

# RETURN OF SERVICE CONTRACT

## BETWEEN:

**Her Majesty the Queen in right of the  
Province of British Columbia as represented  
by the Minister of Health**

**(the “Province”)**

## AND:

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**(the “Participant”)**

**(the “Parties”)**

**WHEREAS:** The Province wishes to ensure there are a sufficient number and appropriate variety of physicians now and in the future for a sustainable, affordable, publicly-funded health system;

**And whereas** the Province agrees to fund the Participant’s Fellowship in exchange for the Participant providing medical services for a specified time and in a community where needed;

**And whereas** the Participant has been accepted into the Fellowship position with a Return of Service attached, in the area of **Anesthesiology** at the University of British Columbia;

**And whereas** upon completion of the Fellowship and upon acquiring a Certificate of Registration from the College of Physicians and Surgeons of British Columbia the Participant is prepared to provide Anesthesiology services to a Health Authority-identified community of need, for the period of time and on the basis set out herein.

## **THEREFORE:**

In consideration of the mutual covenants and agreements contained in this Contract and for other good and valuable consideration, the receipt of which is expressly acknowledged, the Parties agree as follows:

### **Article 1 Interpretation**

#### 1.1 Definitions in this Contract:

**“Addendum”** or **“Return of Service Addendum”** means the Addendum to this Contract which contains terms and conditions of the Return of Service between the Participant and the Health Authority;

**“Certificate of Registration”** means registration with the CPSBC that allows the Participant to practise medicine in British Columbia, other than the certificate of registration which allowed the Participant to enrol in a Fellowship;

**“CPSBC”** means the College of Physicians and Surgeons of British Columbia;

**“Fellowship”** means the fellowship position that is funded under this Contract;

**“Full Time Basis”** means what the Participant and the Health Authority determine it to mean as described in the Addendum but must include a minimum of thirty hours per week providing health authority identified, Government Funded Health Services for the duration of the two-year return of service;

**“Government Funded Health Services”** includes health services covered by the Medical Services Plan (MSP) or an Anesthesia Service Contract with a Health Authority;

**“Health Authority”** means a regional health board designated under the *Health Authority Act* RSBC 1996, c.180, and includes the Provincial Health Services Authority;

**“Medical Practice”** includes but is not limited to areas of medicine in which the Participant practises, the facility in which the Participant practises medicine, the community in which the Participant practises medicine, and the amount of time during which the Participant practises medicine each week;

**"Notice"** means any notice or other communication required to be given under this Contract;

**"Offer Letter"** means a letter from a Health Authority-identified practice offering the Participant a Return of Service placement;

**"Placement Deadline"** means the first Friday in December during the Fellowship year;

**"Repayment Amount"** means Repayment Amount defined in Article 4.1;

**"Return of Service"** means the Return of Service described in Article 5;

- 1.2. References to provisions in this Contract are to provisions in the main body of the Contract, unless otherwise specified.

## **Article 2 Participation**

- 2.1. The Participant must complete the Fellowship and the Return of Service, subject to the terms of this Contract.
- 2.2. The Participant's training in Anesthesiology means the Participant must meet all the competencies required for certification by the Royal College of Physicians and Surgeons of Canada.

## **Article 3 Program Costs**

- 3.1 The Province will pay the University of British Columbia's Faculty of Medicine for the costs of the Participant's Fellowship, including the Participant's salary as applicable.

## **Article 4 Repayment on Termination**

- 4.1 **In the event that this Contract is terminated for any reason, other than in accordance with Article 17.8, before the Participant has completed the Fellowship and the Return of Service in full, the Participant will pay to the Province the amount set out below that corresponds to the Participant's area of practice, plus any interest incurred on that amount from the date the Participant first signed this Contract (the "Repayment Amount"):**

