Sample Technical Anatomic Pathology Services Agreement

The following agreement is an example of an agreement between a pathologists’ group and a hospital. This agreement is a sample of one that might be used in conjunction with a separate professional services agreement between the pathologists’ group and the hospital. This agreement is not provided as a “model” in any sense, but rather is used as a vehicle for identifying specific contract provisions that may raise issues.

Please Note: In general, sample agreements are made available to CAP members as a supplement to the CAP’s other practice management resources. The sample agreements illustrate the general form and content of representative contracts, but they are not intended as “models” and should not be used without appropriate adaptation to reflect changing laws and regulations and the specific needs of each pathologist.
This Technical Anatomic Pathology Agreement ("Agreement") is made and entered into on this ____ day of ______________, 20___ and effective the ____ day of ______________, 20____ ("Effective Date") by and between ________________________, a [State] medical professional corporation ("Pathologist") and ______________________________ ("hospital"), a [State] [not-for-profit] corporation.

Whereas, Pathologist is the owner/operator of an independent laboratory that provides histology/cytology services for hospitals and other clients; and

Whereas, Pathologist has been retained under a separate Pathology Services Agreement to serve as the Medical Director and to provide all clinical and anatomic pathology professional services as Hospital; and

Whereas, Hospital desires to retain Pathologist to provide various histology/cytology services for Hospital and Hospital’s patients;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good a valuable consideration, the receipt and sufficiency whereof are hereby acknowledges, the Parties agree as follows:

1.0 Engagement.
Hospital hereby engages Pathologist to be the exclusive provider of all histology/cytology services through its independent laboratory for patients, with the exception of those tests historically referred to reference laboratory because of their esoteric nature or because of the requests of referring physicians of the Hospital, in accordance with the terms of this Agreement.

2.0 Term and Termination

2.1 Term. The initial term of this Agreement is [one (1)] year from the Effective Date. This Agreement shall automatically renew for renewal terms of one (1) year thereafter unless either party provides written notice to the other party of non-renewal at least one hundred eighty (180) days prior to the end of the then current term.

2.2 Termination. At anytime during the term of this Agreement, wither party may terminate this Agreement by the other written notice that such other party has defaulted un the performance of any material duty or obligation imposed upon it by this Agreement, and such default shall not have been cured within ninety (90) days following the giving of such written notice, unless the defaulting party shall, within the ninety (90) day period, has made a good faith effort to initiate corrective action and it is contemplated that such corrective action will be completed within a reasonable period of time not exceeding ninety (90) days from the date of receipt of the notice of default. If there is a dispute among the practices as to whether there is a material breach, the decision as to whether there has been a material breach shall be made by binding arbitration by
a single arbitrator mutually agreed upon by the parties. The rules of the American Arbitration Association shall govern any such arbitration.

2.3 **Automatic Termination.** This Agreement shall automatically terminate in the event that the Pathology Services Agreement between Pathologist and Hospital is terminated for any reason.

3.0 **Compensation of Pathologist.**

**Alternative 1: Non-Grandfathered Hospital Payment for Medicare patients/Pathologist Billing for All Other:**

With respect to Medicare patients only, Hospital recognizes that the Medicare prospective payment the Hospital includes compensation for each histology/cytology service performed by pathologist. Hospital shall be responsible for paying Pathologist the amount set forth in the attached Exhibit A for each histology/cytology service performed by Pathologist for Medicare patients. All such payments shall be made by Hospital by the fifteenth (15th) day of each month. If the amount due is not paid within the time frame set forth in the invoice, then the amount to be paid to Pathologist shall be increased by one and one-half percent (1.5%) per month, plus the amount of any fees, expenses or costs which Pathologist incurs in collecting the amount. With respect to all other patients who are not covered b Medicare, Pathologists shall bill and collect from such patients or their third party payor directly in pathologist’s own name for histology/cytology services to such patients.

**Alternative 2: Non-Grandfathered Hospital Payment for all patients:**

Hospital shall pay pathologist the amount for set forth in the attached Exhibit A for each histology/cytology service performed by Pathologist during the prior month. All such payments shall be made by the fifteenth (15th) day of each month. If the amount due is not paid within the time frame set forth in the invoice, then the amount to be paid to Pathologist shall be increased by one and one-half percent, (1.5%) per month, plus the amount of any fees, expenses or costs which pathologist incurs in collection the amount.

