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IN THE SUPREME COURT  
OF THE STATE OF NEVADA

SCOTT VINH DUONG, M.D., ANNIE  
LYNN PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Appellants,

vs.

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Respondent.

Electronically Filed  
Mar 11 2020 11:58 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

No.: 79460

Eight Judicial District Court  
Case No. A-19-789110-B

JOINT APPENDIX  
VOLUME I

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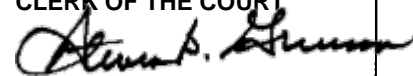
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1 **COMP**  
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14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

A-19-789110-B

16 **FIELDEN HANSON ISAACS MIYADA**  
17 **ROBISON YEH, LTD.,**

18 **Plaintiff,**

19 **vs.**

20 **SCOTT VINH DUONG, M.D., ANNIE**  
21 **LYNN PENACO DUONG, M.D., DUONG**  
22 **ANESTHESIA, PLLC and DOE Defendants**  
23 **I-X,**

24 **Defendants.**

Case No.:  
Dept.:

Department 16

**COMPLAINT**

**Exempt from Arbitration:**  
**Extraordinary Relief Requested;**  
**Damages in Excess of \$50,000**

**(Business Court Requested)**

25 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson"), by and  
26 through its attorneys, the law firm of Dickinson Wright PLLC, files this Complaint against  
27 Defendants Scott Vinh Duong, M.D. ("Scott Duong"), Annie Lynn Penaco Duong M.D. ("Annie  
28 Duong" and together with Scott Duong, "Drs. Duong"), and Duong Anesthesia PLLC ("DAP" and  
together with Drs. Duong, the "Defendants") as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1. Fielden Hanson is a Nevada professional corporation duly licensed to do business  
in the State of Nevada.

2. Fielden Hanson is informed and believes and thereupon alleges that Scott Duong is



1 a resident of Clark County, Nevada and at all times relevant herein conducted business in Clark  
2 County, Nevada.

3 3. Fielden Hanson is informed and believes and thereupon alleges that Annie Duong  
4 is a resident of Clark County, Nevada and at all times relevant herein conducted business in Clark  
5 County, Nevada.

6 4. Fielden Hanson is informed and believes and thereupon alleges that DAP is a  
7 Nevada professional limited liability company doing business in Clark County, Nevada.

8 5. Fielden Hanson alleges the true names and capacities, whether individual,  
9 corporate, associates or otherwise of defendants named herein as Does Individuals and Roe  
10 Entities I through X, inclusive, are unknown to Fielden Hanson, who therefore sues said defendants  
11 by such fictitious names. Fielden Hanson will ask leave to amend this Complaint to show the true  
12 names and capacities of Does Individuals and Roe Entities I through X inclusive when the same  
13 have been ascertained. Fielden Hanson believes and therefore alleges that each defendant named  
14 as a Doe Individual and Roe Entity is responsible in some manner for the events herein referred to  
15 and caused damages proximately thereby to Fielden Hanson as alleged herein.

16 6. This Court has personal jurisdiction over Defendants because they have conducted  
17 business at all times relevant herein in Clark County, Nevada, and their obligations to Fielden  
18 Hanson arise from actions undertaken in Clark County, Nevada.

19 7. Venue is proper in this district pursuant to the forum selection clause in the  
20 employment agreements entered into by Drs. Duong with Fielden Hanson. Venue is also proper  
21 pursuant to NRS 13.010 and 13.040.

## 22 II. FACTUAL BACKGROUND

23 8. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
24 preceding paragraphs as if fully set forth herein.

### 25 ***Drs. Duong Enter Into Employment Agreements Containing Non-Compete and Non-*** 26 ***Solicitation Provisions***

27 9. On or about December 2, 2016, Scott Duong entered into a Partner-Track Physician  
28 Employment Agreement with Fielden Hanson (the "Scott Duong Agreement").

10. On or about December 2, 2016, Annie Duong entered into a Partner-Track Physician Employment Agreement with Fielden Hanson (the "Annie Duong Agreement" and together with the Scott Duong Agreement, the "Employment Agreements").

11. Pursuant to the Employment Agreements, Drs. Duong agreed that they would work for Fielden Hanson on an exclusive basis and all of their "professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of [Fielden Hanson] unless Physician receives prior written consent of the Clinical Governance Board and [Fielden Hanson]."

12. Drs. Duong voluntarily and knowingly agreed to be bound by a non-competition clause in their Employment Agreements (the "Non-Competition Clause"). More specifically, Drs. Duong agreed:

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, that during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

13. The geographic scope of the Non-Competition Clause is limited to the "Facilities" where Drs. Duong worked for Fielden Hanson and does not preclude Drs. Duong from performing services at any other locations.

14. The Employment Agreements define "Facilities" as (1) medical facilities with which Fielden Hanson has "a contract to supply licensed physicians . . . who provide Anesthesiology and Pain Management Services . . ." (2) "facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the [term of the Employment Agreements] . . ." and (3) "facilities with which [Fielden Hanson] has had active negotiations to supply" such services.

15. Following termination of the Employment Agreements, Drs. Duong are prohibited from providing anesthesia and pain management services at Facilities where Drs. Duong provided those services during the term of the Employment Agreements. Drs. Duong are not prohibited from providing any services at any other hospital, ambulatory surgery center, or other location.

16. Drs. Duong also voluntarily and knowingly agreed to be bound by the following Non-Solicitation Clause in their Employment Agreements:

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii) solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

1           17. In the Employment Agreements, Drs. Duong acknowledged that their covenants  
2 regarding Non-Competition and Non-Solicitation “are necessary to ensure the continuation of the  
3 business of [Fielden Hanson] and the reputation of [Fielden Hanson] as a provider of readily  
4 available and reliable, high quality physicians, as well as to protect [Fielden Hanson] from unfair  
5 business competition, including but not limited to, the improper use of Confidential Information.”

6           18. Drs. Duong also confirmed in the Employment Agreements that any breach of the  
7 Non-Competition Clause would cause Fielden Hanson irreparable harm and, therefore, Fielden  
8 Hanson would be entitled to injunctive relief to prevent further breaches of the Non-Competition  
9 Clause.

10           19. Drs. Duong also explicitly agreed that the Non-Competition Clause and Non-  
11 Solicitation Clause of the Employment Agreements were essential elements of those agreements  
12 and that “but for the agreement of [Drs. Duong] to comply with such covenants, [Fielden Hanson]  
13 would not have agreed to enter into” the Employment Agreements.

14           20. Drs. Duong further agreed that in the event that any court holds any restriction  
15 contained in the Non-Competition Clause of the Employment Agreements to be unenforceable or  
16 unreasonable, that “a lesser restriction shall be severable therefrom and may be enforced in its  
17 place . . . .”

18 ***Drs. Duong Perform Anesthesia Services at Many Facilities During the Course of Their***  
19 ***Employment with Fielden Hanson***

20           21. The Non-Competition Clause of the Scott Duong Employment Agreement is  
21 limited in geographic scope to the following medical facilities where Scott Duong performed  
22 anesthesia services during his employment by Fielden Hanson (the “Scott Duong Non-  
23 Competition Facilities”): Clear Choice Dental, Desert Springs Hospital, Durango Outpatient,  
24 Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon  
25 Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View  
26 Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven  
27 Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical  
28 Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena

1 Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery  
2 Center, Valley Hospital Medical Center, and Valley View Surgery Center.

3 22. The Non-Competition Clause of the Annie Duong Employment Agreement is  
4 limited in geographic scope to the following medical facilities where Annie Duong performed  
5 anesthesia services during her employment by Fielden Hanson (the "Annie Duong Non-  
6 Competition Facilities"): Affinity Surgery Center, Clear Choice Dental, Desert Springs Hospital,  
7 Durango Outpatient, Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery  
8 Center, Horizon Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare,  
9 Mountain View Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient  
10 Surgery Center, Seven Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center,  
11 Spring Valley Medical Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose  
12 Dominican Hospital- Siena Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise  
13 Hospital, Sunset Surgery Center, Valley Hospital Medical Center, and Valley View Surgery  
14 Center.

15 ***Drs. Duong Knowingly Breach the Employment Agreements by Performing Anesthesia Services***  
16 ***at Certain Facilities Without Fielden Hanson's Consent***

17 23. On November 7, 2018, while Drs. Duong remained employed by Fielden Hanson  
18 and subject to the Employment Agreements, they became managing members of DAP.

19 24. More than two weeks after they became managing members of DAP, Drs. Duong  
20 terminated their employment with Fielden Hanson.

21 25. Soon thereafter, Drs. Duong provided anesthesia services at St. Rose Dominican  
22 Hospital- San Martin Campus and Summerlin Hospital Medical Center, each a Scott Duong Non-  
23 Competition Facility and Annie Duong Non-Competition Facility.

24 26. After learning that Drs. Duong were violating the Non-Competition Clause by  
25 working at St. Rose Dominican Hospital- San Martin Campus and Summerlin Hospital Medical  
26 Center, Fielden Hanson's counsel sent cease and desist letters to Drs. Duong notifying them of  
27 their breaches of the Employment Agreements and requesting a response by December 28, 2018  
28 (the "Cease and Desist Letters").

1           27.    On December 17, 2018, just four days after the Cease and Desist Letters were  
2 mailed, Scott Duong was seen working at Spring Valley Medical Center, a Scott Duong Non-  
3 Competition Facility.

4           28.    One week later, on December 24, 2108, Annie Duong was seen working at  
5 Southern Hills Hospital, an Annie Duong Non-Competition Facility.

6           29.    On both January 3, 2019 and January 10, 2019, Annie Duong performed anesthesia  
7 services at Summerlin Hospital, an Annie Duong Non-Competition Facility.

8           30.    On January 14, 2019, Drs. Duong's counsel responded to the Cease and Desist  
9 Letters by stating Drs. Duong did not intend on complying with the terms of the Non-Competition  
10 Clause.

11           31.    On January 17, 2019, Scott Duong performed anesthesia services at Southern Hills  
12 Hospital, a Scott Doung Non-Competition Facility.

### 13                           **III.    CLAIMS FOR RELIEF**

#### 14                                   **FIRST CAUSE OF ACTION**

#### 15   **(Breach of Contract Against Scott Duong)**

16           32.    Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
17 preceding paragraphs as if fully set forth herein.

18           33.    The Scott Duong Agreement is a valid, enforceable written contract.

19           34.    Fielden Hanson has performed all of its required obligations under the terms of the  
20 Scott Duong Agreement.

21           35.    Scott Duong breached the Scott Duong Agreement by performing anesthesia  
22 services at St. Rose Dominican Hospital- San Martin Campus, Summerlin Hospital Medical  
23 Center, Spring Valley Medical Center, and Southern Hills Hospital.

24           36.    Scott Duong's breaches of the Scott Duong Agreement are causing irreparable harm  
25 to Fielden Hanson's goodwill and business reputation.

26           37.    Scott Duong will continue to breach the Scott Duong Agreement unless and until  
27 enjoined by this Court.  
28

1           38.     Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Scott  
2 Duong from further breaching the Scott Duong Agreement pursuant to Section 2.8.3 of the  
3 Employment Agreements.

4           39.     Scott Duong's violations of the Scott Duong Agreement also have caused Fielden  
5 Hanson to suffer damages in an amount in excess of \$15,000.

6           40.     Fielden Hanson has been required to retain the services of an attorney to pursue its  
7 claims against Scott Duong and is entitled to reasonable attorneys' fees and costs incurred in  
8 prosecuting this action pursuant to Section 11.3 of the Scott Duong Agreement.

9                               **SECOND CAUSE OF ACTION**  
10                              **(Breach of Contract Against Annie Duong)**

11           41.     Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
12 preceding paragraphs as if fully set forth herein.

13           42.     The Annie Duong Agreement is a valid, enforceable written contract.

14           43.     Fielden Hanson has performed all of its required obligations under the terms of the  
15 Annie Duong Agreement.

16           44.     Annie Duong breached the Annie Duong Agreement by performing anesthesia  
17 services at St. Rose Dominican Hospital- San Martin Campus, Summerlin Hospital Medical  
18 Center, and Southern Hills Hospital.

19           45.     Annie Duong's breaches of the Annie Duong Agreement are causing irreparable  
20 harm to Fielden Hanson's goodwill and business reputation.

21           46.     Annie Duong will continue to breach the Annie Duong Agreement unless and until  
22 enjoined by this Court.

23           47.     Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Annie  
24 Duong from further breaching the Annie Duong Agreement pursuant to Section 2.8.3 of the  
25 Employment Agreements.

26           48.     Annie Duong's violations of the Annie Duong Agreement also have caused Fielden  
27 Hanson to suffer damages in an amount in excess of \$15,000.

28

49. Fielden Hanson has been required to retain the services of an attorney to pursue its claims against Annie Duong and is entitled to reasonable attorneys' fees and costs incurred in prosecuting this action pursuant to Section 11.3 of the Annie Duong Agreement.

**THIRD CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing Against Scott Duong)**

50. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

51. The Scott Duong Agreement is a valid and existing contract.

52. Implied in the Scott Duong Agreement is the obligation of good faith and fair dealing.

53. Scott Duong has acted in a manner unfaithful to the purpose of the Scott Duong Agreement by performing anesthesia services at Scott Duong Non-Competition Facilities.

54. Scott Duong's breaches of the implied covenant of good faith and fair dealing are causing irreparable harm to Fielden Hanson's goodwill and business reputation.

55. Scott Duong will continue to breach the implied covenant of good faith and fair dealing unless and until enjoined by this Court.

56. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Scott Duong from further breaching the implied covenant of good faith and fair dealing pursuant to Section 2.8.3 of the Scott Duong Agreement.

57. Scott Duong's violations of the Scott Duong Agreement also has caused Fielden Hanson to suffer damages in an amount in excess of \$15,000.

58. Fielden Hanson has been required to retain the services of an attorney to pursue its claims against Scott Duong and is entitled to reasonable attorneys' fees and costs incurred in prosecuting this action pursuant to Section 11.3 of the Scott Duong Agreement.

**FOURTH CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing Against Annie Duong)**

59. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.