**Anesthesiology: \$477,024**

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- 4.2 The interest referred to in Article 4.1 will be at the prime rate as it is announced from time to time by the Canadian Imperial Bank of Commerce on Canadian dollar commercial loans.
- 4.3 The Parties agree that the Repayment Amount is a reasonable pre-estimation of the damages that the Province will suffer in the event that the Contract is terminated before the Participant has completed the Return of Service in full, recognizing that:
- (a) It will cost the Province at least the amount set out in Table 1 below that corresponds to fund the Participant's Fellowship;
  - (b) It will cost the Province approximately \$8,000 to administer the Participant's placement in the community;
  - (c) A replacement participant will likely be required for the Return of Service community and the Province will have to pay the amounts referred to in (a) and (b) above to educate and to administer the placement of the replacement Participant;
  - (d) It takes at least one year to fill a vacancy in an average community of need in British Columbia and can take much longer in some communities. There will be added costs for the Province to ensure that comparable services are provided in the Return of Service community during this time period, and such costs can be difficult to identify;
  - (e) By completing the Fellowship, the Participant will become eligible to practice medicine in British Columbia, and to provide Government Funded Health Services. If the Participant does not complete the Return of Service in full in the identified Return of Service community, the Participant will be in breach of this Agreement. Any Government Funded Health Services that the Participant provides elsewhere in British Columbia in breach of this Agreement will give rise to further damages, costs, and expenses to the Province, flowing from the Participant's breach of this Agreement. The Province has calculated that, in the 2017-18 fiscal year the average annual income per full time equivalent (FTE) for anesthesiologists with a return of services are as follows:

<b>TABLE 1: Costs Associated with Anesthesiology Breach of Contract</b>	
Fellowship (12 months)	\$105,866
Cost to administer placement in ROS community	\$8,000
Average annual income per FTE	\$363,158

- 4.4 Within thirty (30) days following the Contract termination referred to in Article 4.1, the Participant shall pay to the Province the Repayment Amount in full. If the Participant fails to pay the full amount owing by this date, the Province may refer the matter to any other person or entity, for the purpose of collection.
- 4.5 The Province may forgive some or all of the Repayment Amount if:
- (a) before completing the Return of Service, the Participant dies or becomes gravely ill such that Participant is no longer able to practice medicine, or
  - (b) before breaching any term of this Contract, the Participant first requests compassionate consideration pursuant to Article 4.6 and the Province approves that request.
- 4.6 The Participant may request compassionate consideration from the Province if, after the execution of this Contract, there is a material change in Participant's circumstances such that completing the Return of Service will cause the Participant undue hardship. The Province will determine, in its sole and absolute discretion, whether or not to approve a request for compassionate consideration. Without limiting the generality of the foregoing, approval will not be granted if the Province is of the opinion that:
- (a) the request relates to a pre-existing circumstance that was not disclosed to the Province in writing as required under Article 6.1(b), or
  - (b) the request is for reconsideration of a prior request for compassionate consideration and there has been no material change in Participant's circumstance to warrant reconsideration.

## **Article 5 Return of Service**

- 5.1 Upon successful completion of the Fellowship, the Participant shall practise medicine on a Full-Time Basis in Anesthesiology according to the terms of the Return of Service Addendum.
- 5.2 The length of the Participant's Return of Service shall be calculated as two years of service on a Full-Time Basis returned for one year of Fellowship training. In the event that the Participant becomes unable to practise medicine on a Full-Time Basis during the Return of Service term for any reason, the running of the Return of Service term will be postponed until such time as the Participant resumes the practice of medicine on a Full-Time Basis.

- 5.3 The Province will determine the process by which the Participant is assigned to a Health Authority and community where he/she will provide Return of Service. The Participant will follow this process as communicated by the Province to the Participant.
- 5.4 The Participant must arrange a Return of Service placement with designated Health Authority recruiters during the Fellowship year and on or before the Placement Deadline.
- 5.5 The Participant will complete the Return of Service Addendum in consultation and with the agreement of the Health Authority.
- 5.6 The term of the Participant's Return of Service shall commence at a time agreed to by the Participant and the Health Authority, but in any event the term shall commence no later than three (3) months from the date on which the CPSBC first issues to the Participant a Certificate of Registration.
- 5.7 Within fourteen (14) days of receiving an Offer Letter from a Health Authority-identified practice, the Participant must:
  - (a) take whatever action is necessary to secure the Return of Service placement described in the Offer Letter, and
  - (b) execute the Return of Service Addendum and return it to the designated Health Authority recruiter.
- 5.8 The Participant must secure a Return of Service placement and return the executed Return of Service addendum to the designated Health Authority recruiter by no later than the Placement Deadline. Participant must promptly notify the Province as soon as possible if Participant has any reason to believe that Participant will not secure a Return of Service placement on or before the Placement Deadline.
- 5.9 If the Participant does not secure a Return of Service placement on or before the Placement Deadline but otherwise promptly notified the Province as contemplated in Article 5.8:
  - (a) the Province will provide reasonable assistance to the Participant in seeking a Return of Service placement,
  - (b) Participant must continue to actively seek, and must take any steps necessary to promptly secure, a Return of Service placement in a Health Authority-identified community of need, and must comply with all reasonable directions from the Province in that regard, and
  - (c) Participant must keep the Province fully informed of all efforts and steps taken by Participant in seeking a Return of Service placement.

