

**AGREEMENT**

**BY AND BETWEEN**

**FRESENIUS MEDICAL CARE OF  
MONTANA, LLC D/B/A  
FRESENIUS MEDICAL CARE  
MISSOULA**

**AND**

**THE MONTANA  
NURSES  
ASSOCIATION**

**NOVEMBER 1, 2015 – NOVEMBER 1, 2018**



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## **PREAMBLE**

This Agreement (the “Agreement”) is made by and between Fresenius Medical Care of Montana, LLC d/b/a Fresenius Medical Care Missoula (hereinafter the “Employer” or “Company”) and the Montana Nurses Association (MNA) (hereinafter the “Association” or the “Union”).

## **ARTICLE I – RECOGNITION**

The Employer recognizes the Union as the exclusive representative for the purpose of collective bargaining with respect to wages, hours of work, and other terms and conditions of employment of those regular full-time, regular part-time and part-time registered nurses of the Employer (hereinafter referred to as either “Employees” or “Employee”) for whom the Union was certified as the collective bargaining representative, excluding temporary nurses, directors, managers, supervisors, exempt employees, employees not involved in direct patient care, coordinators, guards, and all positions excluded by the National Labor Relations Act.

## **ARTICLE II - EMPLOYEE STATUS**

Section 1: Types of Employees

A. Regular Full-Time - A regular full-time employee is an Employee regularly scheduled to work at least thirty-six (36) hours per work week.

B. Regular Part-Time - A regular part-time employee is an Employee regularly scheduled to work less than thirty-six (36) hours per work week but at least twenty (20) or more hours per work week.

C. Part-Time - A part-time employee is an employee regularly scheduled to work less than twenty (20) hours per work week.

D. Temporary – A temporary employee may have a fixed start date and end date with the Company, and may be hired or contracted by any resource.

Section 2: Temporary employees may be used on a full-time or part-time basis, provided they do not displace an Employee

### **ARTICLE III - EMPLOYEE REPRESENTATION/AGENCY SHOP**

Any present or future nurse who is not an Association member and who does not make application for membership within thirty (30) days of hire or thirty days (30) from the signing of this contract shall, whichever is later, as a condition of employment, pay to the Association, a representation fee in an amount lawfully determined by the Association. The representation fee shall be equal or less than the regular monthly Association dues. Nurses who fail to comply with this requirement shall be discharged by the Company within 30 days after written notice to the Company from the Association. The Association agrees to indemnify and hold the Company harmless against any and all claims, suits, orders or judgments brought or issued against the Company as a result of any action taken by the Company under the provisions of this section.

### **ARTICLE IV - DUES CHECK OFF**

Section 1: During the term of the Agreement and to the extent permitted by applicable federal and state law, the Employer shall deduct an Employee's regular union dues or fees, as certified by the Union, from the Employee's biweekly net earnings, provided the Employer timely receives from each Employee individually signed dues check-off authorization forms in accordance with applicable law. To the extent that there is any conflict between the Union's form and the terms of this Article, the terms of this Article shall control. All monies deducted under the provisions of this Article shall be remitted to the Union within thirty (30) business days after the second of the biweekly pay periods in each calendar month. The Employer's only obligation under this Article is to deduct union dues in accordance with an Employee's written authorization and place such monies in the U.S. mail or by electronic transfer.

Section 2: The Union will notify the Employer, in writing, of any changes in the amount of any Employee's authorized deductions.

Section 3: The Employer shall be relieved from making the above deductions upon an Employee's termination of employment, lay off from work, unpaid leave of absence, transfer to a position outside of the bargaining unit or written revocation of the authorization to make such deductions. The Employer shall resume the deductions upon an Employee's return to work from layoff or a leave of absence provided that the applicable authorization has not been revoked in writing by the Employee.

Section 4: The Employer shall not be required to make the above deductions from any Employee's paycheck in the event that an Employee's net biweekly earnings are less than the amount of such deductions.

Section 5: The Employer shall not be responsible for the payment of any delinquent dues or fees. The Employer shall not be liable for the remittance or payment of any monetary sum to the Union other than to place the amounts actually deducted from the Employees' net earnings in the U.S. mail or to send such amounts by electronic transfer. The Employer shall have no responsibility for the collection of initiation fees, special assessments or any other deductions requested by the Union.

Section 6: Except as provided in Article III of the Agreement, an Employee's unwillingness to sign, execute or revoke a written authorization for union dues deductions; an Employee's failure or refusal to make any union dues or other financial payments that may be due to the Union; or an Employee's membership in the Union or unwillingness to join or remain a member of the Union, shall not affect the Employee's terms and conditions of employment with the Employer.

Section 7: If the Employee does not object, the Company will provide the Union with the name, address, and contact information of each newly hired Employee or an RN who transfers into the bargaining unit within ten (10) days of his or her hire date or transfer date. The Company will provide the Union with the name of a terminated Employee or an Employee who transfers out of the bargaining unit within ten (10) days of his or her termination date or transfer date. The Company will provide the Union with a list of all Employees covered under the Agreement including complete address; phone number; date of hire as a bargaining unit nurse; FTE status and rate of pay on an agreed upon date semi-annually.

#### **ARTICLE V - UNION VISITATION AND BULLETIN BOARDS**

Section 1: No Employee shall engage in any union activity during work time or during the work time of the intended recipient of any solicitation or distribution or in work areas. Employees and Union representatives are subject to the Employer's Solicitation and Distribution in the Workplace Policy as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 1.

Section 2: A non-employee representative of the Union may be admitted to the Employer's facility at reasonable times during work hours to conduct union-related business. Any such visit to the Employer's premises must be approved by the Employer and scheduled in advance with at least twenty four (24) hours advance notice and such approval shall not be unreasonably denied. