

K22-1118

**AFFILIATION AGREEMENT FOR GRADUATE MEDICAL
EDUCATION
between
OCHSNER CLINIC FOUNDATION
and
CITY OF NEW ORLEANS**

This Affiliation Agreement (hereinafter referred to as "Agreement") is effective as of **July 1, 2022**, by and between Ochsner Clinic Foundation, located at 1514 Jefferson Highway., New Orleans, LA 70121 (hereinafter referred to as "Ochsner") and City of New Orleans, located at 1300 Perdido Street, New Orleans, LA 70112 (hereinafter referred to as "Affiliating Entity").

WHEREAS, this Agreement is desired in order to provide Ochsner and its medical staff with the support of and the participation in a vigorous program of graduate medical and or/clinical education, and the affiliation contemplated by this Agreement should improve and enhance the care of the sick; and

WHEREAS, in a like manner, Ochsner recognizes the unique opportunities for medical and/or clinical education in Affiliating Entity's which will permit opportunities for enhancement of the quality of the educational experience received by Ochsner residents.

WHEREAS, this Agreement is designed to complement the requirements of the Accreditation Council for Graduate Medical Education ("ACGME") for a Letter of Agreement as that term is defined by the ACGME for graduate medical education (hereinafter referred to as "ACGME Letter of Agreement"), which has been, or will be, executed between Ochsner's Program Director and an authorized representative of the Affiliating Entity;

NOW THEREFORE, in consideration of terms and conditions set forth herein, it is mutually agreed by and between the Parties as follows:

A. Services to be Provided by Ochsner

In addition to its responsibilities set forth in the Agreement and for the consideration set forth herein, Ochsner agrees to assign Ochsner Clinical Foundation residents in the Department of Emergency Medicine(Residents") to Affiliating Entity during the term of this Agreement, in accordance with the terms set forth in the Agreement.

Ochsner agrees to assign the Affiliating Entity up to **0.24 FTE** from Ochsner Emergency Medicine Program as listed in this Agreement on an annual basis. The parties understand and agree that Affiliating Entity's commitment to the number and/or level of full time equivalent (FTE) Residents.

1. Duties of Residents

All Residents will participate in accordance with the highest standards of the medical profession, will conduct themselves in a manner consistent with the principles of medical ethics of the American Medical Association, and will comply with Medical Staff Bylaws, rules, regulations, and policies of Affiliating Entity.

Any other specific and/or additional duties set forth hereinafter, are attached in **Appendix A**, hereto and made part hereof.

2. Educational Goals and Objectives

Educational goals and objectives for each training level of resident are contained within the "ACGME Letter of Agreement".

3. Supervision of Residents

The Residents will be under the supervision of Affiliated Entity medical staff assigned by the Program Director. Said Affiliated Entity medical staff will be responsible for supervision and evaluation of Residents as directed by the Program Director.

Affiliating Entity must provide appropriate levels of supervision based on the Residents level of training and current competency.

4. Program Director

The Program Director is **as named by Ochsner**. Ochsner residents shall be assigned to the Affiliating Entity by the Program Director. Coordination of Ochsner Residents responsibilities and educational programs at Affiliating Entity will be provided by the Program Director. With respect to his or her particular Program, the Program Director shall: (1) be accountable to the Head of the appropriate Department in which Residents are assigned, (2) meet with Affiliating Entity's designated Administrative Official and/or the Affiliating Entity Director of medical staff; (3) review and monitor the quality and utilization practices of the residents assigned to Affiliated Entity; (4) answer questions and address problems that arise regarding the Residents assigned to Affiliated Entity; (5) direct and oversee all patient care rendered by Residents; (6) recommend and provide current competency of all Residents to be assigned to Affiliating Entity in accordance with Affiliating Entity Policies; and (7) schedule the Residents assignments to the Affiliating Entity and notify the Affiliating Entity of all changes in schedule.

Any other specific or additional faculty duties set forth hereinafter are set forth in **Appendix B**, attached hereto and made part hereof.