## **Article 6 Participant Representations and Warranties**

- 6.1 As of the date of first signing this Contract, the Participant warrants and represents to the Province that:
- (a) Participant has, with all reasonable diligence, considered Participant's pre-existing circumstances, including with respect to any existing or reasonably foreseeable healthcare, personal care, career, educational, childcare, religious, travel or other needs of Participant and Participant's immediate family;
  - (b) Participant has disclosed to the Province in writing all pre-existing circumstances referred to in paragraph (a) above that, with reasonable anticipation, might prevent the Participant from relocating to a Health Authority-identified community of need or otherwise completing the Return of Service in full;
  - (c) Participant has every intention to complete the Return of Service in full; and
  - (d) Participant has no knowledge of any material fact or matter not disclosed to the Province that might prevent the Participant from relocating to a Health Authority-identified community of need or otherwise completing the Return of Service in full as contemplated by this Contract.

All the foregoing warranties and representations are material and have been relied upon by the Province in entering into this Contract.

## **Article 7 Change in Practice**

- 7.1 The Participant shall not change his or her Medical Practice during the term of the Return of Service from that specified in Article 5.1 and in the Return of Service Addendum, except in accordance with Article 7.2.
- 7.2 Nothing in Article 7.1 prevents the Health Authority, with the approval of the Province, from approving changes to the Participant's Medical Practice or the Addendum.

## **Article 8 Licenses and Qualifications**

- 8.1 No later than one month after successfully completing the Fellowship, the Participant shall apply to the CPSBC for a Certificate of Registration and

for any other documents necessary to practise medicine in British Columbia.

- 8.2 Nothing in this Contract, including the Addendum, shall in any way obligate the Health Authority to grant or renew the appointment of the Participant to its medical staff or the privileges of the Participant at a facility within the Health Authority.

## **Article 9 Breaches**

- 9.1 In addition to any other provision in this Contract, and for greater certainty, the Participant shall be in breach of this Contract if the Participant:
- (a) does not begin the Fellowship, in which case the Province may terminate the Contract on the day after the day the Participant was to have begun the Fellowship;
  - (b) begins but does not complete the Fellowship, in which case the Province may terminate the Contract on the day after the day the Participant last participated in the Fellowship;
  - (c) has not complied with subparagraph 8.1;
  - (d) has not secured a Return of Service Placement and returned an executed Addendum in accordance with Article 5.7 and 5.8, unless Article 5.9 applies, and the Participant has complied with the requirement of that Article;
  - (e) does not begin to provide the Return of Service in accordance with the Addendum in which case the Province may terminate the Contract on the day after the day that the Participant was to have begun the Return of Service;
  - (f) does not complete the Return of Service, in which case the Province may terminate the Contract on the day after the day the Participant last returned service;
  - (g) is no longer legally entitled to practise medicine in British Columbia, in which case the Province may terminate the Contract on the day after the day the Participant is no longer legally entitled to practise medicine in British Columbia;
  - (h) changes his or her Medical Practice, except in accordance with Article 7.2;
  - (i) fails to follow the process described in Article 5; or