2           61.     Implied in the Annie Duong Agreement is the obligation of good faith and fair  
3     dealing.

62. Annie Duong has acted in a manner unfaithful to the purpose of the Annie Duong Agreement by performing anesthesia services at Annie Duong Non-Competition Facilities.

6            63. Annie Duong's breaches of the implied covenant of good faith and fair dealing are  
7            causing irreparable harm to Fielden Hanson's goodwill and business reputation.

8           64.     Annie Duong will continue to breach the implied covenant of good faith and fair  
9     dealing unless and until enjoined by this Court.

10           65.     Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Annie  
11     Duong from further breaching the implied covenant of good faith and fair dealing pursuant to  
12     Section 2.8.3 of the Annie Duong Agreement.

66. Annie Duong's violations of the Annie Duong Agreement also has caused Fielden Hanson to suffer damages in an amount in excess of \$15,000.

15           67.     Fielden Hanson has been required to retain the services of an attorney to pursue its  
16     claims against Annie Duong and is entitled to reasonable attorneys' fees and costs incurred in  
17     prosecuting this action pursuant to Section 11.3 of the Annie Duong Agreement.

18 **FIFTH CAUSE OF ACTION**  
**(Intentional Interference with Business Relationships Against Drs. Duong)**

20           68.     Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

69. Drs. Duong knew and were aware of Fielden Hanson's contractual or implied contractual business relationships with the Facilities via their previously employment with Fielden Hanson.

70. Drs. Duong interfered with Fielden Hanson's business relationships by inducing or attempting to induce the Facilities to cease doing business with Fielden Hanson and instead enter into a business relationship with them.

1           71.   Drs. Duong's actions in contacting certain Facilities described above were  
2 committed without privilege or justification and in contravention of the terms of the Employment  
3 Agreements.

4           72.   Drs. Duong's improper and intentional interference with Fielden Hanson's business  
5 relationships is causing irreparable harm to Fielden Hanson's goodwill and business reputation.

6           73.   Drs. Duong will continue to directly and/or indirectly interfere with Fielden  
7 Hanson's business relationships unless and until enjoined by this Court.

8           74.   Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Drs.  
9 Duong from further interfering with Fielden Hanson's business relationships pursuant to Section  
10 2.8.3 of the Employment Agreements.

11           75.   Drs. Duong's conduct also has caused Fielden Hanson to suffer damages in an  
12 amount in excess of \$15,000.

13           76.   Fielden Hanson has been required to retain the services of an attorney to pursue its  
14 claims against Drs. Duong and is entitled to reasonable attorneys' fees and costs incurred in  
15 prosecuting this action pursuant to Section 11.3 of the Employment Agreements.

16                                   **SIXTH CAUSE OF ACTION**  
17                                   **(Intentional Interference with Business Relationships Against DAP)**

18           77.   Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
19 preceding paragraphs as if fully set forth herein.

20           78.   DAP knew and was aware of the Employment Agreements because its managing  
21 members were parties to the Employment Agreements.

22           79.   DAP interfered with the Employment Agreements by inducing or attempting to  
23 induce Drs. Duong to breach the terms of the Employment Agreements.

24           80.   DAP's actions in interfering with the Employment Agreements and causing Drs.  
25 Duong to breach the Employment Agreements were committed without privilege or justification.

26           81.   DAP's improper and intentional interference with Fielden Hanson's business  
27 relationships is causing irreparable harm to Fielden Hanson's goodwill and business reputation.  
28

1           82.     DAP will continue to directly and/or indirectly interfere with Fielden Hanson's  
2 business relationships unless and until enjoined by this Court.

3           83.     Fielden Hanson seeks preliminary and permanent injunctive relief enjoining DAP  
4 from further interfering with Fielden Hanson's business relationships.

5           84.     DAP's conduct also has caused Fielden Hanson to suffer damages in an amount in  
6 excess of \$15,000.

7           85.     Fielden Hanson has been required to retain the services of an attorney to pursue its  
8 claims against DAP and is entitled to reasonable attorneys' fees and costs incurred in prosecuting  
9 this action.

10                                   **SEVENTH CAUSE OF ACTION**  
11                                   **(Intentional Interference with Prospective Economic Advantage Against All Defendants)**

12           86.     Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
13 preceding paragraphs as if fully set forth herein.

14           87.     Defendants knew and were aware of Fielden Hanson's prospective contractual  
15 business relationships with the Facilities.

16           88.     Defendants intended to harm Fielden Hanson by interfering with Fielden Hanson's  
17 prospective contractual business relationships with the Facilities.

18           89.     Defendants had no privilege or justification for interfering with Fielden Hanson's  
19 ability to execute these prospective contractual business relationships with the Facilities.

20           90.     Defendants' improper and intentional interference with Fielden Hanson's  
21 prospective contractual business relationships is causing irreparable harm to Fielden Hanson's  
22 goodwill and business reputation.

23           91.     Defendants will continue to directly and/or indirectly interfere with Fielden  
24 Hanson's prospective contractual business relationships unless and until enjoined by this Court.

25           92.     Fielden Hanson seeks preliminary and permanent injunctive relief enjoining  
26 Defendants from further interfering with Fielden Hanson's prospective contractual business  
27 relationships pursuant to Section 2.8.3 of the Employment Agreements.  
28

1           93.     Scott and Annie's conduct also has caused Fielden Hanson to suffer damages in an  
2 amount in excess of \$15,000.

3           94.     Fielden Hanson has been required to retain the services of an attorney to pursue its  
4 claims against Defendants and is entitled to reasonable attorneys' fees and costs incurred in  
5 prosecuting this action pursuant to Section 11.3 of the Employment Agreements.

6                               **EIGHTH CAUSE OF ACTION**  
7                               **(Unjust Enrichment Against All Defendants)**

8           95.     Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the  
9 preceding paragraphs as if fully set forth herein.

10          96.     Defendants were unjustly enriched by wrongfully utilizing Fielden Hanson's  
11 goodwill and business relationships for their own financial benefit to the detriment of Fielden  
12 Hanson.

13          97.     Defendants' actions were not justified and caused Fielden Hanson to sustain actual  
14 and/or consequential damages in an amount in excess of \$15,000.

15          98.     Fielden Hanson has been required to retain the services of an attorney to pursue its  
16 claims against Defendants and is entitled to reasonable attorneys' fees and costs incurred in  
17 prosecuting this action pursuant to Section 11.3 of the Employment Agreements.

18                               **PRAYER FOR RELIEF**

19          WHEREFORE, Fielden Hanson prays for relief against Defendants as follows:

20          (a)     For damages against all Defendants, jointly and severally, for their wrongful  
21 conduct as set forth herein, in an amount in excess of \$15,000;

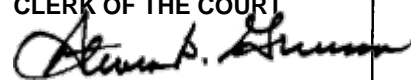
22          (b)     For punitive and exemplary damage damages against all Defendants, jointly and  
23 severally, for their wrongful, intentional, bad faith conduct as set forth herein, in an amount in  
24 excess of \$15,000;

25          (c)     For preliminary and permanent injunctive relief enjoining Defendants from  
26 performing anesthesia services at the Scott Duong Non-Competition Facilities and Annie Duong  
27 Non-Competition Facilities or soliciting any business from the Scott Duong Non-Competition  
28 Facilities and Annie Duong Non-Competition Facilities.

- 1 (d) For attorneys' fees and costs; and  
2 (e) For such other and further relief as the Court may deem just and proper.  
3 DATED this 5<sup>th</sup> day of February 2019.

4 DICKINSON WRIGHT PLLC

5  
6   
7 MICHAEL N. FEDER  
8 Nevada Bar No. 7332  
9 GABRIEL A. BLUMBERG  
10 Nevada Bar No. 12332  
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12 Las Vegas, Nevada 89113-2210  
13 Attorneys for Plaintiff  
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15 Tel: (702) 550-4400  
16 *Attorneys for Plaintiff*



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*Attorneys for Plaintiff*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FIELDEN HANSON ISAACS MIYADA  
ROBISON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE  
LYNN PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE Defendants  
I-X,

Defendants.

Case No.: A-19-789110-B  
Dept.: Department 16

**INITIAL APPEARANCE FEE  
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, the filing fee is submitted for  
the Plaintiff appearing in the above-entitled action as indicated below:

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Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.	\$1530.00
<b>TOTAL REMITTED: (Required)</b>	<b>Total Paid \$1530.00</b>

DATED this 8<sup>th</sup> day of February 2019.

DICKINSON WRIGHT PLLC

  
 MICHAEL N. FEDER  
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13 *Attorneys for Plaintiff*

**FILE WITH  
MASTER CALENDAR**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**  
12 **ROBISON YEH, LTD.,**

Case No.: A-19-789110-B  
Dept.: 11

13 Plaintiff,

14 vs.

**PLAINTIFF FIELDEN HANSON  
ISAACS MIYADA ROBISON YEH,  
LTD.'S MOTION FOR PRELIMINARY  
INJUNCTION ON ORDER  
SHORTENING TIME**

15 **SCOTT VINH DUONG, M.D., ANNIE**  
16 **LYNN PENACO DUONG, M.D., DUONG**  
17 **ANESTHESIA, PLLC and DOE Defendants I-**  
18 **X,**

**Date of Hearing: 2/25/19**  
**Time of Hearing: 9:00 a.m.**

19 Defendants.

20 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson") by and  
21 through its attorneys, the law firm of Dickinson Wright PLLC, hereby respectfully requests that  
22 the Court:

23 1. Enter a Preliminary Injunction enjoining each of Defendants Scott Vinh Duong  
24 ("Scott Duong"), Annie Lynn Penaco Duong ("Annie Duong" and together with Scott Duong,  
25 "Drs. Duong"), and Duong Anesthesia, PLLC ("DAP" and together with Drs. Duong, the  
26 "Defendants") from performing anesthesia or pain management services at certain specific  
27 Facilities where Drs. Duong performed services during the terms of their employment agreements  
28 with Fielden Hanson.



2. Enter an order shortening time to set the hearing on Fielden Hanson's Motion for Preliminary Injunction.

This Motion is based upon the following Memorandum of Points and Authorities; the pleadings and papers already on file herein, including Fielden Hanson's Complaint (the "Complaint"); the declaration of Gabriel A. Blumberg, Esq., set forth below; the declaration of W. Bradford Isaacs, M.D., attached hereto as Exhibit 1 and the exhibits attached thereto; and any argument of counsel that may be permitted at the hearing in this matter.

DATED this 15<sup>th</sup> day of February 2019.

DICKINSON WRIGHT PLLC

  
MICHAEL N. FEDER

Nevada Bar No. 7332

GABRIEL A. BLUMBERG

Nevada Bar No. 12332

8363 West Sunset Road, Suite 200

Las Vegas, Nevada 89113-2210

*Attorneys for Plaintiff*

**ORDER SHORTENING TIME**

Good Cause Appearing Therefore,

IT IS HEREBY ORDERED that the time for hearing Plaintiff Fielden Hanson's Motion for Preliminary Injunction is shortened to be heard on the 25 day of February, 2019, at 9 a.m./p.m., or as soon thereafter as the parties may be heard.

~~Defendants' Opposition shall be filed by February \_\_, 2019.~~

~~Fielden Hanson's Reply shall be filed by February \_\_, 2019.~~

Dated this 19 day of February 2019.

  
DISTRICT COURT JUDGE

1 Respectfully Submitted By:

2 DICKINSON WRIGHT PLLC

3  
4 

5 MICHAEL N. FEDER, NV Bar No. 7332  
6 GABRIEL A. BLUMBERG, NV Bar No. 12332  
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9 Tel: (702) 382-4002  
10 *Attorneys for Plaintiff*

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**DECLARATION OF GABRIEL A. BLUMBERG, ESQ. IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND APPLICATION FOR ORDER SHORTENING  
TIME**

Gabriel A. Blumberg, Esq., being first duly sworn, declares as follows:

1. I am an attorney licensed to practice law in the State of Nevada and I am an associate with the law firm of Dickinson Wright PLLC, counsel for Fielden Hanson. I have personal knowledge of the matters set forth herein and know them to be true except for matters set forth herein on information and belief, and as to those matters, I believe them to be true.

2. This declaration is submitted in support of the Motion for Preliminary Injunction on Order Shortening Time (the "Motion").

3. As set forth more fully in Fielden Hanson's Complaint, Drs. Duong entered into non-compete and non-solicitation agreements with Fielden Hanson in December 2016. Drs. Duong acknowledged that these agreements were central to their employment with Fielden Hanson and Fielden Hanson would not have employed Drs. Duong absent the non-compete and non-solicitation provisions. Furthermore, Drs. Duong agreed that if they were to ever breach the non-compete provision, they would consent to the immediate entry of an injunction because their violation would cause Fielden Hanson irreparable harm.

4. Based on the information set forth in the Motion, it is apparent that Defendants are violating the non-compete provision of their employment agreements by intentionally interfering with Fielden Hanson's business by performing services at medical facilities where they previously

1 provided services while employed by Fielden Hanson in an attempt to build their own competing  
2 practice. Defendants must immediately be enjoined because they are causing irreparable harm to  
3 Fielden Hanson by infringing on Fielden Hanson's goodwill and reputation and diverting business  
4 away from Fielden Hanson.

5 5. Defendants' wrongful conduct will only multiply if not immediately enjoined.  
6 Indeed, after Fielden Hanson issued cease and desist letters to Drs. Duong, their conduct only  
7 worsened and they began working at additional facilities where they previously worked, and are  
8 prohibited from servicing under the terms of their employment agreements.

9 6. Given the immediate and continuing irreparable harm, it is imperative that this  
10 matter be heard on shortened time. Fielden Hanson therefore requests that this Court implement  
11 an expedited briefing schedule and set a hearing for no later than February 27, 2019.

12 7. Defendants' counsel Ryan O'Malley of Howard & Howard has already indicated  
13 he is authorized to accept service of the Complaint and this Motion will be emailed to Defendants'  
14 counsel at the same time it is delivered to the Court for signature on the order shortening time.