**Alternative 3: Grandfathered Fee-For-Service Reimbursement:**

Hospital represents and warrants that it is a “covered hospital” within the meaning of Section 554 of Pub. Law 101-554, in that hospital had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the technical component of physician pathology services to fee-for-service Medicare beneficiaries who were hospital inpatients or outpatients, respectively, and submitted claims for payment for such component to the Medicare Part B reimbursement for the histology/cytology services provided under this Agreement and shall be responsible for billing Medicare and all third party payers and/or patients for the histology/cytology services furnished under this Agreement. In the event that the grandfather provided for such services expires and is not renewed, Hospital and Pathologist shall meet to negotiate fair market compensation for the services provided by Pathologist consistent with the reimbursement received by pathologist for such services from the Medicare program. If the parties cannot agree on such fair market value compensation, either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
4.0 **Independent Contractor.**
In the performance of all work, duties, and obligations under this Agreement, Pathologist are at all times acting and performing as independent contractors practicing the profession of medicine. The Hospital shall have no control or direction over the methods by which Pathologist performs the work and functions required by this Agreement. The sole interest and responsibility of the Hospital is to assure that the Department of Pathology and services covered by this Agreement are performed in a competent, efficient and satisfactory manner.

5.0 **Allocation of Responsibility.**

5.1 **Pathologist Responsibility.** Pathologist shall be liable for any and all claims, costs and expenses arising from or out of any alleged negligent act or omission of Pathologist, its agents or employees in the performance of its obligations under this Agreement.

5.2 **Hospital Responsibility.** Hospital shall be liable for any and all claims, costs and expenses arising from or out of any alleged negligent act or omission of Hospital, its agents or employees in the performance of its obligations under this Agreement.

6.0 **Access to Records.**
In accordance with the provisions of 42 U.S.C. Section 1395x(v)(1)(I) and 42 C.F.R. §420.300 et seq., Pathologist shall make available upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and any other books, records and documents of Pathologist that are necessary to certify to such persons the nature and extent of costs incurred by the hospital for services furnished by Pathologist for which payment may be made under Medicare, Medicaid or other federal reimbursement programs. The obligation of Pathologist to make records available shall extend for four (4) years after the furnishing of such services pursuant to this Agreement.

7.0 **Insurance.**

7.1.1 **Pathologists’ Insurance.** Pathologists shall as its own expense carry professional liability insurance with limits of liability in amounts not less than ___________________ dollars ($_________________) per occurrence and ___________________ dollars ($_________________) annual aggregate. As evidence of such coverage, Pathologists shall furnish Hospital with a certificate of insurance prior to commencing its services under this Agreement and annually thereafter.

7.1.2 **Hospital’s insurance.** The Hospital shall carry adequate liability insurance for the premises of the Department and adequate liability and malpractice insurance for all Hospital employees, including all technicians, and all students in the Department, with limits of liability in amounts not less than ___________________ dollars ($_________________) per occurrence. It shall upon request, submit evidence of such insurance, to Pathologists.
8.0 Privacy Of Health Information.

8.1 Use and Disclosure of PHI. Pathologist may use and disclose Protected Health Information as that term is defined in 45 C.F.R. §164.501 (“PHI”) only as permitted herein or required by law. Pathologist shall not use or disclose PHI created or received on behalf of Hospital in any manner that would constitute a violation of the Privacy Regulations if done by Hospital.

8.2 Protection of PHI. Pathologist shall take reasonable precautions to protect the PHI from loss, misuse and unauthorized access, disclosure, alteration and destruction.

8.3 Obligation to Report Violations. Pathologists shall, upon becoming aware of any use or disclosure of PHI in violation of this Agreement, promptly report any such use or disclosure to Hospital.

8.4 Agreements with Subcontractors. Pathologist shall obtain an agreement with each agent or subcontractor that has or will have access to the PHI which is received from, or created or received by Pathologist in the course of performing services for, Hospital, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Pathologist pursuant to this Agreement with respect to such PHI.

8.5 Designated Record Set. Following a request by Hospital for access to PHI about an individual contained in a Designated Record Set, Pathologist shall promptly make available to Hospital such PHI. (“Designated Record Set” shall mean a group of records maintained by or for hospital that is (i) the medical records and billing records about hospital patients maintained by or for hospital patients maintained by or for Hospital, or (ii) used, in whole or in part, by or for hospital to make decisions about its patients. As used herein the term “Record” means any item, collection, used or disseminated by or for Hospital.)

8.6 Requests for PHI. In the event that any individual requests access to PHI directly from Pathologist, Pathologist shall promptly forward such request to Hospital. Any denials of access to the PHI requested shall be the responsibility of Hospital.

8.7 Amendments to PHI. Following a request from Hospital for the amendment of an individual’s PHI contained in a Designated Record Set (for so long as the PHI is maintained in the Designate Record Set), Pathologist shall promptly provide such information to Hospital for amendment and incorporate any such amendments in the PHI as required by C.F.R. §164.526.
8.8 Requests for Accounting. Following notice by Hospital to Pathologist that it has received a request for an accounting of disclosures of PHI, other than related to the treatment of the patient, the processing of payments related to such treatment, or the operation of a covered entity or its business associate and not relating to disclosures made earlier that six (6) years prior to the date on which the accounting was requested, Pathologist shall promptly make available to hospital such information as is in Pathologists’ possession and is required for Hospital to make the accounting required by 45 C.F.R. §164.528. In the event the request for an accounting is delivered directly to pathologist, pathologist shall promptly forward such request to Hospital.

8.9 Compliance Requests. At Hospital’s request, Pathologist shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Pathologist on behalf of, Hospital available to the Secretary of the Department of Health and Human Services for purposes of determining Hospital’s and Pathologists’ compliance with the Privacy Regulations.

8.10 Permitted Uses and Disclosures. Unless otherwise limited herein, Pathologist may:

8.10.1 Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Pathologist.

8.10.2 Disclose PHI for the proper management and administration of Pathologist, provided that disclosures are required by law, or Pathologist obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Pathologist of any instances of which it is aware in which the confidentiality of the information has been breached.

8.10.3 Use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

8.10.4 Aggregate the PHI in its possession with PHI that Pathologist has in its possession through its capacity as a business associate to other Covered Entities, provided that the purpose of such aggregation is to provide Hospital with data analysis relating to the Health Care Operations (as defined at 45 C.F.R. §164.501 of Hospital.

8.10.5 De-identify any and all PHI provided that the de-identification conforms to the requirements of 45 C.F.R. §164.514(b).

8.11 Breach. In the event that Hospital determines that Pathologist has materially breached the terms of this Agreement, Hospital shall provide notice to Pathologist of such material breach, and shall provide Pathologist with a reasonable time to cure such breach. In the event that the breach is not cured within the specified period, Hospital may terminate this Agreement.
8.12 **Material Term.** Compliance with the terms of this Agreement is a material term of any and all underlying agreements pursuant to which Hospital is making available the PHI to Pathologist and Hospital. The parties understand and agree that termination of this Agreement shall give rise to Hospital’s immediate right to terminate such underlying agreements.

8.13 **Miscellaneous.** The parties to this Agreement do not intend to create any rights in any third partied. The Agreement may be amended or modified only in a writing signed by the parties. No party may assign its respective rights and obligations under this Agreement without the prior written consent of the other party. None of the provisions of this Agreement are intended to create, nor will be deemed to create, any relationship between the parties other than that of independent contracting parties with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the partied evidencing their business relationship.

9.0 **MISCELLANEOUS PROVISIONS**

9.1 **Governing Law.** This Agreement will be governed by the laws of the State of [INSERT STATE].

9.2 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party. The Hospital shall not unreasonably withhold consent in the event that Pathologists desires to assign this Agreement to any partnership corporation of which Pathologists and/or its physicians may at any time be or become partners or shareholders. In the event of a valid assignment considered to by the other party, the assignee shall succeed to the rights, duties and responsibilities of the party assigning this Agreement.

9.3 **Notices.** All notices, requests, demands and any other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly delivered in person or if sent by registered or certified, first class united States mail. Postage prepaid to:

9.3.1 **If to Hospital:**
__________________________
__________________________
__________________________
Attention: ________________

9.3.2 **If to Pathologist:**
__________________________
__________________________
__________________________
Attention: ________________

Any of the undersigned may from time to time change said addresses by written notice to the other parties as above provided.
9.4 Entire Agreement. This Agreement contains the complete, full and exclusive understanding of the parties with respect to the subject matter hereof and supersedes any and all other agreements between the parties with respect to this subject matter.

9.5 Headings. All headings are for convenience only and shall not be construed to modify the substance of this Agreement.

9.6 Amendments. Any amendments, additions or supplements to this Agreement shall be effective and binding on Hospital and Pathologist only in writing and signed by each party to this Agreement.

9.7 Severability. If any provision on this Agreement is found to be invalid or unenforceable, such provisions shall be deemed stricken from this Agreement and the remainder of this Agreement shall remain in full force and effect. The parties shall negotiate in good faith to amend the Agreement to replace any provision which, as nearly as possible, accomplished the original objectives of the parties.

9.8 Waivers. One or more waivers by either party of a breach of this Agreement by the other party shall not be construed as a waiver of further breaches of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as on the day and year first written above.

PATHOLOGISTS

By: ______________________
     ______________________
     ______________________

Date: ______________________

HOSPITAL

By: ______________________
     ______________________
     ______________________

Date: ______________________