

Medical School Operating Grant Agreement

Between

The Georgia Board for Physician Workforce

And

Morehouse School of Medicine

Atlanta, Georgia

Fiscal Year 2011

STATE OF GEORGIA
COUNTY OF FULTON

STATE OF GEORGIA
GEORGIA BOARD FOR PHYSICIAN WORKFORCE
AGREEMENT FOR PAYMENT OF STATE FUNDS

THIS AGREEMENT (hereinafter, "Agreement") entered into this 1st day of July, 2010, by and between the Georgia Board for Physician Workforce of the State of Georgia (hereinafter referred to as the "Board") and Morehouse School of Medicine (hereinafter referred to as the "Medical School").

WITNESSETH:

WHEREAS, pursuant to O.C.G.A. section 49-10-1, *et seq.*, and Chapter 195-1 of the Rules and Regulations of the State of Georgia, the Board is charged with the duty of addressing the physician workforce needs of Georgia communities through the support and development of medical education programs; and

WHEREAS FURTHER, the Board has been granted the power, duty, and responsibility to approve and allocate state funds appropriated to the Board to carry out its purposes; and

WHEREAS FURTHER, the Board finds that there is an inadequate supply and distribution of primary care and other needed core specialty physicians in rural areas and inner cities of the State of Georgia (hereinafter, the "State"); and

WHEREAS FURTHER, the Georgia General Assembly, from time to time, provides funding as may be reasonably necessary for the continued success of the Medical School's educational program to provide an adequate number of primary care and other needed core specialty physicians and improve graduate education programs for primary care and other needed core specialty physicians so as to assure adequate medical care and a better quality of life for all residents of the State; and

NOW, THEREFORE, in consideration of the mutual covenants and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree and covenant as follows:

1. **Basic Undertaking**. The Board shall upon the terms and conditions contained herein pay to the Medical School, and the Medical School hereby accepts, an amount not to exceed eight million one hundred twenty two thousand three hundred fifty seven dollars (\$8,122,357), to be disbursed in accordance with section 4 hereof. The funds received shall be used as operating funds in the continued development and implementation of primary care and other needed core specialty educational programs for medical students and physicians. The Medical School hereby agrees that all funds received pursuant to this Agreement shall be used **solely** for the financial support of the Medical School for that purpose.

2. **Covenants of the Medical School.** The Medical School hereby agrees, warrants, and represents that it will meet the following conditions in the use of the funds:

(a) The Medical School shall have and maintain continuous accreditation by the Liaison Committee on Medical Education.

(b) The Medical School shall encourage and promote medical student entry into primary care and core specialty graduate medical education programs, including family practice, general internal medicine, general pediatrics, obstetrics/gynecology, general surgery, and other specialties identified by the Board as needed in this State.

(c) The Medical School shall maintain a rate of at least fifty percent (50%) of its medical school graduates entering primary care and core specialty graduate medical education programs as defined in subsection 2(b) above (hereinafter, the "Primary Care and Core Specialty Enrollment Rate"). The Primary Care and Core Specialty Enrollment Rate shall be calculated as follows:

(1) **Primary Care and Core Specialty Graduates:** The number of medical school graduates enrolled in primary care and core specialty residency programs (hereinafter, "Primary Care and Core Specialty Graduates") shall be the sum of all graduates from the Medical School during the five-year period from July 1, 2005 through June 30, 2010, enrolled in an ACGME accredited graduate medical education program in family practice, internal medicine, obstetrics/gynecology, pediatrics, general surgery, internal medicine/pediatrics, internal medicine/preventive medicine, or internal medicine/family practice.

(2) **Total Graduates:** The total number of medical school graduates (hereinafter, the "Total Graduates") shall be the sum of all graduates receiving the Doctor of Medicine Degree from the Medical School during the five-year period from July 1, 2005 through June 30, 2010. Graduates who did not enter a graduate medical education program after receiving their medical degree shall be subtracted from the Total Graduates.

(3) **Primary Care and Core Specialty Enrollment Rate:** The primary care and core specialty enrollment rate shall be the quotient of Primary Care and Core Specialty Graduates divided by the Total Graduates.

(d) The Medical School shall operate on a non-discriminatory basis and in a non-discriminatory manner, regardless of the students' race, color, sex, religion, national origin, age, or handicap.