15 EXECUTED this 15<sup>th</sup> day of February, 2019.

16  
17   
18 GABRIEL A. BLUMBERG, ESQ.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Fielden Hanson has spent more than a decade developing goodwill, its reputation, and  
22 business relationships with numerous medical facilities in Clark County, Nevada. Defendants now  
23 seek to exploit and profit from Fielden Hanson's efforts for their own gain and to the detriment of  
24 Fielden Hanson in contravention of their unambiguous agreement not to compete with Fielden  
25 Hanson at facilities where they previously performed services for Fielden Hanson. Defendants'  
26 conduct must be enjoined to prevent any further irreparable harm to Fielden Hanson and to ensure  
27  
28

1 compliance with Nevada's public policies respecting parties' right to contract and favoring  
2 enforcement of covenants not to compete.

3 An injunction is especially appropriate here, where upon accepting employment with  
4 Fielden Hanson in December 2016, Scott Duong and Annie Duong both agreed to a reasonable,  
5 narrowly tailored non-compete clause that only prohibited them, for a period of two years  
6 following their separation from Fielden Hanson, from providing anesthesia and pain management  
7 services at medical facilities where they had worked for Fielden Hanson during the term of their  
8 employment.

9 Furthermore, Scott Duong and Annie Duong both acknowledged that this non-compete  
10 clause in their employment agreements was a material term and Fielden Hanson would not have  
11 entered into employment agreements with them absent their assurances that they would abide by  
12 the non-competition clauses. Indeed, the non-competition clauses were such an important part of  
13 the employment agreements that Scott Duong and Annie Duong agreed that injunctive relief  
14 should issue in the event either of them ever breached the non-competition clauses.

15 Unfortunately, Fielden Hanson must now seek Court intervention to enforce the terms of  
16 the employment agreements and the bargained-for non-competition clauses. Despite Drs. Duong  
17 having the ability to continue performing anesthesia and pain management services at other  
18 medical centers across Clark County, Nevada, and elsewhere, Scott Duong and Annie Duong  
19 immediately, upon terminating their employment with Fielden Hanson, began providing  
20 anesthesia services at a number of facilities they had serviced for Fielden Hanson. Fielden Hanson  
21 notified Scott Duong and Annie Duong that their conduct violated the terms of their employment  
22 agreements, but rather than cease their contractually prohibited conduct, Scott Duong and Annie  
23 Duong instead began servicing additional facilities where they had performed services for Fielden  
24 Hanson in contravention of their employment agreements. Their egregious conduct demonstrates  
25 that the only effective method for protecting Fielden Hanson's interests under the employment  
26 agreements during the pendency of this action is for this Court to issue a preliminary injunction  
27  
28

1 prohibiting Scott Duong and Annie Duong from performing anesthesia services at any facilities  
2 where they performed services while employed by Fielden Hanson.

## 3 **II. STATEMENT OF RELEVANT FACTS**

### 4 **A. Fielden Hanson Provides of Anesthesia Services in Clark County, Nevada**

5 Fielden Hanson has been providing perioperative and anesthesia services to medical  
6 facilities in Clark County, Nevada for decades. Ex. 1 at ¶ 3. Fielden Hanson hand-selects  
7 providers who not only demonstrate excellent clinical knowledge and skill, but also compassion  
8 for their patients. *Id.* at ¶ 4. In order to uphold the reputation of providing Fielden Hanson's  
9 patients with the best possible care, each of Fielden Hanson P's anesthesiologists has a license to  
10 practice medicine and is either Board Certified or Eligible. *Id.* Fielden Hanson providers perform  
11 thousands of anesthesia procedures annually in a wide range of specialties, including  
12 cardiothoracic, obstetrics/gyn, general, orthopedics, pediatrics, and neurosurgery. *Id.* at ¶ 5.

### 13 **B. Drs. Duong Enter Into Employment Agreements with Fielden Hanson**

14 In December 2016, Fielden Hanson entered into separate Partner-Track Physician  
15 Employment Agreements with Scott Duong (the "Scott Duong Agreement") and Annie Duong  
16 (the "Annie Duong Agreement" and together with the Scott Duong Agreement, the "Employment  
17 Agreements"). *Id.* at ¶ 6; Exs. 1-A, 1-B.

18 Pursuant to the Employment Agreements, Drs. Duong agreed that they would work for  
19 Fielden Hanson on an exclusive basis and all of their "professional Anesthesiology and Pain  
20 Management Services shall be provided solely and exclusively as an employee of [Fielden  
21 Hanson] unless Physician receives prior written consent of the Clinical Governance Board and  
22 [Fielden Hanson]." Exs. 1-A, 1-B at ¶ 2.1.

### 23 **C. Drs. Duong Agree to a Non-Competition Clause**

24 Drs. Duong both voluntarily and knowingly agreed to be bound by a non-competition  
25 clause in their Employment Agreements (the "Non-Competition Clause"). More specifically, Drs.  
26 Duong agreed:

27 2.8.1 Non-Competition. In consideration of the promises contained herein,  
28 including without limitation those related to Confidential Information, except as

1 may be otherwise provided in this Agreement, that during the Term of this  
2 Agreement and for a period of two (2) years following termination of this  
3 Agreement, Physician covenants and agrees that Physician shall not, without the  
4 prior consent of the Practice (which consent may be withheld in the Practice's  
5 discretion), directly or indirectly, either individually or as a partner, joint venturer,  
6 employee, agent, representative, officer, director, member or member of any person  
7 or entity, (i) provide Anesthesiology and Pain Management Services at any of the  
8 Facilities at which Physician has provided any Anesthesiology and Pain  
9 Management Services (1) in the case of each day during the Term, within the  
10 twenty-four month period prior to such day and (2) in the case of the period  
11 following the termination of this Agreement, within the twenty-four month period  
12 prior to the date of such termination; (ii) call on, solicit or attempt to solicit any  
13 Facility serviced by the Practice within the twenty-four month period prior to the  
14 date hereof for the purpose of persuading or attempting to persuade any such  
15 Facility to cease doing business with, or materially reduce the volume of, or  
16 adversely alter the terms with respect to, the business such Facility does with the  
17 Practice or any affiliate thereof or in any way interfere with the relationship  
18 between any such Facility and the Practice or any affiliate thereof; or (iii) provide  
19 management, administrative or consulting services at any of the Facilities at which  
20 Physician has provided any management, administrative or consulting services or  
21 any Anesthesiology and Pain Management Services (1) in the case of each day  
22 during the Term, within the twenty-four month period prior to such day and (2) in  
23 the case of the period following the termination of this Agreement, within the  
24 twenty-four month period prior to the date of such termination.

25 *Id.* at ¶ 2.8.1.

26 **D. Drs. Duong Agree to the Entry of Injunctive Relief in the Event they Breach the  
27 Employment Agreements**

28 In the Employment Agreements, Drs. Duong acknowledged that their covenants regarding  
the Non-Competition Clause is "necessary to ensure the continuation of the business of [Fielden  
Hanson] and the reputation of [Fielden Hanson] as a provider of readily available and reliable,  
high quality physicians, as well as to protect [Fielden Hanson] from unfair business competition,  
including but not limited to, the improper use of Confidential Information." *Id.* at ¶ 2.8. Drs.  
Duong confirmed in the Employment Agreements that any breach of Non-Competition Clause  
would cause Fielden Hanson irreparable harm and therefore Fielden Hanson would be entitled to  
injunctive relief to prevent further breaches of the Non-Competition Clause of the Employment  
Agreements. *Id.* at ¶ 2.8.3.

1 Drs. Duong explicitly agreed that the Non-Competition Clause was an essential element of  
2 the Employment Agreements and that Fielden Hanson would not have entered into the  
3 Employment Agreements absent the Non-Competition Clause. *Id.* at ¶ 2.10.

4 Lastly, Drs. Duong agreed that in the event any court deems any restriction contained in  
5 the Non-Competition Clause of the Employment Agreements to be unenforceable or unreasonable,  
6 that court shall enforce the Non-Competition Clause to the extent it is reasonable and the court  
7 shall reform any unenforceable provision in order to render it enforceable. *Id.* at ¶ 2.8.3; 2.10; *see*  
8 *also* NRS 613.195(5).

9 **E. Drs. Duong Perform Anesthesia Services at Many Facilities During the Course of**  
10 **Their Employment with Fielden Hanson**

11 Scott Duong performed anesthesia services at the following facilities (the “Scott Duong  
12 Non-Competition Facilities”) while employed by Fielden Hanson pursuant to the Scott Duong  
13 Agreement: Clear Choice Dental, Desert Springs Hospital, Durango Outpatient, Flamingo Surgery  
14 Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon Surgery Center, Las  
15 Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View Hospital, North Vista  
16 Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven Hills Surgery Center,  
17 Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical Center, St. Rose  
18 Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena Campus, Stone  
19 Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery Center, Valley  
20 Hospital Medical Center, and Valley View Surgery Center. Ex. 1 at ¶ 8.

21 Annie Duong performed anesthesia services at the follow facilities (the “Annie Duong  
22 Non-Competition Facilities” and together with the Scott Duong Non-Competition Facilities, the  
23 “Non-Competition Facilities”) while subject to the Annie Duong Agreement: Affinity Surgery  
24 Center, Clear Choice Dental, Desert Springs Hospital, Durango Outpatient, Flamingo Surgery  
25 Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon Surgery Center, Las  
26 Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View Hospital, North Vista  
27 Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven Hills Surgery Center,  
28 Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical Center, St. Rose

1 Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena Campus, Stone  
2 Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery Center, Valley  
3 Hospital Medical Center, and Valley View Surgery Center. *Id.* at ¶ 9.

4 **F. Drs. Duong Knowingly Breach the Employment Agreements by Performing**  
5 **Anesthesia Services at Certain Facilities Without Fielden Hanson's Consent**

6 On November 7, 2018, while Drs. Duong remained employed by Fielden Hanson and  
7 subject to the Employment Agreements, they became managing members of DAP. *Id.* at ¶ 10.  
8 More than two weeks after they became managing members of DAP, Drs. Duong terminated their  
9 employment with Fielden Hanson. *Id.* at ¶ 11.

10 Drs. Duong proceeded to provide anesthesia services at Non-Competition Facilities. *Id.* at  
11 ¶ 12 (identifying Drs. Duong working at St. Rose Dominican Hospital- San Martin Campus and  
12 Summerlin Hospital Medical Center after ceasing their employment with Fielden Hanson). After  
13 learning that Drs. Duong were violating the Non-Competition Clause, Fielden Hanson's counsel  
14 sent cease and desist letters to Drs. Duong notifying them of their breaches of the Employment  
15 Agreements and requesting a response by December 28, 2018 (the "Cease and Desist Letters").  
16 *Id.* at ¶ 13.

17 On December 17, 2018, just four days after the Cease and Desist Letters were mailed, Scott  
18 Duong was seen working at Spring Valley Medical Center, a Scott Duong Non-Competition  
19 Facility, with Dr. Schroer, a surgeon Scott Duong met during his time working for Fielden Hanson.  
20 *Id.* at ¶ 14. One week later, on December 24, 2108, Annie Duong was seen working at Southern  
21 Hills Hospital, an Annie Duong Non-Competition Facility, with Dr. Kim, a surgeon Annie Duong  
22 met during her time working for Fielden Hanson. *Id.* at ¶ 15.

23 On January 3, 2019, Scott Duong performed anesthesia services as Desert Springs Hospital,  
24 a Scott Duong Non-Competition Facility, with Dr. Wood, a doctor Scott Duong met during his  
25 time working for Fielden Hanson. *Id.* at ¶ 16. On January 3, 2019 and January 10, 2019, Annie  
26 Duong performed anesthesia services at Summerlin Hospital, an Annie Duong Non-Competition  
27 Facility. *Id.* at ¶ 17. On January 17, 2019, Scott Duong performed anesthesia services at Southern  
28 Hills Hospital, a Scott Duong Non-Competition Facility. *Id.* at ¶ 18.



Based on these facts, it is clear that Drs. Duong may continue to expand upon their prior breaches of the Employment Agreements and unfairly compete with Fielden Hanson at Non-Competition Facilities during the pendency of this action absent entry of an injunction.

### III. LEGAL ARGUMENT

#### A. Legal Standard

The issuance of mandatory and restrictive injunctions is a well-settled remedy in Nevada. *See City of Reno v. Metley*, 79 Nev. 49, 61, 378 P.2d 256, 262 (1963); *see also Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev. 1, 492 P.2d 1123 (1972); *Harmon v. Tanner Motor Tours of Nevada, Ltd.*, 79 Nev. 4, 377 P.2d 622 (1963). In fact, NRS 33.010 provides:

An injunction may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

NRS 33.010.

For a preliminary injunction to issue, "the moving party must show that there is a likelihood of success on the merits and that the nonmoving party's conduct, should it continue, would cause irreparable harm for which there is no adequate remedy at law." *Department of Conservation and Natural Resources, Div. of Water Resources v. Foley*, 109 P.3d 760, 762 (2005).

The Court should consider the following four factors when determining whether it should enter preliminary injunctive relief:

1. The threat of immediate, irreparable harm;
2. The likelihood that the party seeking a preliminary injunction will be successful on the merits of the underlying action;

3. Whether the balance of interests weighs in favor of the party seeking the preliminary injunction; and

4. Whether issuance of the preliminary injunction is in the public's interest.

*Clark County School District v. Buchanan*, 112 Nev. 1146, 924 P.2d 716 (1996); *see also Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978) (holding that a "preliminary injunction to preserve the status quo is normally available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy").

Here, it is apparent that Fielden Hanson satisfies these elements and is entitled to a preliminary injunction preventing Defendants from further violating the Employment Agreements and infringing on Fielden Hanson's goodwill and business relationships.

**B. Drs. Duong Agreed that Injunctive Relief Should Be Granted Upon Any Alleged Violation of the Non-Competition Clause**

As alleged in the Complaint and explained in detail in the Isaacs Declaration, the Duongs have violated the Non-Competition Clause in their Employment Agreements and continue to do so. Ex. 1 at ¶¶ 11-20. This is the exact conduct that Drs. Duong both conceded would cause Fielden Hanson to suffer irreparable harm. *See* Exs. 1-A, 1-B at ¶ 2.8.3. Furthermore, Drs. Duong also agreed that Fielden Hanson "shall be entitled to injunctive relief to prevent further breaches of the provisions of [the Non-Competition Clause]." *Id.*

Drs. Duong therefore cannot oppose this Motion because they already consented to entry of the requested preliminary injunction in their Employment Agreements. Thus, the Motion must be granted and Drs. Duong must be enjoined from performing anesthesia services at the Non-Competition Facilities.

**C. Fielden Hanson Will Suffer Irreparable Harm if Defendants Are Allowed to Continue Violating the Employment Agreements**

In addition to Drs. Duong having already conceded their conduct would cause Fielden Hanson irreparable harm, the facts in this case have borne out that Fielden Hanson actually is

1 suffering irreparable harm as a result of Defendants' conduct. The Nevada Supreme Court has  
2 found that irreparable harm occurs when a party unreasonably interferes with a business when, for  
3 example, the business's former executive solicits the business's customers, induces employees to  
4 leave the business, and discloses confidential information and trade secrets such as contracts,  
5 pricing structures, customer lists, and product designs after purchasing a competing business.  
6 *Finkel v. Cashman Professional, Inc.*, 270 P.3d 1259, 1263 (Nev. 2012); *see also Guion v. Terra*  
7 *Marketing of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847 (1974) (holding that equity will  
8 "restrain tortious acts where it is essential to preserve a business or property interest."). The  
9 Nevada Supreme Court has also held that "acts committed without just cause which unreasonably  
10 interfere with a business or destroy its credit or profits, may do an irreparable injury and thus  
11 authorize issuance of an injunction." *Sobol v. Capital Management Consultants, Inc.*, 102 Nev.  
12 444, 446, 726 P.2d 335, 337 (1986); *see also Accelerated Care Plus Corp. v. Diversicare Mgmt.*  
13 *Servs. Co.*, 2011 WL 3678798, at \*5 (D. Nev. Aug. 22, 2011) (citing *JAK Productions, Inc. v.*  
14 *Wiza*, 986 F.2d 1080, 1084 (7th Cir.1993)) ("Irreparable harm is easily shown when a former  
15 business associate uses the knowledge gleaned from a former business to compete against that  
16 business in violation of a non-compete.)

17 Furthermore, Nevada court have recognized that employers "commonly rely upon  
18 restrictive covenants, primarily nondisclosure and noncompetition covenants, to safeguard  
19 important business interests" and "[i]njunctive are the only method of effective enforcement for  
20 covenants that are limited in duration." *Traffic Control Services, Inc. v. United Rentals Nw., Inc.*,  
21 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004); *Accelerated Care*, 2011 WL 3678798, at \*4 (citing  
22 *Compass Bank v. Hartley*, 430 F.Supp.2d 973, 982 (D.Ariz.2006)).

23 Here, Defendants have used the knowledge of Fielden Hanson's Facilities and customers  
24 they gained from their employment with Fielden Hanson to compete unfairly against Fielden  
25 Hanson in violation of the Non-Competition Clause. This scenario is exactly what the law seeks  
26 to prevent through the issuance of preliminary injunctions. *See, e.g., Sobol*, 102 Nev. at 446;  
27 *Accelerated Care*, 2011 WL 3678798, at \*5.

Furthermore, it is apparent that Drs. Duong will continue to breach the Non-Competition Clause and inflict further harm on Fielden Hanson's business if not enjoined. Indeed, just days after Fielden Hanson issued the Cease and Desist Letters to Drs. Duong notifying them of their obligations under the terms of the Non-Competition Clause, Scott Duong was seen working at a Scott Duong Non-Competition Facility with surgeons he had developed a relationship with during his time with Fielden Hanson. Ex. 1 at ¶ 14 (noting Scott Duong was seen working at Spring Valley Medical Center with Dr. Schroer on December 17, 2018). One week later, on December 24, 2108, Annie Duong was seen working at Southern Hills Hospital, an Annie Duong Non-Competition Facility, with Dr. Kim, a surgeon Annie Duong met during her time working for Fielden Hanson. *Id.* at ¶ 15.

Unfortunately, these were not isolated incidents. Rather, Drs. Duong have increased the number of Non-Competition Facilities where they are working. On January 3, 2019, Scott Duong performed anesthesia services as Desert Springs Hospital, a Scott Duong Non-Competition Facility, with Dr. Wood, a doctor Scott Duong met during his time working for Fielden Hanson. *Id.* at ¶ 16. On both January 3, 2019 and January 10, 2019, Annie Duong performed anesthesia services at Summerlin Hospital, an Annie Duong Non-Competition Facility, and the next week, on January 17, 2019, Scott Duong performed anesthesia services at Southern Hills Hospital, a Scott Duong Non-Competition Facility. *Id.* at ¶¶ 17-18. This growing list of Non-Competition Facilities where Drs. Duong are working creates an even greater need for a preliminary injunction to issue because it is apparent that Drs. Duong do not intend to comply with the Non-Competition Clause and will continue to increase the number of Non-Competition Facilities where they work if the bargained-for Non-Competition Clause is not enforced. This unjust outcome must be avoided through the issuance of an injunction.

**D. Fielden Hanson Is Likely to Succeed on the Merits of Its Claims**

**1. Defendants Have Breached the Employment Agreements**

A breach of contract claim requires Plaintiffs establish: (1) a valid contract; (2) performance or excuse of performance by the Plaintiffs; (3) material breach by the Defendants;

1 and (4) damages. *Johnston v. International Mixed Martial Arts Federation*, 2015 WL 273619, \*3  
2 (D. Nev. Jan. 22, 2015) (citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 134, 734 P.2d 1238,  
3 1240 (1987)).

4 Here, Fielden Hanson can easily satisfy the elements of its breach of contract claims.  
5 Fielden Hanson satisfies the first element because the Employment Agreements constitute valid  
6 and enforceable contracts between Fielden Hanson and Drs. Duong. In particular, the Non-  
7 Competition Clauses are valid and enforceable because they impose reasonable restrictions that  
8 are specifically targeted to protect Fielden Hanson's legitimate business interests. Rather than  
9 imposing broad territorial restrictions, the Non-Competition Clauses only restrict Drs. Duong from  
10 performing anesthesia services at the specified Non-Competition Facilities. The carefully crafted  
11 Non-Competition Clauses therefore permit Drs. Duong to work at numerous medical centers in  
12 Clark County, Nevada, and elsewhere, including medical centers adjacent to Non-Competition  
13 Facilities if they so desired. This narrow geographic restriction does not unreasonably restrict Drs.  
14 Duong's ability to earn a living and must be enforced. *See* NRS 613.195(5).<sup>1</sup>

15 Fielden Hanson fulfilled the second element of its breach of contract claim by performing  
16 its obligations under the Employment Agreements through employing and compensating Drs.  
17 Duong.<sup>2</sup> Drs. Duong, however, breached the Employment Agreements by, *inter alia*, soliciting  
18 business from Fielden Hanson's Facilities, performing anesthesia services at Non-Competition  
19 Facilities in competition with Fielden Hanson, and failing to withdraw from the medical staff of  
20 all Facilities upon termination of the Employment Agreements. As a direct result of Drs. Duong's  
21 breaches, Fielden Hanson has suffered, and continues to suffer, irreparable harm. Based on these  
22 facts, Fielden Hanson enjoys a high likelihood of prevailing on its breach of contract claims.

23 ...

24 ...

25 \_\_\_\_\_  
26 <sup>1</sup> Even to the extent the Court were to deem the geographic restriction of the Non-Competition Clause unreasonable,  
27 the Court would be obligated to blueline the Non-Competition Clause to render the geographic restriction more  
28 reasonable and would be required to enforce that version of the Non-Competition Clause. NRS 613.195(5).

<sup>2</sup> This employment and compensation served as valid consideration for the Non-Competition Clause. *See Camco, Inc.*  
*v. Baker*, 113 Nev. 512, 517, 936 P.2d 829, 832 (1997).

1           **2. Defendants Have Breached the Implied Covenant of Good Faith and Fair**  
2           **Dealing**

3           Every contract in Nevada “imposes upon the contracting parties the duty of good faith and  
4           fair dealing.” *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046, 862  
5           P.2d 1207, 1209 (1993). This duty “prohibits arbitrary or unfair acts by one party that work to the  
6           disadvantage of the other.” *Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007). If a  
7           party intentionally violates the intention and spirit of a contract, that party should be held liable  
8           for breach of the implied covenant of good faith and fair dealing. *Hilton Hotels*, 109 Nev. at 1048.

9           Here, Drs. Duong entered into the Employment Agreements, which imposed upon them  
10          the duty to act in good faith and avoid taking any unfair action that would harm Fielden Hanson.  
11          Drs. Duong breached this duty by knowingly and intentionally violating the Non-Competition  
12          Clause. They knew that Fielden Hanson entered into the Employment Agreements based on their  
13          commitment to not compete upon termination of the Employment Agreements. Exs. 1-A, 1-B at  
14          2.8.3. Despite acknowledging this material term of the Employment Agreements, Drs. Duong  
15          immediately and unabashedly began violating the terms of the Non-Competition Clause prior to  
16          and following their termination from Fielden Hanson. Ex. 1 at ¶¶ 11-20. Indeed, using the  
17          relationships they developed while working for Fielden Hanson, Drs. Duong began usurping  
18          corporate opportunities from Fielden Hanson and irreparably harming Fielden Hanson. *Id.*

19          Drs. Duong then further evidenced their bad faith by increasing the number of Non-  
20          Competition Facilities where they performed anesthesia services following receipt of the Cease  
21          and Desist Letters. Despite Fielden Hanson P putting Drs. Duong on notice that their work at St.  
22          Rose Dominican Hospital – San Martin and Summerlin Hospital constituted a breach of the  
23          Employment Agreements, Drs. Duong did not cease performing services at Non-Competition  
24          Facilities. Ex. 1 at ¶¶ 12-13. Instead, they began performing anesthesia services at three additional  
25          Non-Competition Facilities. *Id.* at ¶¶ 14-18. Their conduct undoubtedly contravenes the spirit of  
26          the Employment Agreements and renders them liable for breach of the implied covenant of good  
27          faith and fair dealing.  
28

1           **3. Defendants Have Intentionally Interfered with Fielden Hanson's Business**  
2           **Relationships**

3           Under Nevada law, a claim for intentional interference with contractual relations exists  
4           where: (1) there is a valid contract between plaintiff and third party; (2) defendant knew of the  
5           contract; (3) defendant committed intentional acts intended or designed to disrupt the contractual  
6           relationship; (4) there was an actual disruption of the contract; and (5) plaintiff sustained damages  
7           as a result. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 862 P.2d 1207, 1210 (Nev. 1993).

8           Here, Fielden Hanson has contractual or implied contractual business relationships with  
9           the Non-Competition Facilities. Ex. 1 at ¶¶ 8-9. Drs. Duong undeniably knew the Facilities where  
10          they had performed services for Fielden Hanson pursuant to their Employment Agreements. *Id.*  
11          Following their termination from Fielden Hanson, Drs. Duong have been seen performing  
12          anesthesia services at Non-Competition Facilities in contravention of the Non-Competition  
13          Clause. *Id.* at ¶¶ 12-18.

14          Drs. Duong's conduct has actually harmed and disrupted Fielden Hanson's business by  
15          diverting business away from Fielden Hanson. *Id.* at ¶ 19; *see also* Exs. 1-A, 1-B at ¶ 2.8.3  
16          (acknowledging that their breach of the Non-Competition Clause was harm Fielden Hanson and  
17          disrupt Fielden Hanson's business with the Facilities).

18          Based on these facts, Fielden Hanson is likely to prevail on its claim for intentional  
19          interference with business relationships and a preliminary injunction should issue to preclude any  
20          further interference by Defendants.

21          **E. The Balance of Hardships Weighs in Favor of Fielden Hanson**

22          An injunction would impose no hardship on Drs. Duong because they agreed: (1) to abstain  
23          from working at the Non-Competition Facilities for a defined period following the termination of  
24          their employment with Fielden Hanson and (2) to entry of an injunction in the event they breached  
25          the Non-Competition Clause of the Employment Agreements. Exs. 1-A, 1-B at ¶¶ 2.8.1, 2.8.3.  
26          Thus, issuing an injunction would only serve to fulfill Drs. Duong's contractual expectations and  
27          maintain the contractually agreed upon status quo until this lawsuit ends.  
28

1 Furthermore, Drs. Duong will not suffer any undue hardship because the geographic  
2 restrictions of the Non-Competition Clause are reasonable. Unlike some non-compete clauses that  
3 wholly prohibit a former employee from working in all of Clark County, Nevada or specific  
4 radiuses of territory around facilities, the Employment Agreements here are specifically tailored  
5 only to preclude Drs. Duong from working at Facilities they serviced for Fielden Hanson. As a  
6 result, Drs. Duong can perform anesthesia services at a number of medical facilities in Clark  
7 County, Nevada, including medical facilities that may be across the street from Non-Competition  
8 Facilities, during the pendency of this case with an injunction enforcing the Non-Competition  
9 Clause. Drs. Duong therefore can continue to earn a living and will not suffer any harm if an  
10 injunction is issued.

11 Fielden Hanson, on the other hand, would suffer great harm and injustice if an injunction  
12 is not issued. Fielden Hanson has invested significant time and resources into developing  
13 relationships with the Non-Competition Facilities and has built significant goodwill with those  
14 Facilities. Ex. 1 at ¶¶ 3-5. It would be fundamentally unfair to allow Drs. Duong to personally  
15 benefit from Fielden Hanson's efforts during the pendency of this case, especially when doing so  
16 also causes corresponding harm to Fielden Hanson and violates the parties' agreed-upon Non-  
17 Competition Clause.

