

Emergency Transfer Agreement

This Emergency Transfer Agreement (“Agreement”) is made by and between The University of Vermont Medical Center Inc., a Vermont non-profit corporation (“UVMVMC”) and ACTD LLC d/b/a Green Mountain Surgery Center (“GMSC”), a Vermont limited liability company, to be effective on the 29 day of March, 2019.

Recitals

WHEREAS, GMSC seeks to operate an ambulatory surgery center in Colchester, Vermont.

WHEREAS, GMSC, pursuant to federal and state law, is required to have an effective procedure for the immediate transfer, to a hospital, of patients requiring emergency medical care beyond the capabilities of GMSC;

WHEREAS, the hospital to which GMSC transfers patients requiring such emergency care must be a local, Medicare-participating hospital or local nonparticipating hospital that meets the requirements for payment for emergency services by Medicare;

WHEREAS, UVMVMC is a tertiary acute care hospital located in Burlington, Vermont, and is the only hospital that is local to GMSC and meets the requirements for payment of emergency services by Medicare;

WHEREAS, GMSC desires to transfer patients requiring emergency services to UVMVMC and UVMVMC desires to accept such patients; and

WHEREAS, the parties also desire to facilitate the continuity of care and to specify the rights and duties of each party as well as the procedures for ensuring the appropriate, timely transfer of patients and records between the parties.

NOW, THEREFORE, for mutual consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Agreement

1. Need for Transfer. The need for transfer of a patient from GMSC to UVMVMC shall be determined and recommended by the patient’s attending physician in such physician’s own medical judgment. When a transfer is recommended as medically appropriate, a GMSC patient shall be transferred to UVMVMC as promptly as possible under the circumstances, provided that beds and other appropriate resources are available. Acceptance of the patient by UVMVMC shall be made in compliance with federal and state law, including, but not limited to, the Emergency Medical Treatment and Labor Act (“EMTALA”) and the policies and procedures of UVMVMC.
2. GMSC agrees that it shall:
 - a. Notify UVMVMC as far in advance as possible before requesting to transfer a patient;
 - b. Transmit with each patient at the time of transfer, or in the case of emergency, as promptly as possible thereafter, all pertinent medical information and records necessary to continue the patient’s treatment and to provide identifying and other information;

- c. Transfer to UVMMC the patient's personal effects, including money and valuables and information relating to same; and
 - d. Effectuate the transfer to UVMMC through qualified personnel and appropriate transportation equipment, including the use of necessary and medically appropriate life support measures.
3. Billing. Charges incurred with respect to services performed by either party to this Agreement shall be collected by the party that provided such services directly from the patient, insurance, or other third-party payor. Neither party shall be liable to the other for charges due. All such charges shall be billed by each party under its own name and for its own account, and all collections received by the parties shall accrue to the sole benefit of the respective institutions.
4. Term. This Agreement shall be effective from the date first written above and shall continue in effect indefinitely or until no longer required by law.
5. Amendments; Termination. Amendments to the terms of this Agreement shall be made only through mutual, written agreement of the parties. Either party may terminate this Agreement for any reason upon sixty (60) days' prior written notice. Notwithstanding the above, either party has the right to terminate this Agreement at any time immediately upon notice to the other, in the event that the other party has become bankrupt, lost a relevant business license, been placed on the Office of Inspector General's List of Excluded Individuals/Entities.
6. Notice. Any notice required to be given pursuant to this Agreement will be in writing and will be delivered to the following:

If to GMSC:

Amy Cooper, MBA
40 Main Street, Ste. 540
Burlington, VT 05401

With a copy to:

Karen Tyler, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand
91 College Street
PO Box 545
Burlington, VT 05402

If to UVMMC:

Stephen Leffler, MD
Interim President and COO
University of Vermont Medical Center Executive Office
462 Shelburne Rd.
Burlington, VT 05401

With a copy to:

Steven Klein
Director of Legal Affairs and Assistant General Counsel
University of Vermont Medical Center
111 Colchester Ave.
Burlington, VT 05401