- (j) fails to comply with the requirements contained in the Return of Service Addendum.
- 9.2 The Province may terminate this Contract by giving Notice in writing to the Participant if one or more of the following has occurred:
- (a) a breach of any term described in Article 9.1;
  - (b) any other circumstance arises which in the opinion of the Province; acting reasonably, prevents the Participant from fulfilling his or her Return of Service obligations appropriately;
  - (c) the Participant has breached any other term of this Contract.
- 9.3 For the purposes of Article 9.2 other circumstances may include, but are not limited to, revocation or restriction of the Participant's hospital privileges consistent with the applicable hospital by-laws respecting non-renewal for discipline, competency or wilful disobedience on the part of the Participant, where applicable, but not because of Health Authority need; criminal conviction of the Participant; or any suspension, revocation, or imposition of terms, conditions or limitations on the Participant's Certificate of Registration issued by the CPSBC that is not covered by Article 9.1(g).
- 9.4 For the purposes of Article 9.2(b), the Contract terminates on the date set out in the Notice, or the date that the Notice is deemed to have been received under Article 16, whichever is later.

## **Article 10 Reporting**

- 10.1 If the Province asks for information relating to this Contract, including but not limited to a report or documentation concerning the performance of the Participant's obligations, or a report or documentation concerning any other matter under or relating to this Contract, the Participant will provide this information as soon as practicable.

## **Article 11 Amendments**

- 11.1 This Contract shall not be amended except by prior written agreement between the Province and the Participant.

## **Article 12 Relationship of the Parties**

- 12.1 The Participant's relationship with the Province shall, during the term of this Contract, be that of an independent contractor. Nothing in this

Contract shall be construed to constitute the Participant as a partner, joint venture, employee or agent of the Province for any purpose.

### **Article 13 Enforceability and Severability**

13.1 If a court or other lawful authority of competent jurisdiction declares any provision of this Contract invalid, illegal or unenforceable, this Contract shall continue in full force and effect with respect to all other provisions. All rights and remedies under such other provisions shall survive any such declaration.

### **Article 14 No Waiver Unless in Writing**

14.1 No waiver of any breach of this Contract shall operate as a waiver of any similar subsequent breach or of the breach of any other provision of this Contract. No provision of this Contract shall be deemed to be waived and no breach excused unless such waiver or consent excusing the breach is in writing and signed by the party that is purporting to have given such waiver or consent. No delay or omission on the part of any party to this Contract shall operate as a waiver of any such right. No waiver or failure to enforce any provision of the Contract shall in any way affect the validity of the Contract or any part of it.

### **Article 15 Assignment or Transfer**

15.1 Neither this Contract, nor any of the rights or obligations of the parties arising under this Contract, shall be transferable or assignable by any party to any third party without the prior written consent of the other party.

### **Article 16 Notice**

16.1 A Notice given or required to be given under this Contract will be in writing and will be delivered either personally, by courier, sent by postage prepaid mail, by facsimile or by email, addressed to the other party at the address set out below or at such other address as either party later designates to the other party in writing. Notice by mail need not be by certified or registered mail.

*To the Province:*

c/o **BC Ministry of Health**  
**Attention: Ryan Murray**  
**Health Sector Workforce and Beneficiary Services Division**  
**P.O. Box 9649**

**Stn. Prov. Gov't  
Victoria BC V8W 9P4**

*To the Participant.*

- 16.2 Where Notice is delivered to the recipient's address set out in Article 16.1: (a) by hand, it will be deemed to be received on the date of its delivery; (b) by prepaid post, it will be deemed to be received on the fifth business day following its mailing; or (c) by facsimile or email, it will be deemed to be received on the date of transmission if transmitted during the recipient's normal business hours, or on the following business day if transmitted outside of the recipient's normal business hours.
- 16.3 Either party may from time to time give Notice to the other party of a substitute address, fax number or email address which from the date of such Notice is given will supersede any previous address, fax number or email address specified for the party giving Notice.

**Article 17: Miscellaneous**

- 17.1 This Contract shall be governed by and construed in accordance with the laws of British Columbia.
- 17.2 Except to the extent otherwise expressly stated in this Contract, the rights and remedies of the parties are cumulative and are in addition to, and not in substitution for, any rights and remedies provided by law or in equity.
- 17.3 This Contract shall operate to the benefit of and be binding upon the parties to the Contract and their respective successors.
- 17.4 Each party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Contract that the other parties may reasonably require for the purposes of giving effect to this Contract.
- 17.5 Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 17.6 Any reference in this Contract to any statute is a reference to that statute as amended, restated or re-enacted from time to time.

