

reasonable time of applying for such privileges, as a result of professional quality or competence issues related to Physician's practice of medicine;

(iv) Physician's resignation from any professional medical organization under threat of disciplinary action related to material issues regarding Physician's competence and quality of patient care;

(v) The imposition of any restrictions or limitations by any governmental authority having jurisdiction over Physician to such an extent that Physician cannot engage in the professional practice for which Physician was employed;

(vi) Physician's failure to perform the essential duties required hereunder or failure or refusal for such period to comply with the material and reasonable policies, standards and regulations of New LLC which from time to time may be established and of which Physician has written notice;

(vii) Physician is found guilty of unprofessional or unethical conduct by any board, institution, organization or professional society having any privilege or right to pass upon the professional conduct of Physician;

(viii) Physician's conviction in a court of competent jurisdiction of any felony offense or any misdemeanor offense that adversely affects Physician's ability to carry out his/her obligations hereunder; or

(ix) In the event an arbitrator, pursuant to Article VIII, makes a final determination that Physician has taken any action or has engaged in any activity that is detrimental to the material interests of New LLC, and such action or activity continues after Physician receives notice to cease such action or activity.

If New LLC terminates this Physician Employment Agreement for cause within five (5) years after the effective date of this Physician Employment Agreement, Physician shall pay to New LLC as liquidated damages and not as a penalty an amount reasonable in light of the actual losses to be suffered by New LLC; provided, however, that liquidated damages shall not be payable if termination is due to Physician's death or disability (as defined in the Regulations of New LLC) or in the event Physician terminates this Physician Employment Agreement for cause. The parties agree that the actual losses to be suffered by New LLC will be difficult to ascertain, but the liquidated damages set forth herein have been arrived at after good faith effort to estimate such losses. Physician specifically acknowledges and agrees that New LLC has entered into a long-term management agreement based upon Physician's continued practice with New LLC during the initial term of this Physician Employment Agreement and that Physician's failure to continue to practice medicine with New LLC may result in New LLC suffering economic damages. Upon the termination of this Physician Employment Agreement by New LLC for cause during the initial term of this Physician Employment Agreement, the amount of liquidated damages to be paid by Physician shall be \$ _____ []% of AOR

consideration] if the termination occurs during the first two years of this Physician Employment Agreement, \$ _____ [~~100~~% of AOR consideration] if the termination occurs during the third year, \$ _____ [~~100~~% of AOR consideration] if the termination occurs during the fourth year, and \$ _____ [~~100~~% of AOR consideration] if the termination occurs during the fifth year. Payment of the liquidated damages shall be made in cash to New LLC within sixty (60) days of the termination of this Physician Employment Agreement; provided, however, that if Physician fails to pay the appropriate amount of limited damages set forth in this Section 4.2, then that portion of the Note (as defined in the Master Transaction Agreement) equal to such liquidated damages shall be assigned to New LLC, shall be credited against the amount of liquidated damages owed by Physician, and shall constitute Ancillary Revenues (as defined in Management Services Agreement).

(b) Limitation After Option Exercise. If during the initial term of this Physician Employment Agreement the Option described in Section 3.2 is exercised such that Optionee controls a majority of the membership interests in New LLC, termination by New LLC for cause under subsection (vi) of Section 4.2(a) may be overridden or otherwise nullified or voided by the majority vote of the physicians who were members of New LLC prior to the exercise of the Option.

(c) Reporting Obligation. Physician has an affirmative obligation as a condition of employment to report to New LLC any investigation or inquiry by any regulatory agency, governmental authority, or professional society regarding any item or activity, whether material or not, listed in Subsection (a) above.