7. Marketing. GMSC shall not use the name or logo of UVMMC in any marketing materials without the express written consent of UVMMC. UVMMC shall not use the name or logo of GMSC in any marketing materials without the express written consent of GMSC.
8. Relationship of the parties. The relationship of the parties is that of independent contractors. Neither party shall have any right to control the means and methods of performing and accomplishing the services hereunder. Nothing contained herein or done in the pursuance of this Agreement will constitute the parties as creating or establishing the relationship of employer/employee, entering into a joint venture or into a partnership, or to act as the agent for the other for any purpose or in any sense whatsoever, and neither party shall have the right to make any warranty or representation to such effect, except as provided herein.
9. Insurance. Each party, at its sole cost and expense, shall maintain in full force and effect adequate professional and general liability coverage insurance of not less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate. Each party shall provide, upon request, the certificate of insurance or equivalent confirmation of insurance coverage, showing the coverages required herein no later than thirty (30) days from the date of execution of this Agreement.
10. Indemnification. Each party agrees to defend, indemnify and hold harmless the other party and its directors, officers, members, employees, servants, agents, successors and assigns from and against any and all third party claims and demands for bodily injury or property damage arising out of or resulting from its negligent acts or omissions, provided, however, that this indemnification and hold harmless shall not apply to any claims arising from or as a result of the negligent acts or omissions of the other party or its employees, agents or licensees. To the extent a party receives notice of a claim or demand that would be covered by this indemnity, the party shall in turn provide prompt written notice of said claim or demand to the other party.
11. Confidentiality. Each party acknowledges that it is subject to and governed by the Health Insurance Portability and Accountability Act ("HIPAA") as a Covered Entity, as that term is defined under HIPAA, and agrees to preserve the confidentiality of any patient information exchanged under this Agreement by treating that information in accordance with all applicable federal and state laws. Each party fully understands the fiduciary and confidential nature of medical information, medical records and the subject matter that each party may, from time to time, encounter in the normal conduct of the services described in this Agreement, including all technical and business information (collectively "confidential information"). Each party agrees to keep strictly confidential and hold in trust all confidential information, and not to disclose or reveal such information to any third party, except within the restrictions of this Agreement. Each party shall ensure that each of its employees or agents who perform services under this Agreement is aware of and adheres to this confidentiality section. In addition, each party shall

comply with any and all confidentiality requirements as required by law. Termination of this Agreement will not eliminate the parties' obligations to continue to maintain confidentiality under this section.

12. Compliance with Applicable Laws. Each party hereby affirms that it has never been excluded, debarred, suspended or otherwise determined to be ineligible from participation in any federally-funded health care program, including but not limited to Medicare, Medicaid, and TRICARE, and no proceedings are pending or have been threatened which might result in debarment, exclusion, or determination of ineligibility. Each party hereby affirms that it has not been placed on the Department of Treasury's Office of Foreign Asset Control's Specially Designated Nationals and Blocked Person List, and no proceedings are pending or have been threatened which might result in the party being placed on such list. In the event that any circumstances arise which could affect the party's certification under this provision, the party agrees to immediately notify the other party, and either party may, after receiving such notification, terminate this Agreement immediately in accordance with Section 5 herein, without penalty.
13. Disclaimer of Referrals. Nothing in this Agreement is intended to obligate or induce either party to refer patients to the other or to any physician or provider employed by or affiliated with such party. Each party retains the right in its absolute medical discretion to make referrals to any provider it deems appropriate. It is the intent of the parties that this Agreement fully comply with all federal and state laws, including, without limitation, the Social Security Act and regulations promulgated thereunder. To the extent that either party to this agreement considers that any one or more of the terms of this Agreement may violate any federal or state law, the parties agree to negotiate in good faith an amendment or restatement of such term in order to comply with such law.
14. Assignment. GMSC may not assign, transfer, delegate, or subcontract this Agreement or any part of this Agreement without the prior written consent of UVMMC.
15. Severability. If any provision of the Agreement is held invalid or unenforceable by a court of competent jurisdiction, then it is the express intent of the parties that all the other provisions of the Agreement be construed to remain fully valid, enforceable, and binding on all parties.
16. Waiver. The failure of either party to enforce any term, condition, or right under this Agreement will not be construed to be a waiver of such term, condition, or right, or damages caused thereby, or of any other terms, conditions, or rights under this Agreement.
17. Recitals, Entire Agreement. The above recitals are hereby incorporated into this Agreement as if fully set forth herein. This Agreement constitutes the entire Agreement between the parties as concerns the subject matter of this Agreement and supersedes all proposals, oral or written, and all other communication between the parties relating to the subject matter of this Agreement.


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

ACTD LLC d/b/a
GREEN MOUNTAIN SURGERY CENTER

By: 

Its: Manager

THE UNIVERSITY OF VERMONT
MEDICAL CENTER INC.

By: 

Its: 3/29/19