18 Thus, the balancing of harms clearly weighs in favor of issuing an injunction in this matter.

19 **F. The Public Interest Strongly Favors Granting an Injunction**

20 Nevada has a clear and unmistakable history of affirming its citizens' right to contract and  
21 Nevada has a strong public policy of enforcing non-competition clauses. First, it is undisputed  
22 that Drs. Duong knowingly and voluntarily entered into the Employment Agreements, wherein  
23 they both agreed to the entry of a preliminary injunction in the event they breached the Non-  
24 Competition Clause. Exs. 1-A, 1-B at ¶ 2.8.3. The parties' covenant in the Employment  
25 Agreements must be enforced because Nevada "has an interest in protecting the freedom of persons  
26 to contract, and enforcing contractual rights and obligations" and the only way to ensure that the  
27 parties' right to contract is not violated is by enforcing the agreed upon terms of the Employment  
28



1 Agreements and enjoining Drs. Duong from performing any anesthesia services in violation of the  
2 Non-Competition Clause. *Ellis v. McDaniel*, 95 Nev. 455, 596 P.2d 222, 224 (1979).

3 Second, in addition to Nevada's well-entrenched policy supporting its citizen's right to  
4 contract, it is also undeniable that the Nevada Legislature has indicated this State's robust public  
5 interest in enforcing non-compete clauses. Indeed, when enacting AB 276, the Nevada Legislature  
6 clearly dictated that courts in this State *shall* enforce non-compete clauses or revise nonconforming  
7 non-compete clauses in order to render them valid and enforceable. *See* NRS 613.195(5)<sup>3</sup> ("If an  
8 employer brings an action to enforce a noncompetition covenant and the court finds the covenant  
9 is supported by valuable consideration but contains limitations as to time, geographical area or  
10 scope of activity to be restrained that are not reasonable, impose a greater restraint than is necessary  
11 for the protection of the employer for whose benefit the restraint is imposed and impose undue  
12 hardship on the employee, the court shall revise the covenant to the extent necessary and enforce  
13 the covenant as revised"). Thus, even if this Court were to find the Non-Competition Clause to be  
14 unreasonable, it must blueline the Non-Competition Clause to render it enforceable and issue an  
15 injunction prohibiting Drs. Duong from engaging in any conduct that violates the Non-  
16 Competition Clause as so modified.

17 **G. The Bond Should Be Nominal**

18 The Court should only require a nominal bond for the preliminary injunction because Drs.  
19 Duong already agreed that there should be no bond in the event this Court issues a preliminary  
20 injunction. Exs. 1-A, 1-B at ¶ 2.8.3. Furthermore, the bond should be nominal because the  
21 requested injunction would not interfere with the ability of Drs. Duong to work at numerous  
22 medical facilities in Clark County, Nevada, and elsewhere. Indeed, the requested injunction will  
23 only prevent Defendants from further breaching the Employment Agreements and improperly  
24 interfering with Fielden Hanson's business at the Non-Competition Facilities. Drs. Duong agreed  
25

26 <sup>3</sup> This provision must be applied retroactively because it was adopted specifically to address and overturn the Nevada  
27 Supreme Court's decision in *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016),  
28 wherein the Nevada Supreme Court erroneously voided an entire noncompetition clause instead of bluelining the  
unreasonable provision of the clause. *See* Senate Committee on Commerce, Labor and Energy May 24, 2017 Minutes  
at p. 15


1 that they would not engage in such conduct and thus they cannot suffer any significant harm if the  
2 Court enforces the parties' agreement. Thus, the Court should require a bond of \$1,000.

3  
4 **IV. CONCLUSION**

5 Based on the foregoing, Fielden Hanson respectfully requests that this Court enter a  
6 preliminary injunction enjoining Defendants from performing anesthesia services at any of Fielden  
7 Hanson's Facilities or soliciting any business from any of the Facilities that would interfere with  
8 Fielden Hanson's relationships with the Facilities.

9 DATED this 15<sup>th</sup> day of February 2019.

10 DICKINSON WRIGHT PLLC

11 

12 MICHAEL N. FEDER

13 Nevada Bar No. 7332

14 GABRIEL A. BLUMBERG

15 Nevada Bar No. 12332

16 8363 West Sunset Road, Suite 200

17 Las Vegas, Nevada 89113-2210

18 Attorneys for Plaintiff

19 Las Vegas, Nevada 89113-2210

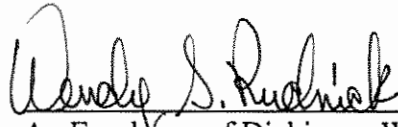
20 Tel: (702) 550-4400

21 *Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 19th day of February 2019, he/she caused a copy of **PLAINTIFF FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD.'S MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME**, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

Ryan O'Malley, Esq.  
**HOWARD & HOWARD**  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
Email: [rto@h2law.com](mailto:rto@h2law.com)  
*Attorney Defendants*

  
An Employee of Dickinson Wright PLLC

# EXHIBIT 1

**DECLARATION OF W. BRADFORD ISAACS, M.D. IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

I, W. Bradford Isaacs, M.D. do hereby state and declare as follows:

1. I am the President of Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson"), and make this Declaration in support of Fielden Hanson's Motion for Preliminary Injunction.

2. I have personal knowledge of the matters set forth herein and know them to be true except for matters set forth herein on information and belief, and as to those matters, I believe them to be true. If called upon to testify, I could and would do so.

3. Fielden Hanson has been providing perioperative and anesthesia services to medical facilities in Clark County, Nevada for decades. Fielden Hanson has spent years and invested significant resources in developing goodwill in Clark County, Nevada.

4. Fielden Hanson hand-selects providers who not only demonstrate excellent clinical knowledge and skill, but also compassion for their patients. In order to uphold the reputation of providing our patients with the best possible care, each of our anesthesiologists has a license to practice medicine and is either Board Certified or Eligible.

5. Fielden Hanson providers perform thousands of anesthesia procedures annually in a wide range of specialties, including cardiothoracic, obstetrics/gyn, general, orthopedics, pediatrics, and neurosurgery.

6. Scott Duong and Annie Duong began working for Fielden Hanson in December 2016. As a bargained-for part of their employment, Scott Duong and Annie Duong each signed an Employment Agreement inclusive of non-compete and non-solicitation provisions, as well as Fielden Hanson's Clinical Code of Conduct. A true and correct copy of Scott Duong's Employment Agreement is attached hereto as Exhibit 1-A. A true and correct copy of Annie Duong's Employment Agreement is attached hereto as Exhibit 1-B.

1  
2 7. As part of their job duties with Fielden Hanson, Scott Duong and Annie Duong  
3 were frequently placed in personal contact with third-party patients, physicians, and physicians'  
4 groups in need of anesthesia administration services. Scott Duong and Annie Duong, through  
5 their employment with Fielden Hanson, were able to obtain valuable information as to the nature  
6 and character of Fielden Hanson's business, including the names of third-party patients,  
7 physicians, and physicians' groups that had ongoing relationships with Fielden Hanson and with  
8 whom Fielden Hanson had developed good will.

9 8. During his employment with Fielden Hanson, Scott Duong administered  
10 anesthesia at the following Facilities: Clear Choice Dental, Desert Springs Hospital, Durango  
11 Outpatient, Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center,  
12 Horizon Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare,  
13 Mountain View Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient  
14 Surgery Center, Seven Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center,  
15 Spring Valley Medical Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose  
16 Dominican Hospital- Siena Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise  
17 Hospital, Sunset Surgery Center, Valley Hospital Medical Center, and Valley View Surgery  
18 Center.

19 9. During her employment with Fielden Hanson, Annie Duong administered  
20 anesthesia at the following Facilities: Affinity Surgery Center, Clear Choice Dental, Desert  
21 Springs Hospital, Durango Outpatient, Flamingo Surgery Center, Henderson Hospital,  
22 Henderson Hospital Surgery Center, Horizon Surgery Center, Las Vegas Regional Surgery  
23 Center, LP, Las Vegas Surgicare, Mountain View Hospital, North Vista Hospital, Parkway  
24 Surgery Center, Sahara Outpatient Surgery Center, Seven Hills Surgery Center, Southern Hills  
25 Hospital, Specialty Surgery Center, Spring Valley Medical Center, St. Rose Dominican Hospital-  
26 San Martin Campus, St. Rose Dominican Hospital- Siena Campus, Stone Creek Surgery Center,  
27  
28

1  
2 Summerlin Hospital, Sunrise Hospital, Sunset Surgery Center, Valley Hospital Medical Center,  
3 and Valley View Surgery Center.

4 10. On November 7, 2018, while Drs. Duong remained employed by Fielden Hanson  
5 and subject to the Employment Agreements, they became managing members of Duong  
6 Anesthesia PLLC.

7 11. More than two weeks after they became managing members of DAP, Drs. Duong  
8 terminated their employment with Fielden Hanson.

9 12. Soon thereafter, Scott Duong and Annie Duong provided anesthesia services at St.  
10 Rose Dominican Hospital- San Martin Campus and Summerlin Hospital Medical Center.

11 13. After learning that Scott Duong and Annie Duong were violating the Non-  
12 Competition Clause by working at St. Rose Dominican Hospital- San Martin Campus and  
13 Summerlin Hospital Medical Center, Fielden Hanson's counsel sent cease and desist letters to  
14 Scott Duong and Annie Duong notifying them of their breaches of the Employment Agreements  
15 and requesting a response by December 28, 2018 (the "Cease and Desist Letters"). True and  
16 correct copies of the Cease and Desist Letters are attached hereto as Exhibits 1-C and 1-D.

17 14. On December 17, 2018, just four days after the Cease and Desist Letters were  
18 mailed, Scott Duong was seen working at Spring Valley Medical Center with Dr. Schroer, a  
19 surgeon Scott Duong met during his time working for Fielden Hanson.

20 15. One week later, on December 24, 2108, Annie Duong was seen working at  
21 Southern Hills Hospital with Dr. Kim, a surgeon Annie Duong met during her time working for  
22 Fielden Hanson.

23 16. On January 3, 2019, Scott Duong performed anesthesia services at Desert Springs  
24 Hospital with Dr. Wood, a doctor Scott Duong met during his time working for Fielden Hanson.

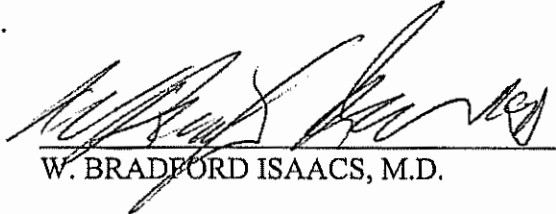
25 17. On both January 3, 2019 and January 10, 2019, Annie Duong performed  
26 anesthesia services at Summerlin Hospital.

1  
2 18. On January 17, 2019, Scott Duong performed anesthesia services at Southern  
3 Hills Hospital.

4 19. Drs. Duong's actions are diverting business away from Fielden Hanson,  
5 interfering with Fielden Hanson's profits, and infringing on Fielden Hanson's goodwill.

6 20. It is my belief that Drs. Duong will continue to violate the Non-Competition  
7 Clause of their Employment Agreements if they are not enjoined immediately. My belief is  
8 based, in part, on the letters Fielden Hanson received in response to its Cease and Desist Letters  
9 wherein Drs. Duong's counsel represented that Drs. Duong believed the Non-Competition  
10 Clause was void and therefore they would not adhere to it. True and correct copies of Drs.  
11 Duong's counsel's responses to the Cease and Desist Letters are attached hereto as Exhibits 1-E  
12 and 1-F.

13 DATED this 13 day of February 2019.

14  
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16 W. BRADFORD ISAACS, M.D.  
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# EXHIBIT 1-A

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT  
BY AND BETWEEN  
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.),  
AND  
SCOTT VINH DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Scott Vinh Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or

charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)

solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or

USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become 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) has become available to Physician on a non-confidential basis from a source other than the Practice and 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 of the Practice of which Physician has knowledge, 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 the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

#### Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 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 the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem



reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

### 3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2

herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

**6.2.5 Termination Upon Disability of Physician.** Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

**6.2.6 Immediate Termination by the Practice.** Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42

U.S.C. § 1320a 7b (the “Anti-Kickback Statute”), 31 U.S.C. § 3729 (the “False Claims Act”), 42 U.S.C. § 1395nn (the “Stark Law”), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician’s ineligibility to be insured against medical malpractice; (vii) Physician’s loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician’s failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice’s request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician’s violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either

party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

6.2.9 Termination Without Cause. Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

6.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall

deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance



Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.



11.6 Waiver of Breach. The waiver by either party or the Clinical Governance Board of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver by such party of any subsequent breach of the same or other provision hereof.

11.7 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by overnight courier, or when received by prepaid certified mail, return receipt requested, addressed as follows:

The Practice:	Anesthesiology Consultants, Inc. P.O. Box 401805 Las Vegas, NV 89140-1805 Attention: President
Physician:	Scott Vinh Duong, M.D. 11350 Blemont Lake Dr., Unit 101 Las Vegas, NV 89135

or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

11.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect such invalidity, illegality or unenforceability thereof shall not affect the remainder of this Agreement which shall be in full force and effect, enforceable in accordance with its terms.

11.9 Gender and Number. Whenever the context of this 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.

11.10 Divisions and Headings. The division of this Agreement into sections and the use of captions and headings in connection therewith is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Entire Agreement. This Agreement, together with the Plan Regarding Compensation for Services, supersedes all previous contracts, and constitutes the entire agreement existing between or among the parties respecting the subject matter hereof, and neither party shall be entitled to other benefits than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect the parties specifically acknowledge that, in entering into and executing this Agreement each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions

to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.


11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

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BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

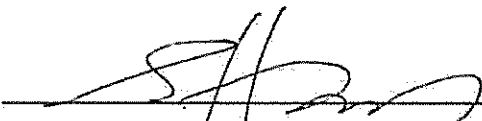
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.)

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PHYSICIAN:

  
Name: Scott Vinh Duong, M.D.

### Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.

Exhibit A

USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) ("**PRCS**") adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation ("**ACI**") on the other hand (each a "**Provider Services Agreement**").

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the "**Plan**"), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or "draw" basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30<sup>th</sup>) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician's projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the "**ACI P&L**"), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A  
to Exhibit A

## Exhibit B

### Clinician Code of Conduct

#### Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

#### Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.



4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

#### Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

#### Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.