(d) By Physician. Physician may terminate this Physician Employment Agreement immediately upon written notice to New LLC, which notice shall describe the reason for such termination, for any of the following reasons, which shall be deemed to be "cause":

(i) New LLC dissolves and Physician in Physician's capacity as a member of New LLC voted to prevent such dissolution and continue the business of New LLC;

(ii) New LLC breaches a material provision of this Physician Employment Agreement, which breach is not cured by New LLC within ninety (90) days of receipt or written notice from Physician specifically identifying the breach;

(iii) There is a payment Event of Default under such Physician's Note (as defined in the Master Transaction Agreement) or AOR defaults in the delivery of shares of AOR common stock deliverable to Physician and such payment Event of Default or failure to deliver stock continues for ten (10) days after notice has been given to AOR;

(iv) New LLC loses any certification or otherwise becomes unable, due to any act or omission, to continue to operate as an [REDACTED] professional limited liability company (excluding immaterial acts or omissions that may affect the organizational status of New LLC but which do not preclude New LLC from conducting its business);

(v) The permanent and total disability (as defined in the Regulations of New LLC) or death of Physician; or

(vi) The Management Services Agreement by and between New LLC and Business Manager is terminated by New LLC for cause.

4.3 Termination Without Cause.

(a) This Physician Employment Agreement may be terminated by Physician without cause upon payment of liquidated damages as provided hereafter and with 120 days prior written notice. In the event of such notice, New LLC may limit Physician's activities during the notice period to treatment of only those patients that Physician has treated prior to the notice date, or New LLC may impose any other restrictions it deems necessary and reasonable. In the event Physician terminates this Physician Employment Agreement without cause within five (5) years after the date of this Physician Employment Agreement, Physician shall pay to New LLC as liquidated damages and not as a penalty an amount reasonable in light of the actual losses to be suffered by New LLC. The parties agree that the actual losses to be suffered by New LLC will be difficult to ascertain, but the liquidated damages set forth herein have been arrived at after good faith effort to estimate such losses. Physician specifically acknowledges and agrees that New LLC has entered into a long-term management agreement based upon Physician's continued practice with New LLC during the initial term of this Physician Employment Agreement and that Physician's failure to continue to practice medicine with New LLC may result in New LLC suffering economic damages.

(b) Upon the termination of this Physician Employment Agreement by Physician without cause within five (5) years after the effective date of this Physician Employment Agreement, the amount of liquidated damages to be paid by Physician shall be \$ _____ [____% of AOR consideration] if the termination occurs during the first two years of this Physician Employment Agreement, \$ _____ [____% of AOR consideration] if the termination occurs during the third year, \$ _____ [____% of AOR consideration] if the termination occurs during the fourth year, and \$ _____ [____% of AOR consideration] if the termination occurs during the fifth year. Payment of the liquidated damages shall be made in cash to New LLC within sixty (60) days of the termination of this Physician Employment Agreement; provided, however, that if Physician fails to pay the appropriate amount of limited damages set forth in this Section 4.3, then that portion of the Note (as defined in the Master Transaction Agreement) equal to such liquidated damages shall be assigned to New LLC, shall be credited against the amount of liquidated damages owed by Physician, and shall constitute Ancillary Revenues (as defined in Management Services Agreement).

4.4 Effect of Termination. Upon any termination pursuant to Section 4.2 or Section 4.3, New LLC shall pay to Physician the compensation due through the date of termination, as full and final satisfaction of the terms of this Physician Employment Agreement, and Physician shall have no further claims against New LLC for compensation.

ARTICLE V. ASSIGNMENT OF RIGHT TO BILL

As a condition of Physician's employment hereunder, Physician hereby assigns to New LLC and its assigns any current and future right Physician might have from time to time during the term of this Physician Employment Agreement to bill and receive payment from any third party payor, including, without limitation, any managed care payor and the Medicare and Medicaid programs, for professional services rendered by Physician under this Physician Employment Agreement. Physician acknowledges that New LLC or its assignee shall submit these billings in its own name, and that Physician is hereby precluded from billing any third party payor for Physician's professional services under this Physician Employment Agreement unless required by a third party payor, in which event Physician shall bill such services with the understanding that all fees generated from such billings shall belong to New LLC or its assignee.