(e) The Medical School shall abide by all Board rules and regulations now in effect or hereafter promulgated.

3. **Accountability.** The Medical School agrees to abide by and meet all of the covenants set forth in section 2 hereof and to expend said funds solely in conformance with this Agreement and to account for said funds in accordance with generally accepted accounting principles. Any funds not expended for the purposes provided herein shall be returned to the Board promptly. The parties hereto agree that the covenants set forth in section 2 hereof are conditions subsequent to the payment of funds

under this Agreement and that, if the Medical School breaches any or all of said covenants, the Board shall have the right to demand and receive repayment of any or all of the payments tendered to the Medical School under this Agreement in accordance with the terms of section 10 hereof.

4. Disbursement of Funds. Subject to the availability of funds for such purpose, the Board shall pay the Medical School in accordance with the following payment schedule:

\$2,030,589.25	Available for disbursement on or after October 20, 2010
\$2,030,589.25	Available for disbursement on or after January, 20, 2010
\$2,030,589.25	Available for disbursement on or after April 20, 2011.
\$2,030,589.25	Available for disbursement on or after June 20, 2011.

As a precondition to the disbursement of the payments described above, the Medical School shall submit to the Board written requests for disbursement in a form reasonably acceptable to the Board. Should the Georgia General Assembly appropriate an amount to the Board that is insufficient to fund fully the payments made pursuant to this Agreement, the Board, in its discretion, may reduce the total amount paid pursuant to this Agreement, with the payment schedule set forth above being ratably reduced to conform to the total adjusted amount.

5. Term of Agreement. Except as otherwise provided in this Agreement, the term of this Agreement shall commence as of July 1, 2010 and shall continue through June 30, 2011.

6. Enforceable and Legally Binding Act. The Medical School warrants and certifies that it is duly organized, validly existing, and in good standing under the laws of the State of Georgia; that it has all the requisite power and authority to enter into this Agreement and to assume the responsibilities herein including the expenditure of funds; and that all necessary actions have been and will be taken in conformance with all applicable laws to make this Agreement and actions hereunder valid, enforceable and legally binding acts of the Medical School.

7. Records; Monitoring and Auditing.

(a) The Medical School shall maintain and submit all records and reports as requested by the Board, including but not limited to:

(1) A report listing anticipated revenue and expenditures of the Medical School for the Agreement period to be submitted by August 1st of the Agreement period.

(2) A report listing the actual revenue and expenditures of the Medical School of the year preceding the Agreement period to be submitted by December 1st of the Agreement period.

(3) A first quarter report to be submitted by August 10th which provides: (A) student names, (B) student Social Security numbers, (C) students' medical school year, and (D) permanent addresses of students enrolled in the 3rd and 4th years of medical school; and

(4) A first quarter report to be submitted by September 1st which provides: (A) student names, (B) student Social Security numbers, (C) students' medical school year, and (D) permanent addresses of students enrolled in the 1st and 2nd years of medical school; and

(5) Quarterly reports to be submitted no later than the tenth (10th) day of October, January, and April which provide a listing of the Medical School students and their status in a format as agreed upon by the Board and the Medical School, with the April report (fourth quarter report) containing the specialty selection and training program location of the Medical School graduates; and

(6) A copy of the most recent submission of the Association of American Medical College ("AAMC") Annual Financial Questionnaire to be submitted no later than January 10th during the term of this Agreement; and

(7) An alumni report to be submitted no later than October 1st during the term of this Agreement, listing all graduates of the Medical School, their respective dates of graduation, their current respective practice locations (city and state), and their respective specialty practicing.

(8) A report summarizing the performance of medical students, noting the first time pass rate, number of students examined, and the number of students repeating/passing the exam on repeat attempts, as listed on the most recent annual performance summary from the National Board of Medical Examiners for 1) the USMLE Step 1 Examination, 2) USMLE Step 2 CK examination, and 3) the USMLE Step 2 CS examination. The report will be submitted by October 10th of the agreement period.

(9) A report noting (by matriculating class) the eventual graduation rate for each class for the past 5 years. Indicate the numbers of students lost for each class in the following attrition categories: academic, personal, academic and personal, transfer. The report will be submitted by October 10th of the agreement period and include the most recently graduated class.

(10) A report by matriculating class indicating the percentage of students who required longer than 4 years to complete the program. Indicate the numbers of students who required extra time in the following categories: academic, personal, academic and personal, combined degree. The report will be submitted by October 10th of the agreement period and include the most recently graduated class.

