MEMORANDUM OF AGREEMENT

BETWEEN

U.S. DEPARTMENT OF DEFENSE

AND

XXXXXXXXXX HOSPITAL or XXXXXXXXXXX MEDICAL CENTER

(City, State)

FOR PUBLIC HEALTH RESPONSE TO THE CORONAVIS (COVID-19) DISEASE

1. **Authorities.**
2. 10 U.S.C. § 1094. Licensure requirement for health-care professionals
3. 28 U.S.C. § 1346. United States as defendant
4. 28 U.S.C. § 2671-2680. Tort claims procedure
5. 31 U.S.C. § 1535. Agency agreements
6. 42 U.S.C. § 243. General Grant of Authority for Cooperation
7. 42 U.S.C. § 1320d-9. Health Insurance Portability and Accountability Act of 1996 (HIPAA)
8. 42 U.S.C. § 5121 to 5208. Robert T. Stafford Disaster Relief and Emergency Assistance Act Stafford Act
9. FEMA Mission Assignment XXXXDR-XX-DOD-XX, dated XX month 2020
10. **Background.**
11. This Memorandum of Agreement (MOA) is entered by the Department of Defense (hereinafter DoD) and XXXXXXXXXXX Hospital or XXXXXXXXXX Medical Center, a non-Federal private institution (hereafter NFPI), for support from DoD to the NFPI for public health response to the Coronavirus disease (hereinafter COVID-19).
12. The NFPI is accredited and engaged in providing health care services. DoD operates the Military Health System and is assisting in the public health response to COVID-19.
13. DoD’s involvement in this undertaking is pursuant to the President’s National Emergency Declaration, dated 13 March 2020, the Major Disaster Declaration (DR-XXXX) under the Stafford Act (42 U.S.C. § 5121 to 5208) issued on XX month 2020, and Mission Assignment XXXXDR-XX-DOD-XX, dated XX month 2020, approved by the Secretary of Defense on XX month 2020 for at least 30 days, which may be extended.
14. Under the terms of this agreement, DoD personnel, equipment, medical supplies, or other resources may be used in the NFPI to address public health needs relating to COVID-19.
15. **Understanding.** The parties acknowledge and agree to the following:
16. While performing clinical care at the NFPI, DoD personnel will be under the clinical control and supervision of the NFPI. DoD personnel will also be subject to, and required to abide by, all facility rules and applicable regulations, except as specifically provided in this MOA. The parties agree that:
17. Under 10 U.S.C. § 1094(d), and when ordered by SECDEF, a DoD health care professional who has a current license in any state is authorized to carry out authorized DoD duties in any location, without the need for another license in the particular state where such duties will be performed. DoD warrants that DoD personnel carrying out activities under this MOA are currently licensed and professionally competent to carry out authorized duties.
18. DoD warrants that all DoD personnel carrying out activities under this MOA have had their professional credentials validated by DoD and will, upon request, provide specific information to the NFPI regarding such credentials.
19. The NFPI will provide clinical privileges, and/or other appropriate authority, for DoD health care professionals consistent with standards generally used by the NFPI. Procedures will be expedited to the extent feasible.
20. The NFPI reserves the right to refuse acceptance of any DoD personnel or to bar any DoD personnel if it is determined that further participation would not be in the best interest of the NFPI.
21. NFPI personnel will neither engage in activities nor act in any manner creating the appearance that they are acting as agents, or on behalf of, any agency of the United States Government.
22. In addition to other provisions in this agreement, the NFPI specifically agrees to:
23. Make available to DoD personnel the clinical and related facilities needed for appropriate patient care under this MOA.
24. Provide appropriate office, storage, dressing, or locker room space, and all other administrative privileges typically enjoyed by the NFPI’s professional staff.
25. Provide emergency medical and dental treatment to DoD personnel, while at the NFPI, under the terms of this agreement. The reasonable cost of this treatment will be paid by DoD.

d. Provide Personnel Protective Equipment (PPE) to DoD personnel that meets Center for Disease Control and Prevention (CDC) guidelines to perform the duties pursuant to this MOA and mission assignment stated in paragraph I.8.

e. Allow DoD Public Affairs (PA) personnel access to identified areas to document DoD support through imagery and stories. DoD PA personnel shall abide by the NFPI's policies and procedures regarding protected health information and the HIPAA of 1996. DoD PA personnel shall be escorted when deemed necessary by the NFPI. DoD and/or PA personnel will coordinate clearing and publishing materials, content, stories, photographs, etc. with NFPI and will not publish anything the NFPI does not want published.

1. In addition to other provisions of this agreement, DoD specifically agrees to:
2. Ensure DoD personnel comply with all applicable NFPI rules and instructions.
3. Be responsible for health examinations and such other medical examinations and protective measures necessary for its personnel.
4. Prohibit DoD personnel from publishing any materials developed as a result of activities under this MOA that have not been approved for release, in writing, by DoD and the NFPI.
5. It is understood that the NFPI will not generate any bills for provider services rendered by DoD personnel. Nothing in this paragraph limits the NFPI’s ability to generate appropriate bills for associated costs, such as supplies, overhead, and equipment, or the services of non-DoD personnel involved in the provision of care to the same patient. All proceeds from these bills shall become the exclusive property of the NFPI, and as applicable; DoD shall have no right or claim to such proceeds.
6. It is understood that DoD personnel shall abide by the NFPI’s HIPAA policies. It is understood that DoD personnel are considered part of the NFPI’s workforce for purposes of HIPAA compliance and are not business associates under HIPAA; therefore, no business associate agreement between the parties is necessary.
7. With respect to handling of potential tort claims arising from activities under this MOA, the parties agree that:
8. While working in the NFPI, and while acting pursuant to the terms of this agreement, DoD personnel remain personnel of the United States performing duties within the course and scope of their federal employment.
9. The provisions of the Federal Tort Claims Act (28 U.S.C. § 1346 (b), 2671-2680), including borrowed servant doctrine and any other applicable defenses and immunities available to the United States, will apply to allegations of negligence or wrongful acts or omissions by DoD personnel while acting within the scope of duties pursuant to this agreement. The provisions of 28 U.S.C. § 2679 will immunize the DoD personnel from individual tort liability.
10. Any notification of an actual or potential claim or suit against a party to this MOA, which names one or more personnel of another party, will be reported to all parties. All parties will cooperate fully in the investigation of such complaints, to include making available medical records, medical material including x-rays, slides, tissue, and witness statements, and the names of potential witnesses; to the extent permitted by law. DoD will facilitate the involvement of the U.S Department of Justice (DoJ), as appropriate, to represent the interests of the United States and its employees arising from such claims or litigation.
11. The NFPI further agrees not to seek indemnification from the United States or DoD personnel, for any settlement, verdict, or judgment, resulting from any claim or lawsuit, arising out of performance of DoD personnel, while acting under the supervision of the NFPI.
12. It is understood that this agreement shall be controlled by federal law, and where such law calls for the application of state law, the law of the state where the NFPI is located shall apply.
13. It is expressly agreed that this written statement embodies the entire agreement of the parties regarding this MOA, and no other applicable agreements exist between the parties except as herein expressly set forth. Any changes or modification to this agreement must be in writing and signed by all parties.
14. The terms of this agreement will commence as of the last date signed by a party to this MOA, will ratify any work that may have been performed by DoD medical personnel prior to the execution of this MOA, and will terminate upon mutual agreement of the parties, unless renewed or unless earlier terminated in writing by any party.
15. **Approvals.**

For the NFPI:

Name and Title of Authorized Official Date

(Hospital Administrator or other designated official)

For DoD:

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