ARTICLE VI. OUTSIDE ACTIVITIES AND NONCOMPETITION

6.1 Covenant Not to Compete. Physician recognizes that New LLC's decision to enter into this Physician Employment Agreement is induced primarily because of the covenants and assurances made by Physician in this Physician Employment Agreement, that Physician's covenant not to compete is necessary to ensure the continuation of the business of New LLC and the reputation of New LLC, and that irrevocable harm and damage will be done to New LLC if Physician competes with New LLC. Therefore, Physician agrees that during the term of this Physician Employment Agreement and for a period of one (1) year following termination of this Physician Employment Agreement (other than termination by Physician for cause pursuant to Section 4.2(d)), Physician shall not, directly or indirectly, as an employee, employer, contractor, consultant, agent, principal, member, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business or practice within the Practice Territory that is in competition in any manner whatsoever with the business of New LLC without the written permission of New LLC. The terms "in competition in any manner whatsoever with the business of New LLC" shall include the practice of medicine in the Practice Territory, except that it shall not include the practice of medicine in any field of medicine that does not involve oncology or hematology. The parties mutually acknowledge all of the following:

(a) In exchange for Physician's covenants to New LLC in this Physician Employment Agreement, New LLC is furnishing to Physician, in addition to Physician's compensation, valuable consideration, including, but not limited to:

(i) full access to an established medical practice and a large patient base;

(ii) the availability of expensive medical equipment, office equipment, and a trained and adequate staff; and

(iii) specialized training, as necessary, to provide medical services according to New LLC's standards.

(b) If Physician should set up an office and practice medicine within the Practice Territory in competition with the business of New LLC, it would cause economic harm and loss of goodwill to New LLC resulting in immediate and irreparable loss, injuries, and damage to New LLC.

(c) Notwithstanding anything to the contrary in this Section 6.1, Physician is not prohibited from owning less than five percent (5%) of the equity of any publicly traded entity.

(d) Neither the public in general nor any patients will be adversely affected by the enforcement of the noncompetition covenant, in that other similar providers of professional medical services are readily available within the restricted area.

6.2 Ancillary Agreement. This covenant shall be construed as an agreement ancillary to the other provisions of this Physician Employment Agreement, and the existence of any claim or cause of action of Physician against New LLC, whether predicated on this Physician Employment Agreement or otherwise, shall not constitute a defense to the enforcement by New LLC of this covenant. Without limiting other possible remedies to New LLC for breach of this covenant, Physician agrees that injunctive or other equitable relief will be available to enforce the covenants of this provision, such relief to be without the necessity of posting a bond, cash or otherwise.

6.3 Enforcement. New LLC and Physician further agree that if any restriction in this Article is held by any court to be unenforceable or unreasonable, a lesser restriction will be enforced in its place and the remaining restrictions in this Physician Employment Agreement will be enforced independently of each other. Physician agrees to pay the attorney's fees, court costs, and expenses incurred by New LLC if New LLC chooses, in its sole discretion, to enforce any provision under this Article. In any action to enforce any provision of this Article VI, the court may award reasonable attorneys' fees, costs, and expenses to the prevailing party.

6.4 Buyout. Notwithstanding the prior provisions of this Article, Physician shall be immediately released from the restrictive covenant in this Article and may practice in competition with New LLC within the Practice Territory after the termination of this Physician Employment Agreement by purchasing the covenants described in Section 6.1. The parties believe that reasonable compensation to New LLC for the release of Physician from the restrictive covenants of this Article would be [REDACTED], which is New LLC's anticipated costs of recruiting and training a replacement for Physician. Physician promises to pay, and New LLC agrees to accept, that amount as consideration if Physician should desire to be released from the restrictive covenants of this Article. The purchase price specified in this Section 6.4 is independent of and in addition to the damages

specified in Section 4.2 or 4.3, and Physician acknowledges the reasonableness of the purchase price. Upon payment of the liquidated damages, nothing shall preclude Physician from practicing in competition with New LLC within the Practice Territory and Physician may have access to and copies of (at Physician's expense) the patient medical records of the patients for whom Physician was the primary provider of services.

6.5 Survival. The provisions of this Article shall survive the termination of this Physician Employment Agreement for one year.