(b) Upon reasonable request, the Medical School agrees to provide the Board with any information, documents, and/or photographs the Board deems necessary to monitor performance of this Agreement and, until the expiration of three (3) years after expenditure of funds under this Agreement, to give the access for inspection of all directly pertinent books, documents, papers, and records maintained by the Medical School involving transactions relating to the Medical School to the Board, any duly authorized representative thereof, or any interested, duly authorized officer or employee of the State, including but not limited to any pertinent books, documents, papers, and records relating to non-discrimination. The Medical School agrees to maintain proper and accurate books, records, and accounts reflecting its administration of this Agreement funds and compliance with all applicable laws and accounting for the receipt and expenditure of all State funds received under this Agreement. Such documentation shall be retained for at least three years after expenditure of funds under this Agreement and shall be made available to the Board

upon request. Wages and salary costs shall be supported by time and attendance or equivalent records for each employee. The Medical School further agrees that an accounting of these funds shall be included in the next regularly scheduled audit or financial statement of the Medical School or its Parent University and any future audits or financial statements until all expenditures of Agreement funds have been accounted for. In the event of a dispute between the parties hereto, these records shall be maintained until the dispute is resolved. The Medical School acknowledges and agrees that any unresolved findings of the Board concerning expenditure of project funds, whether based on an audit report, financial statement, project completion report, or independent investigation of the Board, shall preclude the Medical School from applying for or receiving any further payments or other funds from the Board, until such findings are resolved to the satisfaction of the Board. Payments made under this Agreement shall be subject to reduction for months charged thereto that are found, on the basis of audit examination, not to constitute allowable costs under this Agreement, and the Medical School agrees to refund the amount of any such reduction.

8. **Independent Contractor; No Agency or Partnership.** The parties to this Agreement are independent contractors. Nothing herein nor any actions of the parties hereto or their agents or employees shall create any agency relationship, partnership, or joint venture between the Board and the Medical School. The Board is not an agent or representative of the Medical School, and the Medical School is not an agent or representative of the Board. The Medical School shall be solely responsible for performing any and all obligations under this Agreement.

9. **Termination for Funding Failure.** The total payment funding established hereunder is payable by the Board from funds received as authorized by the Georgia General Assembly, the availability of which, to the extent authorized by law, is determined in the sole discretion of the Board; in the event that the source of payment for the total payment funding no longer exists or is insufficient with respect to the funding contemplated by this Agreement, the Board may terminate this Agreement without further obligation of the Board as to that amount. The certification of the Board of the events stated above shall be conclusive.

10. **Termination for Cause; Remedies for Breach Other Than Termination.** In the event the Board determines, in its sole discretion, that the Medical School: (i) has failed to comply with the terms of this Agreement in a timely manner; (ii) has failed to complete all or a portion of the actions required under the Agreement; (iii) has acted in any way contrary to the purposes for which the payment was awarded; or (iv) has violated any federal, state, or local law, ordinance or regulation, including but not limited to non-discriminatory compliance, the Board, in its sole discretion, may terminate this Agreement immediately and without notice, and the Medical School shall be required to return to the Board all funds disbursed under this Agreement, upon request. In the event that the Medical School does not achieve any one of the benchmark percentages required as a condition of payment in section 2 hereof, funding for the Term of this Agreement shall be reduced by ten percent (10%), plus an additional one percent (1%) for each percentage point that any given percentage performance is below the targeted benchmark percentage. In the event that the Medical School disputes the findings of the Board in regard to the calculation of the Primary Care and Core Specialty Enrollment Rate or the Medical School's compliance with any condition of section 2 hereof or if there are unusual circumstances that the Medical School wishes the Board to consider, the Medical School may elect to file an appeal with the Board. The Board may waive or reduce the penalty at its discretion based on the information presented in the appeal. The Board's decision on appeal shall be final.

11. **Entire Agreement.** This Agreement supersedes all prior negotiations, discussions, statements, and agreements between the Board and the Medical School with respect to the payments made hereunder. This Agreement constitutes the entire agreement among and between the parties. There are no representations, oral or otherwise, other than those expressly set forth herein. No agent, officer, representative, or attorney for either party has authority to make any statement, representation, or agreement amending or supplementing the provisions of this Agreement.