- 17.7 For greater certainty, Articles 4, 9, 10 as well as any Article, which by its nature or context is intended to survive the termination of this Contract, shall survive the termination of this Contract.
- 17.8 Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism, and lawful act by a public authority but shall not include the insufficiency of funds or failure to make any payment required hereunder. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) business days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.
- 17.9 Time is of the essence of this Contract.

## **Article 18 Entire Agreement**

- 18.1 This Contract and all documents contemplated by or delivered under or in connection with this Contract, constitute the entire agreement between the Parties with respect to the subject matter of this Contract and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise.

## **Article 19 Legal Advice**

- 19.1 The Participant acknowledges that he/she has the right to obtain independent legal advice before signing this Contract and hereby confirms that he/she has obtained that advice or does not wish to seek or obtain independent legal advice.

**SIGNED AND DELIVERED** by or on  
behalf of the Participant

\_\_\_\_\_  
(Participant)

\_\_\_\_\_  
(Please Print Name)

Address:

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

Date: \_\_\_\_\_

**SIGNED AND DELIVERED** by  
the Province by an authorized  
representative of the Minister of  
Health

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Please Print Name)

Address:

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

Date: \_\_\_\_\_

**ADDENDUM**

**RETURN OF SERVICE ADDENDUM**

**BETWEEN:**

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(the “Health Authority”)

(Community: \_\_\_\_\_)

**AND:**

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(the “Participant”)

(the “Parties”)

**WHEREAS:**

The Participant has entered into a Return of Service Contract with the Province to which this Addendum is attached;

**AND WHEREAS:**

The Participant desires to enter an agreement with the Health Authority to fulfill the Participant’s commitment to provide the Return of Service contemplated in the Return of Service Contract;

**AND WHEREAS:**

The Health Authority is prepared to assist in the education of the Participant in the area of practice of Anesthesiology.

**THEREFORE, THE PARTIES AGREE:**

1. This Addendum is made pursuant to Articles 2 and 5 of the Return of Service Contract for the Participant to provide medical services as required by the Return of Service commitment to the Province under the Return of Service Contract.
2. The Participant acknowledges that this Addendum is subject to the Return of Service Contract and any breach by the Participant of this Addendum is a breach of the Return of Service Contract.
3. Any term not specifically defined in this Addendum shall be the same as in the Return of Service Contract referred to above.

4. The Participant must apply for appointment to the medical staff of the **Health Authority** with clinical privileges appropriate to the Participant's practice in accordance with the appointment criteria and processes of the **Health Authority**. If the Participant fails to achieve appointment to the Health Authority medical staff because the **Health Authority** cannot, in its sole opinion, meet its obligations to the Participant in providing the necessary resources to support the Participant's practice, the Participant must apply for appointment to the medical staff of another health authority.
5. The Participant will provide services in accordance with Article 5 of the Return of Service Contract.
6. When the Participant begins providing services, he/she will devote a **minimum of \_\_\_\_\_ (define "full time" i.e. specify expected hours per week or hours per year but in any event no less than 30 hours/week) providing Health Authority-identified Government Funded Health Services**, from the date on which the Return of Service commences until the end of the two-year Return of Service.
7. Without limiting the generality of the services to be provided by the Participant in the area of practice of **Anesthesiology**, the Participant and the Health Authority have jointly developed and agreed to the following service deliverables which further define the service needs of the Health Authority:  
**(List service deliverables)**

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**Start Date:** \_\_\_\_\_

8. This Addendum shall not be amended except by prior written and signed agreement between the Health Authority, the Participant, and the representative of the Minister of Health.
9. In order to comply with the Participant's commitments in the Return of Service Contract, the Participant must submit to the designated Health Authority recruiter a completed copy of this Addendum signed by the Participant in accordance with Article 5 of the Return of Service Contract.

\_\_\_\_\_  
Signature Return of Service Participant      Date

\_\_\_\_\_  
Print Name of Participant

\_\_\_\_\_  
Signature Health Authority      Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Approval of the Province (authorized representative  
of the Minister of Health)      Date

\_\_\_\_\_  
Print Name