ARTICLE VII. CONFIDENTIALITY OF INFORMATION

7.1 Confidential Information. Physician agrees to keep confidential and not to use or to disclose to others during the term of this Physician Employment Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by New LLC or required by law, any secrets or confidential technology, proprietary information, patient lists, or trade secrets of New LLC, or any matter or thing ascertained by Physician through Physician's affiliation with New LLC, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of New LLC. This restriction shall not apply to any information that (i) is or becomes generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Physician or Physician's affiliates, advisors, or representatives); (ii) is or becomes available to Physician on a nonconfidential basis from a source other than New LLC or its affiliates, advisors, or representatives, provided that, at the time of disclosure to Physician, Physician is not aware that such source was bound by a confidentiality agreement with or other obligation of secrecy to New LLC; or (iii) has already been or is hereafter independently acquired or developed by Physician without violating any confidentiality agreement with or other obligation of secrecy to New LLC.

7.2 Departure. Except as provided in Section 1.4 above, should Physician leave the employment of New LLC, Physician will neither take nor retain, without prior written authorization from New LLC, any papers, patient lists, fee books, patient records, files, or other documents or copies (in whatever form) thereof or other confidential information of any kind belonging to New LLC pertaining to New LLC's patients, business, sales, financial condition, or products. Without limiting other possible remedies to New LLC for the breach of this covenant, Physician agrees that injunctive or other equitable relief shall be available to enforce this covenant, such relief to be without the necessity of posting a bond, cash or otherwise. Physician further agrees that if any restriction contained in this paragraph is held by any court to be unenforceable or unreasonable, a lesser restriction shall be enforced in its place and remaining restrictions contained herein shall be enforced independently of each other.

7.3 Exceptions

(a) Physician shall not be prohibited from releasing any confidential or proprietary information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the confidential information.

(b) It shall not be a breach of Physician's covenants under this Article VII if a disclosure is made pursuant to a court order, a valid administrative agency subpoena, or a lawful request for information by an administrative agency. Physician shall give New LLC prompt notice of any such court order, subpoena, or request for information.

ARTICLE VIII. ARBITRATION

The parties agree to use good faith negotiation to resolve any dispute, claim, or controversy that may arise under or relate to this Physician Employment Agreement or to a breach of this Physician Employment Agreement. Any matter not resolved by negotiation (other than claims involving any noncompetition or confidentiality covenant) shall be submitted to binding arbitration and such arbitration shall be governed by the terms of Exhibit A to this Physician Employment Agreement, which is incorporated herein by reference in its entirety; provided, however, that the terms and provisions of this Article VIII and Exhibit A shall not preclude any party hereto from seeking, or a court of competent jurisdiction from granting, a temporary restraining order, temporary injunction or other equitable relief for any breach of (i) any noncompetition or confidentiality covenant or (ii) any duty, obligation, covenant, representation or warranty, the breach of which may cause irreparable harm or damage.

ARTICLE IX. MISCELLANEOUS

9.1 **Assignability.** New LLC may assign this Physician Employment Agreement only to a successor professional limited liability company upon notice to Physician. Otherwise, neither party may assign its rights or duties under this Physician Employment Agreement without the prior written consent of the other party.

9.2 **Notice.** Any notice, demand, or communication required, permitted, or desired to be given under this Physician Employment Agreement (i) shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed to the party at the primary address of New LLC or, if appropriate, at the residence of Physician on file with New LLC, or to such other address and to the attention of such other person(s) or officer(s) as either party may designate by written notice (ii) shall be simultaneously delivered to [REDACTED] at its corporate headquarters, attention Chief Executive Officer and General Counsel.

9.3 **Enforceability.** Should any provision of this Physician Employment Agreement be held invalid, unenforceable, or unconstitutional by any governmental body or court of competent jurisdiction, such holding shall not diminish the validity or enforceability of any other provision hereof.

9.4 **Governing Law.** This Physician Employment Agreement shall be governed by and interpreted in accordance with the laws of the State of [REDACTED].

9.5 **Construction.** Common nouns and pronouns and all other terms shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, as the identity of the person or persons, firm or association may require in the context.

9.6 Binding Effect. The provisions of this Physician Employment Agreement shall inure to the benefit of and shall be binding on the heirs, personal representatives, successors, assigns, estates and legatees of each of the parties hereto.