5. Scheduling

All scheduling and staffing decisions will be made by Ochsner's Program Director in collaboration with the Affiliating Entity's Head of the Department in which Residents are **assigned**.

6. Non-exclusivity

The above services are provided to Affiliating Entity on a nonexclusive basis and this Agreement in no way shall be construed to limit or impede Ochsner's right to provide similar or related services to any person or entity. Neither Ochsner nor any of its physicians shall have any obligation to refer patients to Affiliating Entity, nor shall Affiliating Entity have any obligation to refer any patient to Ochsner physicians.

In the event an Ochsner physician hospitalizes a patient or deems any ancillary service necessary, Ochsner physician shall be free to use any hospital or ancillary services he or she selects.

7. Intern and Residents System (IRIS) Cooperation

Ochsner agrees to cooperate with Affiliating Entity and inform all Residents and the Program Directors whose Programs rotate at Affiliating Entity of the documentation requirements related to the time allocation on a per rotation per Program basis in order for the Affiliating Entity to file an accurate Intern and Residents System (IRIS) report. Ochsner agrees to take all actions necessary, appropriate, and reasonably requested by Affiliating Entity to assist in collection of such data for the rotations and Programs present at Affiliating Entity pursuant to the Agreement and respond to Affiliating Entity's requests for additional information and/or clarification within reasonable time, not to exceed 10 business days, from the receipt of any such request.

8. Insurance and Indemnification

Ochsner agrees to furnish Affiliating Entity with a Certificate of Insurance providing evidence that Ochsner is covered by policies of insurance, through self-insurance and/or commercial coverage, providing statutory worker's compensation coverage, employer's liability coverage, and commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence. Ochsner shall name the City of New Orleans – Risk Manager as Certificate Holder. Certificates should be delivered via U.S. Mail to Risk Management Division, 1300 Perdido Street, Suite 9E06 – City Hall, New Orleans, LA 70112.

Ochsner warrants to Affiliating Entity that it and each of its Residents shall remain during the term of this Agreement, either: (1) insured against all claims of professional liability under one or more policies of insurance with indemnity limits of not less than \$500,000 per occurrence or claim; or, in the alternative, (2) enrolled in or participates in a plan of self-insurance pursuant to the qualifications of the Louisiana Medical Malpractice Act, Louisiana Revised Statutes 40:1231.1, et seq. in the sole discretion of Ochsner.

Affiliating Entity agrees to furnish Ochsner, upon request, a Certificate of Insurance providing evidence that Affiliating Entity is covered by policies of insurance, through self-insurance and/or commercial coverage, providing statutory worker's compensation coverage, employer's liability coverage, and commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence.

Affiliating Entity warrants to Ochsner that it and each of its medical staff providing supervision of Residents under this Agreement shall remain during the term of this Agreement, either: (1) insured against all claims of professional liability under one or more policies of insurance with indemnity limits of not less than \$500,000 per occurrence or claim; or, in the alternative, (2) enrolled in or participates in a plan of self-insurance pursuant to the qualifications of the Louisiana Medical Malpractice Act, Louisiana Revised Statutes 40:1231.1, et seq. in the sole discretion of Affiliating Entity.

Affiliating Entity warrants to Ochsner that it shall maintain policies of insurance, through self-insurance and/or commercial coverage, automobile liability insurance to cover Affiliating Entity and its employees for bodily injury and property damage to third parties arising out of the ownership,

maintenance, or use of an owned, non-owned or hired vehicle in an amount not less than \$1,000,000.00 per occurrence combined single limit.

The City shall retain the right to self-fund for any and/or all of the insurance coverage(s) required under this agreement.

Ochsner hereby agrees to hold harmless and indemnify Affiliating Entity from any claim, suit, or loss sustained by Affiliating Entity, its officers, directors, or employees, for any asserted injury to or death of any person to the extent that it results from or is caused by the asserted negligence, error, or omission of Ochsner, or any Ochsner Resident, officer, director, employee, or agent.