# EXHIBIT 1-B

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT  
BY AND BETWEEN  
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.),  
AND  
ANNIE LYNN PENACO DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Annie Lynn Penaco Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or

charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)

solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or



USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become 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) has become available to Physician on a non-confidential basis from a source other than the Practice and 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 of the Practice of which Physician has knowledge, 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 the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 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 the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem

reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

### 3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2

herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

6.2.5 Termination Upon Disability of Physician. Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

6.2.6 Immediate Termination by the Practice. Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42

U.S.C. § 1320a 7b (the “Anti-Kickback Statute”), 31 U.S.C. § 3729 (the “False Claims Act”), 42 U.S.C. § 1395nn (the “Stark Law”), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician’s ineligibility to be insured against medical malpractice; (vii) Physician’s loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician’s failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice’s request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician’s violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either

party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

6.2.9 Termination Without Cause. Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

6.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall



deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance



Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.

11.6 Waiver of Breach. The waiver by either party or the Clinical Governance Board of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver by such party of any subsequent breach of the same or other provision hereof.

11.7 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by overnight courier, or when received by prepaid certified mail, return receipt requested, addressed as follows:

The Practice:	Anesthesiology Consultants, Inc. P.O. Box 401805 Las Vegas, NV 89140-1805 Attention: President
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Physician:	Annie Lynn Penaco Duong, M.D. 11350 Blemont Lake Dr., Unit 101 Las Vegas, NV 89135
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or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

11.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect such invalidity, illegality or unenforceability thereof shall not affect the remainder of this Agreement which shall be in full force and effect, enforceable in accordance with its terms.

11.9 Gender and Number. Whenever the context of this 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.

11.10 Divisions and Headings. The division of this Agreement into sections and the use of captions and headings in connection therewith is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Entire Agreement. This Agreement, together with the Plan Regarding Compensation for Services, supersedes all previous contracts, and constitutes the entire agreement existing between or among the parties respecting the subject matter hereof, and neither party shall be entitled to other benefits than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect the parties specifically acknowledge that, in entering into and executing this Agreement each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions

to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.

11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY  
BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.)

By: \_\_\_\_\_

*Jason N. Workman*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PHYSICIAN:

*Annie Penaco Duong*

Name: Annie Lynn Penaco Duong, M.D.

### Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.

## Exhibit A

### USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) (“**PRCS**”) adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (“**ACF**”) on the other hand (each a “**Provider Services Agreement**”).

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the “**Plan**”), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or “draw” basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30<sup>th</sup>) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician’s projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the “**ACI P&L**”), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)



## Exhibit B

### Clinician Code of Conduct

#### Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

#### Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.

4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

#### Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

#### Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.

# EXHIBIT 1-C



December 13, 2018

Via Certified Mail

Scott Duong, M.D.  
12133 Edgehurst Ct.  
Las Vegas, Nevada 89138

RE: Partner-Track Physician Employment Agreement ("Agreement"), between Scott Duong, M.D. ("you") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. a subsidiary of U.S. Anesthesia Partners, Inc. ("USAP") dated December 2, 2016

Dear Dr. Scott Vinh Duong:

Our law firm has been retained to assure your compliance with the Non-Competition provision of the Partner-Track Employment Agreement that you willingly and voluntarily entered into on December 2, 2016 ("the Agreement"), a copy of which is attached to this correspondence. Section 2.8 expressly states that you recognized that USAP's decision to enter into the Agreement with you was induced primarily because of your covenants and assurances of your non-competition and nonsolicitation were necessary in order to protect USAP from unfair business competition.

Despite the above, since your departure from USAP it has come to its attention that you have breached the Non-Competition provision of the Agreement Section 2.8.1. More specifically, based upon information and belief, you provided professional anesthesia services at St. Rose Dominican Hospital- San Martin campus and Summerlin Hospital Medical Center prior to the expiration of the 24-month term as defined in Agreement upon end of employment with USAP.

Section 2.8.1 specifically prohibits you from directly or indirectly providing anesthesia and/or pain management services, or consultation, management and/or administrative services related thereto, geographically located at any of the facilities defined on page one (1) of the Agreement where such services were provided by you or USAP during the term of your employment at USAP. At the time you executed the Agreement and accepted compensation during your employment, you were fully aware of the Non-Competition provision of Section 2.8.1 and the geographic restriction of the facilities subject to it.

It has also come to USAP's attention that on November 7, 2018 you became a managing member of Duong Anesthesia, PLLC. Yet this was nearly three weeks prior to the end of your employment with USAP on November 25, 2018. You doing so violated multiple provisions of the Agreement including: 1) page two (2) section one (1) regarding your employment with USAP on an exclusive basis unless otherwise approved by USAP which did not occur here; 2) section 2.1 that all of your professional anesthesiology and pain management services shall be

provided solely and exclusively as an employee of USAP unless you received prior written consent of USAP which did not occur here; and 3) section 2.8.1 precluding you for two years becoming an officer or agent of any person or entity which provides anesthesia services at any of the facilities which you provided anesthesia.

You have additionally breached Section 6.3 by not withdrawing from the medical staff of every facility in which you hold medical staff privileges.

As you are undoubtedly aware, USAP and its physician have spent years developing client relations with facilities and physicians in the Las Vegas medical community. The Non-Competition provisions of the Agreement are important protections for the economic interests of the physicians and USAP. By your actions at St. Rose Dominican Hospital- San Martin campus and Summerlin Hospital Medical Center, you have breached the Non-Competition provision.

If you have not notified our firm by December 28, 2018 that you intend to immediately cease your clear violations of Section 2.8.1 of the Agreement we will have no alternative but to commence litigation in Clark County District Court to secure your compliance and seek damages against you for the irreparable harm your conduct has caused and continues to cause upon USAP.

USAP takes this matter very seriously and reserves all rights and remedies it may have, in equity and at law, with respect to the matter set forth herein. I look forward to hearing from you or your counsel.

Very truly yours,



JOHN H. COTTON

Enclosures as listed

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT  
BY AND BETWEEN  
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.),  
AND  
SCOTT VINH DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Scott Vinh Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or



charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)

solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or

USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become 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) has become available to Physician on a non-confidential basis from a source other than the Practice and 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 of the Practice of which Physician has knowledge, 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 the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

#### Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 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 the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem

reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

### 3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2



herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

6.2.5 Termination Upon Disability of Physician. Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

6.2.6 Immediate Termination by the Practice. Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42



U.S.C. § 1320a 7b (the “Anti-Kickback Statute”), 31 U.S.C. § 3729 (the “False Claims Act”), 42 U.S.C. § 1395nn (the “Stark Law”), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician’s ineligibility to be insured against medical malpractice; (vii) Physician’s loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician’s failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice’s request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician’s violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either

party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

**6.2.9 Termination Without Cause.** Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

**6.3 Effect of Expiration or Termination.** Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall

deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance

Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.

11.6 Waiver of Breach. The waiver by either party or the Clinical Governance Board of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver by such party of any subsequent breach of the same or other provision hereof.

11.7 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by overnight courier, or when received by prepaid certified mail, return receipt requested, addressed as follows:

The Practice:                      Anesthesiology Consultants, Inc.  
P.O. Box 401805  
Las Vegas, NV 89140-1805  
Attention: President

Physician:                          Scott Vinh Duong, M.D.  
11350 Blemont Lake Dr., Unit 101  
Las Vegas, NV 89135

or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

11.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect such invalidity, illegality or unenforceability thereof shall not affect the remainder of this Agreement which shall be in full force and effect, enforceable in accordance with its terms.

11.9 Gender and Number. Whenever the context of this 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.

11.10 Divisions and Headings. The division of this Agreement into sections and the use of captions and headings in connection therewith is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Entire Agreement. This Agreement, together with the Plan Regarding Compensation for Services, supersedes all previous contracts, and constitutes the entire agreement existing between or among the parties respecting the subject matter hereof, and neither party shall be entitled to other benefits than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect the parties specifically acknowledge that, in entering into and executing this Agreement each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions

to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.

11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY  
BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.)

By: Jason N. Workman  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PHYSICIAN:

Scott Vinh Duong  
Name: Scott Vinh Duong, M.D.

### Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.



## Exhibit A

### USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) (“**PRCS**”) adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (“**ACI**”) on the other hand (each a “**Provider Services Agreement**”).

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the “**Plan**”), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or “draw” basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30<sup>th</sup>) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician’s projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the “**ACI P&L**”), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A  
to Exhibit A

## Exhibit B

### Clinician Code of Conduct

#### Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

#### Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.

4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

#### Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

#### Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.



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\$8.04 0  
US POSTAGE  
FIRST-CLASS  
06250009108708  
89117



B66540.02

JOHN H. COTTON & ASSOCIATES, Ltd



Via Certified Mail

Scott Duong, M.D.  
12133 Edgehurst Ct.  
Las Vegas, Nevada 89138

7900

WEST

SAHARA

SUITE 200

LAS VEGAS,

NEVADA

89117

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

SCOTT DUONG, M.D.  
12133 Edgelyhurst Ct.  
Las Vegas, NV 89138



9590 9402 3612 7305 5022 20

**2. Article Number (Transfer from service label)**

7017 3380 0000 8128 2893

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

X

☐ Agent

☐ Addressee

**B. Received by (Printed Name)****C. Date of Delivery**

**D. Is delivery address different from Item 1?** ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
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| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

# EXHIBIT 1-D





December 13, 2018

Via Certified Mail

Annie Duong, M.D.  
12133 Edgehurst Ct.  
Las Vegas, Nevada 89138

RE: Partner-Track Physician Employment Agreement ("Agreement"), between Annie Duong, M.D. ("you") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. a subsidiary of U.S. Anesthesia Partners, Inc. ("USAP") dated December 2, 2016

Dear Dr. Annie Lynn Penaco Duong:

Our law firm has been retained to assure your compliance with the Non-Competition provision of the Partner-Track Employment Agreement that you willingly and voluntarily entered into on December 2, 2016 ("the Agreement"), a copy of which is attached to this correspondence. Section 2.8 expressly states that you recognized that USAP's decision to enter into the Agreement with you was induced primarily because of your covenants and assurances of your non-competition and nonsolicitation were necessary in order to protect USAP from unfair business competition.

Despite the above, since your departure from USAP it has come to its attention that you have breached the Non-Competition provision of the Agreement Section 2.8.1. More specifically, based upon information and belief, you provided professional anesthesia services in violation of that section prior to the expiration of the 24-month term as defined in Agreement upon end of employment with USAP.

Section 2.8.1 specifically prohibits you from directly or indirectly providing anesthesia and/or pain management services, or consultation, management and/or administrative services related thereto, geographically located at any of the facilities defined on page one (1) of the Agreement where such services were provided by you or USAP during the term of your employment at USAP. At the time you executed the Agreement and accepted compensation during your employment, you were fully aware of the Non-Competition provision of Section 2.8.1 and the geographic restriction of the facilities subject to it.

It has also come to USAP's attention that on November 7, 2018 you became a managing member of Duong Anesthesia, PLLC. Yet this was nearly three weeks prior to the end of your employment with USAP on November 25, 2018. You doing so violated multiple provisions of the Agreement including: 1) page two (2) section one (1) regarding your employment with USAP on an exclusive basis unless otherwise approved by USAP which did not occur here; 2) section 2.1 that all of your professional anesthesiology and pain management services shall be provided solely and exclusively as an employee of USAP unless you received prior

written consent of USAP which did not occur here; and 3) section 2.8.1 precluding you for two years becoming an officer or agent of any person or entity which provides anesthesia services at any of the facilities which you provided anesthesia.

You have additionally breached Section 6.3 by not withdrawing from the medical staff of every facility in which you hold medical staff privileges.

As you are undoubtedly aware, USAP and its physician have spent years developing client relations with facilities and physicians in the Las Vegas medical community. The Non-Competition provisions of the Agreement are important protections for the economic interests of the physicians and USAP. By your actions, you have breached the Non-Competition provision.

If you have not notified our firm by December 28, 2018 that you intend to immediately cease your clear violations of Section 2.8.1 of the Agreement we will have no alternative but to commence litigation in Clark County District Court to secure your compliance and seek damages against you for the irreparable harm your conduct has caused and continues to cause upon USAP.

USAP takes this matter very seriously and reserves all rights and remedies it may have, in equity and at law, with respect to the matter set forth herein. I look forward to hearing from you or your counsel.

Very truly yours,



JOHN H. COTTON

Enclosures as listed

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT  
BY AND BETWEEN  
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.),  
AND  
ANNIE LYNN PENACO DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Annie Lynn Penaco Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or

charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)



solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or



USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become 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) has become available to Physician on a non-confidential basis from a source other than the Practice and 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 of the Practice of which Physician has knowledge, 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 the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

#### Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 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 the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem

reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

### 3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2

herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

**6.2.5 Termination Upon Disability of Physician.** Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

**6.2.6 Immediate Termination by the Practice.** Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42

U.S.C. § 1320a 7b (the “Anti-Kickback Statute”), 31 U.S.C. § 3729 (the “False Claims Act”), 42 U.S.C. § 1395nn (the “Stark Law”), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician’s ineligibility to be insured against medical malpractice; (vii) Physician’s loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician’s failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice’s request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician’s violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either



party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

**6.2.9 Termination Without Cause.** Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

**6.3 Effect of Expiration or Termination.** Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall

deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance



Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.



to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.


11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

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BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,  
ROBISON, YEH, LTD. (D/B/A  
ANESTHESIOLOGY CONSULTANTS, INC.)

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PHYSICIAN:

  
Name: Annie Lynn Penaco Duong, M.D.

### Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.

## Exhibit A

### USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) (“**PRCS**”) adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (“**ACT**”) on the other hand (each a “**Provider Services Agreement**”).

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the “**Plan**”), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or “draw” basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30<sup>th</sup>) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician’s projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the “**ACI P&L**”), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A  
to Exhibit A



## Exhibit B

### Clinician Code of Conduct

#### Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

#### Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.

4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

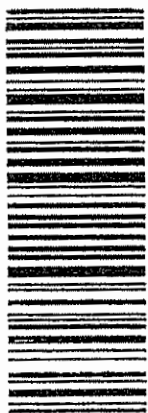
#### Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

#### Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.