9.7 Entire Physician Employment Agreement: Amendments. This Physician Employment Agreement constitutes the entire agreement between the parties pertaining to the employment relationship between New LLC and Physician and supersedes all prior or contemporaneous agreements, understandings, or negotiations of the parties. This Physician Employment Agreement shall not be modified, amended, or supplemented except in a written instrument executed by both parties.

9.8 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Physician Employment Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

IN WITNESS WHEREOF, the parties have caused this Physician Employment Agreement to be executed to be effective as of the date and year first above written.

limited liability company

By: _____

PHYSICIAN:

_____, M.D.

Exhibit A

Arbitration

Section 1 Scope. The parties hereto agree that any claim, controversy, dispute or disagreement between or among them arising out of or relating to this Physician Employment Agreement (other than claims involving any noncompetition or confidentiality covenant) shall be governed exclusively by the terms and provisions of this Exhibit A; provided, however, that the terms and provisions of this Exhibit A shall not preclude any party hereto from seeking, or a court of competent jurisdiction from granting, a temporary restraining order, temporary injunction or other equitable relief for any breach of (i) any noncompetition or confidentiality covenant or (ii) any duty, obligation, covenant, representation or warranty, the breach of which may cause irreparable harm or damage.

Section 2 Arbitrators. In the event there is any claim, controversy, dispute or disagreement between the parties hereto arising out of or relating to this Physician Employment Agreement, and the parties are unable to resolve such claim, controversy, dispute or disagreement within thirty (30) days after notice is first delivered, the parties agree to select arbitrators to hear and decide all such claims under this Exhibit A. The Physician shall select one arbitrator, and New LLC shall select one arbitrator. The two arbitrators so chosen shall then select a third arbitrator who is experienced in the matter or action that is subject to such arbitration. If such matter or action involves health-care issues, then the third arbitrator shall have such qualifications as would satisfy the requirements of the American Health Lawyers Association Alternative Dispute Resolution Service. Each of the arbitrators chosen shall be impartial and independent of all parties to this Physician Employment Agreement. If either of the parties fails to select an arbitrator within twenty days after the end of such thirty-day period, or if the arbitrators chosen fail to select a third arbitrator within twenty days, then any party may in writing request the judge of the United States District Court for the District of [REDACTED] senior in term of service to appoint the arbitrator or arbitrators and, subject to this Exhibit A, such arbitrators shall hear all arbitration matters arising under this Exhibit A and, in default of such selection, may ask the American Arbitration Association.

Section 3 Applicable Rules.

(a) Each arbitration hearing shall be held at a place in [REDACTED] acceptable to a majority of the arbitrators. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association to the extent such rules do not conflict with the terms hereof. The decision of a majority of the arbitrators shall be reduced to writing and shall be binding on the parties. Judgment upon the award(s) rendered by a majority of the arbitrators may be entered and execution had in any court of competent jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement. The charges and expenses of the arbitrators shall be shared equally by the parties to the hearing.

(b) The arbitration shall commence within thirty (30) days after the arbitrators are selected in accordance with the provisions of this Exhibit A. In fulfilling their duties with respect to determining the amount of any damages, the arbitrators may consider such matters-as, in the opinion of the arbitrators, are necessary or helpful to make a proper valuation. The arbitrators may consult with and engage disinterested third parties to advise the arbitrators. The arbitrators shall add any interest factor reflecting the time value of money to the amount of any damages and shall not award any punitive damages.

(c) If any of the arbitrators selected hereunder should die, resign or be unable to perform his or her duties hereunder, the remaining arbitrators or such senior judge (or such judge's successor) shall select a replacement arbitrator. The procedure set forth in this Exhibit A for selecting the arbitrators shall be followed from time to time as necessary.

(d) As to any determination of the amount of any damages, or as to the resolution of any other claim, controversy, dispute or disagreement, that under the terms hereof is made subject to arbitration, no lawsuit based on such claimed damages or such resolution shall be instituted by any of the Parties, other than to compel arbitration proceedings or enforce the award of the arbitrators.

(e) All privileges under [REDACTED] and federal law, including attorney-client and work-product privileges, shall be preserved and protected to the same extent that such privileges would be protected in a federal court proceeding applying [REDACTED] law.