9. HIPAA & HITECH Regulations

The parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. 1320d ("HIPAA") and the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), pursuant to Title XIII of Division A and Title IV of Division B called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act and any current and future regulations promulgated hereunder, including without limitation, the federal privacy, security, and electronic transactions regulations contained in 45 C.F.R. Parts 160, 162, and 164 (the "HIPAA Requirements"). The parties agree not to use or further disclose any Protected Health Information (as defined in the HIPAA Requirements), other than as permitted by the HIPAA Requirements and the terms of this Agreement. The parties agree to make their internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the HIPAA Requirements. In addition, the parties agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic and transaction code sets pertaining to, information related to patients.

Ochsner shall direct its Residents to comply with the policies and procedures of Affiliating Entity, including those governing the use and disclosure of individually identifiable health information under federal law. Solely for the purpose of defining the Residents' role in relation to the use and disclosure of Affiliating Entity protected health information, the Residents are defined as members of the Affiliating Entity workforce, as that term is defined by 45 C.F.R. 160.103, when engaged in activities pursuant to this agreement. However, the Residents are not and shall not be considered employees of Affiliating Entity.

10. Regulatory Compliance

Ochsner shall require that, as applicable, Residents assigned to Affiliating Entity shall comply with applicable federal, state, and applicable standards of The Joint Commission ("TJC") or other regulatory agencies that govern the provision of services pursuant to this agreement, including but not limited to any applicable Louisiana State Board of Medical Examiners ("LSBME") requirements.

11. Background and Immunizations

Ochsner can provide verification that the following have been completed as part of the resident's onboarding process at Ochsner: Criminal Background Check, Sex Offender Registry, Office of Inspector General and the General Services Administration.

Ochsner shall insure that each resident has completed the following tests: (1) a negative tuberculin test within the past year; (2) titers for rubella, measles, mumps, and chicken pox; (3) Hepatitis B vaccine completed, or declination form signed and that each Residents complies with Ochsner's most current flu vaccination policy.

12. Educational Leave

The parties agree that the Residents may receive up to five (5) days non-cumulative educational leave for each Resident per academic year as approved by Ochsner and in accordance with Ochsner's policy.

13. Vacation Leave

The parties agree that the Residents may receive vacation leave in the following amounts: two (2) weeks per year for each first year Resident, three (3) weeks per year for each second year Resident and four (4) weeks per year for all other Residents.

14. Military Leave

The parties agree that the Residents may receive up to fifteen (15) days non-cumulative military leave for each Resident per year, as approved by Ochsner and in accordance with Ochsner's policy and as required by law.

15. Independent Contractor Status

A. Pursuant to this Agreement Ochsner is considered an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City of New Orleans and will not hold itself or any of its employees, subcontractors, or agents to be an employee, partner, or agent of the City. The City of New Orleans will not be liable to Ochsner as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, persons employed by the above-mentioned agencies will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

Pursuant to this Agreement Ochsner is considered an independent contractor as defined in La. R.S. 23:1472(E) and Ochsner nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties.

B. AFFILIATING ENTITY OBLIGATIONS AND RESPONSIBILITIES

Affiliating Entity agrees to provide free designated parking for Residents assigned to Affiliating Entity. Residents who park in any other location are subject to fine and/or other disciplinary action.

Any other specific obligations and/or responsibilities set forth hereinafter, are detailed in **Appendix C**.

1. Rotation

Affiliating Entity agrees, at the commencement of each rotation, to provide the Resident assigned to Affiliating Entity with a general orientation to the Affiliating Entity. Each Resident will be informed of appropriate Affiliating Entity rules, regulations, policies, and procedures and of his or her obligation to abide by same. Resident(s) will be assigned by Affiliating Entity to a qualified member of Affiliating Entity's Medical Staff who shall facilitate the clinical rotation in accordance with written guidelines developed by Affiliating Entity and approved by Ochsner.

2. Compensation

This Agreement is not an obligation or commitment of funds nor a basis for transfer of funds, but rather is a basic statement of the understandings between both Ochsner and Affiliating Entity. Unless otherwise agreed to in writing, each party shall bear its own costs in relation to this Agreement.

C. Term and Termination

This Agreement shall be effective **July 1, 2022 – June 30, 2023**.

Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for thirty (30) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

Either party may terminate this Agreement at any time without cause upon at least thirty (30) day prior written notice to the other party.

In the event that Affiliating Entity or Ochsner shall, with or without cause, at any time give to the other party the written notice as required above, this Agreement shall terminate on the future date specified in such notice, or as otherwise stipulated above, provided that all Ochsner Residents currently enrolled in the Program at Affiliating Entity at the time of notice of termination shall be given the opportunity to complete their assigned clinical rotation(s) for the current academic year at Affiliating Entity.

Upon termination of this Agreement as is hereinabove provided, neither party shall have any further obligation hereunder except for: (1) obligations accruing prior to the date of termination; and

(2) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

D. Amendments

No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

E. Equal Opportunity Clause.

The parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability. The parties agree to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).

F. Entire Agreement

This Agreement along with any Amendments, supersedes all previous contracts and constitutes the entire Agreement between the parties. Neither party shall be entitled to any benefits other than those specified herein. No oral statements or written material not specifically incorporated herein shall be of any force and effect and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment(s) to become effective on the date stipulated in such amendments. Provided however, that any other language in this Agreement to the contrary notwithstanding, if there is an Exceptions Addendum, duly executed by all required authorities of the Ochsner and of the Affiliating Entity, appended to this Agreement, to the extent that the terms and conditions of said Exceptions Addendum vary from the terms or conditions of this Agreement, then the terms and/or conditions of the Exceptions Addendum shall prevail. There is **not** an Exceptions Addendum to this Agreement, and if there is, it consists of **zero (0)** page(s) in length.

H. Convicted Felon Statement

Ochsner complies with City Code § 2-8(c). No principal, member, or officer of Ochsner has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

I. Assignment

1. Neither a Contractor nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council.

2. A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Contractor or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Contractor or subcontractor that exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the Contractor or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Contractor or subcontractor exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.

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IN WITNESS WHEREOF, the parties execute this Agreement effective as of the date above first written.

OCHSNER CLINIC FOUNDATION

City of New Orleans

By: _____

Date: _____

Sal J. Suau, M.D.

Emergency Medicine Residency Program
Director of Ochsner Health

Ochsner Health

By: _____

Date: _____

LaToya Cantrell

Mayor
City of New Orleans

CITY OF NEW ORLEANS - FORM AND LEGALITY APPROVED:

Law Department

By: _____

Printed Name: _____

Notice

Whenever notice is required under this Agreement, such notice shall be in writing and delivered in person, or by Certified Mail, to the following address:

If to Ochsner:	Sal J. Suau, M.D. Emergency Medicine Residency Program Director Ochsner Health 1514 Jefferson Highway New Orleans, LA 70121
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Office of Legal Affairs
Ochsner Clinic Foundation
1514 Jefferson Hwy

New Orleans, LA 70121
ATTN: General Counsel

If to Affiliating Entity:	City Attorney City of New Orleans 1300 Perdido Street Suite 5E03 New Orleans, LA 70112
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If to New Orleans EMS:	Chief, EMS William Salmeron 2929 Earhart Blvd. New Orleans, LA 70125
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APPENDIX A
DUTIES OF RESIDENT(S)

All Resident(s) engaged in the Residency Program will have the following specific duties:

1. Provide outpatient care to EMS patients as designated by Affiliating Entity and the Program.
2. Provide on call coverage as designated by the Program for Affiliating Entity's patients.
3. Render clinical services required by Affiliating Entity and the Residency Program as designated.
4. Participate in safe, effective, and appropriate patient care, under the supervision, commensurate with his/her level of advancement and authorized responsibility.
5. If applicable, participate in Affiliating Entity's activities related to patient care, quality, and utilization effectiveness review.
6. Perform these duties in accordance with the established practices, procedures, and policies of the Affiliating Entity, and those of its programs, departments, and other institutions to which the Resident(s) are assigned. Resident(s) shall comply in a timely fashion with reasonable and necessary documentation requirements of Affiliating Entity, including those for Residents activity and medical records.
7. Participate in and complete educational activities designated by the Program.