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JOHN H. COTTON & ASSOCIATES, Ltd



Via Certified Mail

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WEST  
SAHARA  
SUITE 200  
LAS VEGAS,  
NEVADA  
89117

Annie Duong, M.D.  
12133 Edgelyurst Ct.  
Las Vegas, Nevada 89138

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature</p> <p><b>X</b> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p>	
<p>1. Article Addressed to:</p> <p>Annie Duong, M.D. 12133 Edgelyhurst Ct. Las Vegas, NV 89138</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>
<p>2. Article Number (Transfer from service label)</p> <p>7017 3380 0000 8128 2886</p>		<p>D. Is delivery address different from item 17 <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>			
<p>9590 9402 3612 7305 5022 44</p>			
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

# EXHIBIT 1-E

# Howard & Howard

law for business

Ann Arbor

Chicago

Detroit

Las Vegas

Los Angeles

Peoria

Tel: 702.667.4811 (direct)

Ryan T. O'Malley  
Attorney

email: rto@h2law.com

January 17, 2019

**VIA UPS AND E-MAIL:**

US Anesthesia Partners

Attn: Amy Marie Sanford, General Counsel

12222 Merit Drive, Suite 700

Dallas, TX 75251

E-mail address: [amy.sanford@usap.com](mailto:amy.sanford@usap.com)

John H. Cotton & Associates, Ltd.

Attn: John H. Cotton, Esq.

7900 W. Sahara Avenue, Suite #200

Las Vegas, NV 89117

E-mail address: [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**RE: Cease and Desist Letter to Scott Duong, M.D.**

Dear Ms. Sanford:

This office has been retained to represent the interests of Scott Duong, M.D. ("Dr. Duong") with respect to the above-referenced matter. We received your correspondence dated December 13, 2018, alleging that Dr. Duong had breached a covenant not to compete, and demanding that he cease and desist from continuing to perform procedures at Summerlin Hospital and St. Rose Dominican Hospital – San Martin Campus.

The non-compete that you are now seeking to enforce has been held to be void under Nevada law because it is unreasonable and does not serve to protect USAP's legitimate business interests, among other reasons. *See US Anesthesia Partners v. Tang*, No. A-18-783054-C. A brief summary of the applicable law follows.

***Factual Background***

As you know, Dr. Duong worked at Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI"), which is now known as US Anesthesia Partners ("USAP"). On December 2, 2016, in connection with his employment, Dr. Duong executed a Partner-Track Employment Agreement ("Agreement"), which contained the following covenant not to compete:

In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

The covenant not to compete casts its scope in terms of "Facilities," which the Agreement defines as follows:

All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities".

The covenant not to compete lacks any geographic limitation, nor does it include any further qualifying language distinguishing particular facilities or customers to which it may apply.

### *Legal Summary*

An agreement by an employee not to compete is generally considered a restraint of trade and unenforceable, unless it is reasonable in scope and breadth. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 404, 632 P.2d 1155, 1158-59 (1981). A restraint of trade is unreasonable if it is more burdensome than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted. *Ellis v. McDaniel*, 95 Nev. 455,

458, 596 P.2d 222, 224 (1979). Nevada courts therefore “strictly construe the language of covenants not to compete; and in the case of an ambiguity, that language is construed against the drafter.” *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 489, 117 P.3d 219, 225 (2005). Post-employment anti-competitive covenants such as the one at issue here are subject to greater scrutiny than are similar covenants incident to the sale of a business. *Hotel Riviera*, 97 Nev. at 404, 632 P.2d at 1158–59.

In *US Anesthesia Partners v. Tang*, the Eighth Judicial District Court applied these principles and held that the non-compete at issue here is unreasonable and wholly unenforceable for the following reasons:

1. The “Facilities” referenced in the non-compete clause of the Agreement between USAP and an employee physician re so vague as to render the clause unreasonable in its scope. As defined in the Agreement, the facilities from which a former employee would be prohibited from providing anesthesiology/pain management services or soliciting business include:

- a. All facilities with which USAP has a contract to supply healthcare providers;
- b. Facilities at which those providers provided anesthesiology and pain management services; and
- c. Facilities with which USAP had “active negotiations”;

all during the unspecified term of the physician’s employment and the twelve months preceding his term of employment.

2. The non-compete clause fails to designate facilities or a geographic boundary where the former employee is prohibited from practicing or soliciting business with any specificity.

3. The non-competition agreement fails to consider whether or to what extent USAP’s contracts with facilities survive after their creation, or whether USAP’s “active negotiations” yield actual contracts by the end of the physician’s term of employment. At the time of signing the agreement, this potentially prohibits the employee from working with or soliciting any of USAP’s past, current, or future customers.

4. The scope of the clause is subject to change over the course of a physician’s employment, and even after the physician’s departure, based upon relationships with facilities USAP establishes after execution of the Agreement. An employee therefore cannot reasonably ascertain or anticipate the scope of the clause at the time of its execution.

5. The non-compete clause lacks any geographic limitation or qualifying language distinguishing the particular facilities or customers to which it applies.



Amy Marie Sanford

January 17, 2019

Page 4 of 4

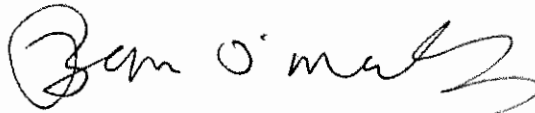
See Minute Order, attached to this correspondence as **Exhibit A**. Because the non-compete clause is overbroad, it is wholly unenforceable, and a court may not modify or "blue-pencil" it to make it reasonable. See *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016).<sup>1</sup> The non-compete clause, as a whole, is void.

Your invocation of an unenforceable non-compete clause to prevent Dr. Duong from working with medical providers who do not even conduct business with USAP merely because the procedures will be performed at Summerlin Hospital or St. Rose Hospital cannot possibly serve to protect any legitimate business interest on the part of USAP. Dr. Duong's actions have not had, and will not have, any effect on USAP's business.

Be advised that if you proceed to take legal action against Dr. Duong, he will vigorously oppose any proceedings and will seek to recover all fees and costs in defending himself against such frivolous allegations.

Sincerely,

**HOWARD & HOWARD ATTORNEYS, PLLC**



Ryan T. O'Malley

4839-4670-0677, v. 1

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<sup>1</sup> On June 3, 2017, the Nevada Legislature enacted AB 276, which modifies *Golden Road's* holding with respect to the construction and severability of non-compete agreements. However, the Agreement at issue in this case was executed on December 2, 2016, well before the enactment of AB 276, but after the holding in *Golden Road*, which was decided on July 21, 2016. Thus, the holding in *Golden Road* controls.

# EXHIBIT 1-F

# Howard & Howard

law for business

0010.5  
10/15

Ann Arbor

Chicago

Detroit

Las Vegas

Los Angeles

Peoria

Tel: 702.667.4811 (direct)

Ryan T. O'Malley  
Attorney

email: rto@h2law.com

January 14, 2019

**VIA UPS AND E-MAIL:**

US Anesthesia Partners

Attn: Amy Marie Sanford, General Counsel

12222 Merit Drive, Suite 700

Dallas, TX 75251

E-mail address: [amy.sanford@usap.com](mailto:amy.sanford@usap.com)

John H. Cotton & Associates, Ltd.

Attn: John H. Cotton, Esq.

7900 W. Sahara Avenue, Suite #200

Las Vegas, NV 89117

E-mail address: [jhcotton@jhcottonlaw.com](mailto:jhcotton@jhcottonlaw.com)

**RE: Cease and Desist Letter to Annie Lynn Penaco Duong, M.D.**

Dear Ms. Sanford:

This office has been retained to represent the interests of Annie Lynn Penaco Duong, M.D. ("Dr. Duong") with respect to the above-referenced matter. We received your correspondence dated December 13, 2018, alleging that Dr. Duong had breached a covenant not to compete, and demanding that she cease performing any conduct which US Anesthesia Partners ("USAP") believes violates the agreement.

This request is impossible to evaluate, as USAP does not articulate any specific conduct that it believes violates the non-compete provision; rather, it states only that "based upon information and belief, [Dr. Duong] provided professional anesthesia services in violation of [the non-compete provision] prior to the expiration of the 24-month term as defined in [the] Agreement[.]" In any case, the provision you seek to enforce is void under Nevada law because it is unreasonable and does not serve to protect USAP's legitimate business interests, among other reasons. *See US Anesthesia Partners v. Tang*, No. A-18-783054-C. A brief summary of the applicable law follows.

***Factual Background***

As you know, Dr. Duong worked at Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI"), which is now known as US Anesthesia Partners. On December 2, 2016, in connection with her employment, Dr. Duong executed a Partner-Track Employment Agreement ("Agreement"), which contained the following covenant not to compete:

[www.howardandhoward.com](http://www.howardandhoward.com)

Wells Fargo Tower, Suite 1000, 3800 Howard Hughes Parkway, Las Vegas, NV 89169-5980

tel 702.667.4811 fax 702.567.1568

00156

In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

The covenant not to compete casts its scope in terms of "Facilities," which the Agreement defines as follows:

All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities".

The covenant not to compete lacks any geographic limitation, nor does it include any further qualifying language distinguishing particular facilities or customers to which it may apply.

### *Legal Summary*

An agreement by an employee not to compete is generally considered a restraint of trade and unenforceable, unless it is reasonable in scope and breadth. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 404, 632 P.2d 1155, 1158-59 (1981). A restraint of trade is unreasonable if it is more burdensome than is required for the protection of the person for whose benefit the restraint is

imposed or imposes undue hardship upon the person restricted. *Ellis v. McDaniel*, 95 Nev. 455, 458, 596 P.2d 222, 224 (1979). Nevada courts therefore “strictly construe the language of covenants not to compete; and in the case of an ambiguity, that language is construed against the drafter.” *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 489, 117 P.3d 219, 225 (2005). Post-employment anti-competitive covenants such as the one at issue here are subject to greater scrutiny than are similar covenants incident to the sale of a business. *Hotel Riviera*, 97 Nev. at 404, 632 P.2d at 1158–59.

In *US Anesthesia Partners v. Tang*, the Eighth Judicial District Court applied these principles and held that the non-compete at issue here is unreasonable and wholly unenforceable for the following reasons:

1. The “Facilities” referenced in the non-compete clause of the Agreement are so vague as to render the clause unreasonable in its scope. As defined in the Agreement, the facilities from which a former employee would be prohibited from providing anesthesiology/pain management services or soliciting business include:

- a. All facilities with which USAP has a contract to supply healthcare providers;
- b. Facilities at which those providers provided anesthesiology and pain management services; and
- c. Facilities with which USAP had “active negotiations”;

all during the unspecified term of a physician’s employment and the twelve months preceding his or her term of employment.

2. The non-compete clause fails to designate facilities or a geographic boundary where the former employee is prohibited from practicing or soliciting business with any specificity.

3. The non-competition agreement fails to consider whether or to what extent USAP’s contracts with facilities survive after their creation, or whether USAP’s “active negotiations” yield actual contracts by the end of the physician’s term of employment. At the time of signing the agreement, this potentially prohibits the employee from working with or soliciting any of USAP’s past, current, or future customers.

4. The scope of the clause is subject to change over the course of a physician’s employment, and even after the physician’s departure, based upon relationships with facilities USAP establishes after execution of the Agreement. An employee therefore cannot reasonably ascertain or anticipate the scope of the clause at the time of its execution.

5. The non-compete clause lacks any geographic limitation or qualifying language distinguishing the particular facilities or customers to which it applies.

Amy Marie Sanford  
January 17, 2019  
Page 4 of 4

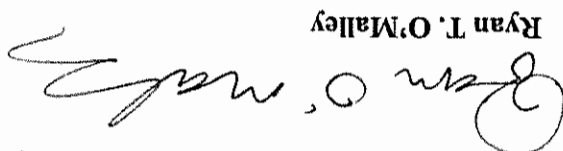
See Minute Order, attached to this correspondence as Exhibit A. Because the non-compete clause is overbroad, it is wholly unenforceable, and a court may not modify or "blue-pencil" it to make it reasonable. See *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016).<sup>1</sup> The non-compete clause, as a whole, is void.

Your invocation of an unenforceable non-compete clause to prevent Dr. Duong from working with any surgeon (whether or not they are USAP clients) at any healthcare facility with which USAP has any sort of past, present, or potential future relationship is not reasonably related to any legitimate business interest of USAP. Dr. Duong's actions have not had, and will not have, any effect on USAP's business.

Be advised that if you proceed to take legal action against Dr. Duong, she will vigorously oppose any proceedings and will seek to recover all fees and costs in defending herself against such frivolous allegations.

Sincerely,

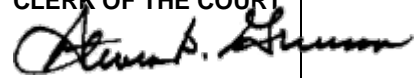
HOWARD & HOWARD ATTORNEYS, PLLC



Ryan T. O'Malley

4810-9976-9733, v. 1

<sup>1</sup> On June 3, 2017, the Nevada Legislature enacted AB 276, which modifies *Golden Road's* holding with respect to the construction and severability of non-compete agreements. However, the Agreement at issue in this case was executed on December 2, 2016, well before the enactment of AB 276, but after the holding in *Golden Road*, which was decided on July 21, 2016. Thus, the holding in *Golden Road* controls.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**  
\* \* \* \*

FIELDEN HANSON ISAACS MIYADA	Case No.: A-19-789110-B
ROBISON YEH, LTD., PLAINTIFF(S)	DEPARTMENT 11
VS.	
SCOTT DUONG, M.D., DEFENDANT(S)	

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Elizabeth Gonzalez.

☒ This reassignment follows the filing of a Peremptory Challenge of Judge Timothy Williams.

Any Trial Date And Associated Trial Hearings Stand But May Be Reset By The New Department. Please Include The New Department Number On All Future Filings.

STEVEN D. GRIERSON, CEO/Clerk of the Court

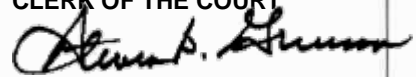
By: /s/ Joshua Raak  
Joshua Raak, Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that this 15th day of February, 2019

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-19-789110-B.