12. **Waiver of Breach; No Estoppel.** The waiver by the Board of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement and shall not establish a course of performance between the parties contradictory to the terms hereof. No course of action or failure to act by the Board or any of its officers, employees, agents, or other representatives shall serve to modify this Agreement, waive rights under it or arising from its breach, or estop the Board from enforcing its provisions.

13. **Notices.** All notices provided for herein shall be deemed duly given upon delivery, if delivered by hand, or upon three (3) days after posting, if sent by certified mail, return receipt requested. Notice shall be given to the following persons or officials at the following addresses:

Georgia Board for Physician Workforce:

Cheryl A. Tucker, Executive Director
Georgia Board for Physician Workforce
1718 Peachtree Street, N. W., Suite 683
Atlanta, Georgia 30309

Morehouse School of Medicine:

John E. Maupin, D.D.S., M.B.A., President
Morehouse School of Medicine
720 Westview Dr., SW
Atlanta, Georgia 30310-1495

A party hereto may from time to time designate a new address to which all written communications are to be sent by notifying the other party in writing of such designation.

14. **Interpretation.** In the event that there is any dispute as to the meaning of any word, phrase, sentence, or other part of this Agreement, the decision of the Board as to the correct interpretation of the questioned portion of this Agreement shall be conclusive and binding on the parties hereto.

15. **Modification of Agreement.** No amendment to this Agreement shall be binding on either party unless it shall be in writing, executed by both parties, and by express reference incorporated into and made a part of this Agreement.

16. **Indemnification.** The Medical School hereby releases and agrees to indemnify and hold harmless the Board, the State of Georgia, and the State's departments, agencies, and instrumentalities from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorney's fees caused by or arising out of this Agreement due to any act or omission in any way related to the subject matter of this Agreement on the part of the Medical School, its agents, employees, customers, invitees, licensees, or others working at the direction of the Medical School or on its behalf. This indemnification extends to the successors and assigns of the Medical School and survives the termination of this Agreement and, to the extent allowed by law, the bankruptcy of the Medical School.

17. **Choice of Law; Choice of Forum.** This Agreement shall be governed by and construed in accordance with Georgia law, excepting any conflicts of law provision directing its enforcement or construction to laws or forums of another jurisdiction. Any action brought to assert any right or remedy pertaining to this Agreement shall be brought exclusively in the Superior Court of Fulton County, Georgia. This Agreement does not waive the 11th Amendment immunity of the State of Georgia, its officers, departments, or instrumentalities.

18. **Headings.** The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

19. **Assignability.** The Medical School shall not assign this Agreement or any right or obligation hereunder without the prior written approval of the Board.

20. **Time of the Essence.** Time is of the essence with respect to the Medical School's performance of its duties and obligations under this Agreement.

21. **No Third-Party Beneficiaries.** This agreement is for the benefit only of the undersigned parties hereto and is not intended to and shall not be construed as granting any rights to or otherwise benefiting any other person.

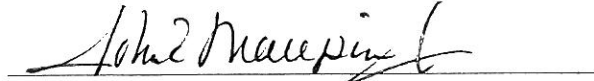
22. **Placement on Rulemaking Notice List.** For the term of this Agreement and any renewal thereof, the Board agrees to place and maintain the Medical School and its primary mailing address on the mailing list maintained by the Board for advance notice of its rule-making proceedings pursuant to O.C.G.A. section 50-13-4(a)(1).

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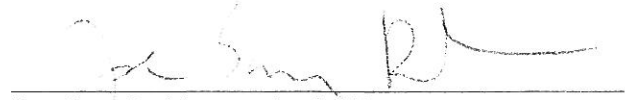
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Morehouse School of Medicine

Georgia Board for Physician Workforce



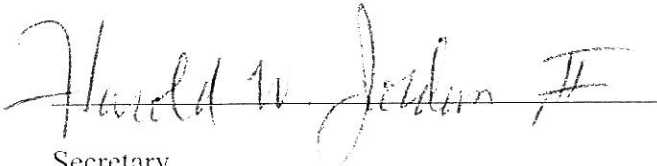
John E. Maupin, D.D.S., M.B.A.
President



Joe Sam Robinson, Jr., M.D.
Chairman

ATTEST:

ATTEST:



Secretary



Cheryl A. Tucker
Executive Director

(CORPORATE SEAL)