APPENDIX B

DUTIES OF THE PROGRAM DIRECTOR AND/OR FACULTY MEMBERS

The Program Director shall provide Affiliating Entity on a monthly basis a list of Resident(s) participating in an Educational Program at Affiliating Entity ("Participant List"). The Participant List shall be due to Affiliating Entity no later than ten (10) days prior to the first day of each month for the upcoming month.

The Program Director and/or any designated resident supervisor will perform the following duties:

1. Be responsible for overall supervision including scheduling and assignments of Residents. Manage time and resources through planning, prioritizing, directing, and delegating effectively.
2. Review, approve and coordinate with designated personnel at Affiliating Entity for participation in Resident training and supervision in accordance with the Affiliation Agreement.
3. Obtain and maintain credentialing, certification and continuing education as required. Develop and maintain an understanding of current requirements by The Joint Commission, organizational policies to include human resource policies and departmental policies.
4. Monitor progress of Resident(s) education.
5. Offer counseling to Residents as appropriate.

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APPENDIX C

AFFILIATING ENTITY OBLIGATIONS

1. Affiliating Entity shall supply members of its Departments of whom Ochsner and Affiliating Entity find mutually acceptable, for the supervision of the delivery of patient care by Ochsner's Residents at Affiliating Entity as well as to provide a quality educational experience to Ochsner Residents while assigned to Affiliating Entity.
2. Affiliating Entity agrees to use the Residents list provided by Ochsner as initial evidence of participation of Resident(s) in the Program. However, if Affiliating Entity questions or disputes Ochsner's documentation of Resident participation based on Affiliating Entity's information or documentation of resident attendance, the parties shall investigate and work collaboratively to timely resolve the dispute. Affiliating Entity's policies and procedures require that Resident(s) register with Affiliating Entity's assigned office prior to beginning of each rotation. Ochsner shall inform Residents of such requirement.
3. Affiliating Entity agrees to provide immediate emergency care in the event of an accident or illness of a Resident. Affiliating Entity shall not be responsible for the cost of such care, follow up treatment or hospitalization.
4. Affiliating Entity shall reserve the right to request Ochsner to withdraw a Resident from the assigned clinical education experience when his/her clinical performance is unsatisfactory and his/her behavior is disruptive or detrimental to the Affiliating Entity and/or patients.
5. Affiliating Entity agrees to notify Ochsner of the results of the Commission on Accreditation of Ambulance Services if status certification is probationary or is denied or removed.
6. Affiliating Entity with notification to Ochsner reserves the right to conduct a drug screen on any resident in accordance with its policy. If a resident or faculty fails a drug screen, the Affiliating Entity may bar participation in or continuation in a rotation.

OCHSNER OBLIGATIONS

1. Ochsner agrees to provide the names of the Program Director of Department providing Residents services and the names of all Resident(s) initially assigned to the Affiliating Entity.
2. Ochsner, through its Departments, agrees to timely inform Affiliating Entity if a new Program Director is named or if a new Resident is assigned to the Affiliating Entity.
3. Ochsner, in concert with the Affiliating Entity, agrees to ensure compliance by all Residents with Affiliating Entity's entrance and exit processes, protocols, orientation process and institutional bylaws, rules and regulations, policies and procedures.
4. Ochsner and Affiliating Entity understand and agree that in compliance with Affiliating Entity's policies and with Ochsner's Health Information and Management (HIM) Policy and Training in particular, all components of Ochsner's Residents' medical records must be completed within thirty (30) days of discharge, or prior to the Resident's completion of the rotation at Affiliating Entity, whichever is earlier. Failure to comply with the medical records completion policy will result in the Residents future training risk at Ochsner's.
5. Ochsner further agrees to ensure compliance by all Ochsner Residents with the Centers for Medicare & Medicaid Services (CMS) "Provider Enrollment Requirements for Writing Prescriptions for Medicare Part D". Ochsner must enroll all its Residents in the Provider Enrollment and Chain/Ownership System (PECOS). Both parties understand and agree that any Resident who is not enrolled will not be able to rotate at Affiliating Entity.

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