/s/ Joshua Raak  
Joshua Raak, Deputy Clerk of the Court



1 **ACSR**  
2 **DICKINSON WRIGHT PLLC**  
3 **MICHAEL N. FEDER**  
4 Nevada Bar No. 7332  
5 Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
6 **GABRIEL A. BLUMBERG**  
7 Nevada Bar No. 12332  
8 Email: [gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)  
9 8363 West Sunset Road, Suite 200  
10 Las Vegas, Nevada 89113-2210  
11 Tel: (702) 550-4400  
12 Fax: (844) 670-6009

13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **FIELDEN HANSON ISAACS MIYADA**  
17 **ROBISON YEH, LTD.,**

18 **Plaintiff,**

19 **vs.**

20 **SCOTT VINH DUONG, M.D., ANNIE LYNN**  
21 **PENACO DUONG, M.D., DUONG**  
22 **ANESTHESIA, PLLC and DOE Defendants I-**  
23 **X,**

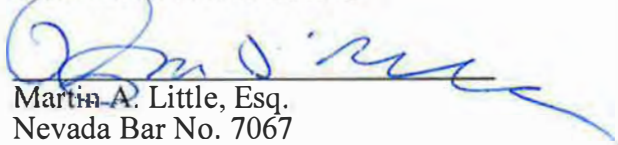
24 **Defendants.**

Case No.: A-19-789110-B  
Dept.: 11

**ACCEPTANCE OF SERVICE**

25 Acceptance of service of the Summons and Complaint on behalf of Defendants Scott  
26 Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D. and Duong Anesthesia, PLLC is hereby  
27 acknowledged this 18 day of February 2019 in the above-entitled matter.

**HOWARD & HOWARD**



Martin A. Little, Esq.  
Nevada Bar No. 7067  
Ryan O'Malley, Esq.  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
Email: [rto@h2law.com](mailto:rto@h2law.com)  
*Attorney Defendants*





**IAFD**

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

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*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**

**DEPT. No. XI**

**NRCP 7.1 DISCLOSURE  
STATEMENT**

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1 Pursuant to NRCP 7.1, DUONG ANESTHESIA, PLLC, Defendant in the above-  
2 captioned case, by and through its undersigned counsel of record, hereby certifies that there is  
3 no parent corporation or publicly held corporation that owns ten percent (10%) or more of,  
4 DUONG ANESTHESIA, PLLC.

5 These representations are made in order that the judges of this Court may evaluate  
6 possible disqualification or recusal.

7  
8 DATED this 22<sup>nd</sup> day of February, 2019.

9  
10  
11 **HOWARD & HOWARD ATTORNEYS PLLC**

12 */s/ Ryan T. O'Malley*  
13 By: \_\_\_\_\_  
14 Martin A. Little (#7067)  
15 Ryan T. O'Malley (#12461)  
16 3800 Howard Hughes Pkwy, Suite 1000  
17 Las Vegas, Nevada 89169  
18 Telephone No. (702) 257-1483  
19 Facsimile No. (702) 567-1568  
20 *Attorneys for Defendants*  
21  
22  
23  
24  
25  
26  
27

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over  
3 the age of 18 years and not a party to this action. My business address is that of Howard &  
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,  
5 89169.

6 On the 22<sup>nd</sup> day of February, 2019, I served the foregoing **NRCP 7.1 DISCLOSURE**  
7 **STATEMENT** in this action or proceeding electronically with the Clerk of the Court via the  
8 Odyssey E-File and Serve System, which will cause this document to be served upon the  
9 following counsel of record:

10  
11 Michael N. Feder, Esq.  
12 Gabriel A. Blumberg, Esq.  
13 DICKINSON WRIGHT PLLC  
14 8363 West Sunset Road, Suite 200  
15 Las Vegas, NV 89113-2210  
16 Tel: (702) 550-4400  
17 Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
18 [gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)

19 *Attorneys for Plaintiff*

20 /s/ Anya Ruiz

21 

---

An Employee of HOWARD & HOWARD ATTORNEYS PLLC

22 4822-5170-5737, v. 1



**IAFD**

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

**HOWARD & HOWARD ATTORNEYS PLLC**

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Telephone: (702) 257-1483

Facsimile: (702) 567-1568

E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [rto@h2law.com](mailto:rto@h2law.com)

*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**

**DEPT. No. XI**

**DEFENDANTS' INITIAL  
APPEARANCE FEE DISCLOSURE  
(NRS CHAPTER 19)**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted  
for parties appearing in the above entitled action as indicated below:

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SCOTT VINH DUONG, M.D	\$1,483.00
ANNIE LYNN PENACO DUONG, M.D	\$ 30.00
<u>DUONG ANESTHESIA, PLLC</u>	<u>\$ 30.00</u>
<b>Total:</b>	<b>\$1,543.00</b>

DATED this 22<sup>nd</sup> day of February, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

By: /s/ Ryan T. O'Malley  
Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
3800 Howard Hughes Pkwy, Suite 1000  
Las Vegas, Nevada 89169  
Telephone No. (702) 257-1483  
Facsimile No. (702) 567-1568  
*Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over  
3 the age of 18 years and not a party to this action. My business address is that of Howard &  
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,  
5 89169.

6 On the 22<sup>nd</sup> day of February, 2019, I served the foregoing **DEFENDANTS' INITIAL**  
7 **APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)** in this action or proceeding  
8 electronically with the Clerk of the Court via the Odyssey E-File and Serve System, which will  
9 cause this document to be served upon the following counsel of record:

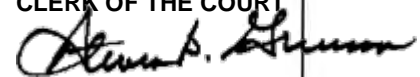
10  
11 Michael N. Feder, Esq.  
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17 Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
18 [gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)

19 ***Attorneys for Plaintiff***

20 */s/ Anya Ruiz*

21 An Employee of HOWARD & HOWARD ATTORNEYS PLLC

22 4832-9464-5385, v. 1



1 **SAO**

2 Martin A. Little (#7067)

3 Ryan T. O'Malley (#12461)

4 **HOWARD & HOWARD ATTORNEYS PLLC**

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Telephone: (702) 257-1483

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E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [rto@h2law.com](mailto:rto@h2law.com)

Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **FIELDON HANSON ISAACS MIYADA**

10 **ROBINSON YEH, LTD.,**

11 **Plaintiff,**

12 **vs.**

13 **SCOTT VINH DUONG, M.D., ANNIE LYNN**

14 **PENACO DUONG, M.D., DUONG**

15 **ANESTHESIA, PLLC and DOE**

16 **DEFENDANTS I-X,**

17 **Defendants.**

**CASE No. A—19-789110-B**

**DEPT. No. XI**

**STIPULATION AND ORDER TO CONTINUE  
HEARING ON MOTION FOR PRELIMINARY  
INJUNCTION**

18 Plaintiff Fieldon Hanson Isaacs Miyada Robinson Yeh, Ltd. ("Fieldon Hanson" or  
19 "Plaintiff") stipulates with Defendants Scott Vinh Duong, M.D. ("Scott"); Annie Lynn Penaco  
20 Duong, M.D. ("Annie"); and Duong Anesthesia, PLLC ("Duon Anesthesia") (collectively  
21 "Defendants") as follows:

- 22 1. The hearing on Plaintiff's Motion for Preliminary Injunction ("Motion")  
23 currently set for hearing on February 25, 2019 at 9:00 a.m. is hereby continued  
24 to **March 4, 2019 at 9:00 a.m.**
- 25 2. Defendants' Opposition to the Motion shall be filed on or before February 25,  
26 2019.

Howard & Howard, Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483

Howard & Howard, Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483

3. Plaintiff's Reply in support of its Motion shall be filed on or before March 1, 2019.

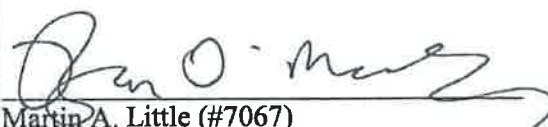
**IT IS SO STIPULATED:**


Dated this 21st day of February, 2019.

Dated this 21st day of February, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

**DICKINSON WRIGHT PLLC**

  
Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
3800 Howard Hughes Parkway, Suite 100  
Las Vegas, NV 89169  
*Attorneys for Defendants*

  
Michael N. Feder (#7332)  
Gabriel A. Blumberg (#12332)  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113  
*Attorneys for Plaintiff*

**ORDER**

**IT IS SO ORDERED.**

Dated this 21 day of February, 2019.

  
DISTRICT COURT JUDGE

Respectfully submitted by:

**HOWARD & HOWARD ATTORNEYS PLLC**

\_\_\_\_\_  
Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
*Attorneys for Defendants*



**Howard & Howard, Attorneys PLLC**  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483

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4834-1941-8248, v. 1

NEO

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

**HOWARD & HOWARD ATTORNEYS PLLC**

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Telephone: (702) 257-1483

Facsimile: (702) 567-1568

E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [rto@h2law.com](mailto:rto@h2law.com)

*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**

**DEPT. No. XI**

**NOTICE OF ENTRY OF  
STIPULATION AND ORDER TO  
CONTINUE HEARING ON MOTION  
FOR PRELIMINARY INJUNCTION**

**PLEASE TAKE NOTICE** that *Stipulation and Order to Continue Hearing on Motion for Preliminary Injunction* was filed in the above-captioned matter on February 22, 2019. A true and correct copy of said order is attached hereto.

DATED this 25<sup>th</sup> day of February, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

*/s/ Ryan T. O'Malley*

By: \_\_\_\_\_

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

3800 Howard Hughes Pkwy, Suite 1000

Las Vegas, Nevada 89169

Telephone No. (702) 257-1483

Facsimile No. (702) 567-1568

*Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am over  
3 the age of 18 years and not a party to this action. My business address is that of Howard &  
4 Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada,  
5 89169.

6 On the 25<sup>th</sup> day of February, 2019, I served the foregoing **NOTICE OF ENTRY OF**  
7 **STIPULATION AND ORDER TO CONTINUE HEARING ON MOTION FOR**  
8 **PRELIMINARY INJUNCTION** in this action or proceeding electronically with the Clerk of  
9 the Court via the Odyssey E-File and Serve System, which will cause this document to be  
10 served upon the following counsel of record:

11  
12 Michael N. Feder, Esq.  
13 Gabriel A. Blumberg, Esq.  
14 DICKINSON WRIGHT PLLC  
15 8363 West Sunset Road, Suite 200  
16 Las Vegas, NV 89113-2210  
17 Tel: (702) 550-4400  
18 Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
19 [gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)

20 *Attorneys for Plaintiff*

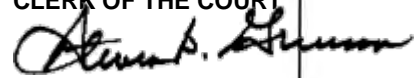
21 */s/ Anya Ruiz*

22 

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An Employee of HOWARD & HOWARD ATTORNEYS PLLC

23 4811-2579-8793, v. 1



1 **SAO**

2 Martin A. Little (#7067)

3 Ryan T. O'Malley (#12461)

4 **HOWARD & HOWARD ATTORNEYS PLLC**

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Telephone: (702) 257-1483

Facsimile: (702) 567-1568

E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [rto@h2law.com](mailto:rto@h2law.com)

Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **FIELDON HANSON ISAACS MIYADA**

10 **ROBINSON YEH, LTD.,**

11 **Plaintiff,**

12 **vs.**

13 **SCOTT VINH DUONG, M.D., ANNIE LYNN**

14 **PENACO DUONG, M.D., DUONG**

15 **ANESTHESIA, PLLC and DOE**

16 **DEFENDANTS I-X,**

17 **Defendants.**

**CASE No. A—19-789110-B**

**DEPT. No. XI**

**STIPULATION AND ORDER TO CONTINUE  
HEARING ON MOTION FOR PRELIMINARY  
INJUNCTION**

18 Plaintiff Fieldon Hanson Isaacs Miyada Robinson Yeh, Ltd. ("Fieldon Hanson" or  
19 "Plaintiff") stipulates with Defendants Scott Vinh Duong, M.D. ("Scott"); Annie Lynn Penaco  
20 Duong, M.D. ("Annie"); and Duong Anesthesia, PLLC ("Duon Anesthesia") (collectively  
21 "Defendants") as follows:

- 22 1. The hearing on Plaintiff's Motion for Preliminary Injunction ("Motion")  
23 currently set for hearing on February 25, 2019 at 9:00 a.m. is hereby continued  
24 to **March 4, 2019 at 9:00 a.m.**
- 25 2. Defendants' Opposition to the Motion shall be filed on or before February 25,  
26 2019.

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3. Plaintiff's Reply in support of its Motion shall be filed on or before March 1, 2019.

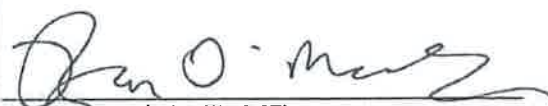
**IT IS SO STIPULATED:**

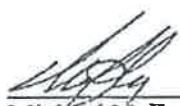
Dated this 21st day of February, 2019.

Dated this 21st day of February, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

**DICKINSON WRIGHT PLLC**

  
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Michael N. Feder (#7332)  
Gabriel A. Blumberg (#12332)  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113  
*Attorneys for Plaintiff*

**ORDER**

**IT IS SO ORDERED.**

Dated this 21 day of February, 2019.

  
DISTRICT COURT JUDGE

Respectfully submitted by:

**HOWARD & HOWARD ATTORNEYS PLLC**

\_\_\_\_\_  
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**CHLG**

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*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**  
**DEPT. No. XI**

**PEREMPTORY CHALLENGE**

Pursuant to Nevada Supreme Court Rule 48.1, Defendants Scott Vinh Duong, M.D.,  
Annie Lynn Penaco Duong, M.D., and Duong Anesthesia, PLLC hereby give notice of their  
peremptory challenge of the Honorable Elizabeth Gonzales, Department 11.

Dated this 25<sup>th</sup> day of February, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On the 25<sup>th</sup> day of February, 2019, I served the foregoing **PEREMPTORY CHALLENGE** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve System, which will cause this document to be served upon the following counsel of record:

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Gabriel A. Blumberg, Esq.  
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***Attorneys for Plaintiff***

*/s/ Anya Ruiz*

\_\_\_\_\_  
An Employee of HOWARD & HOWARD ATTORNEYS PLLC

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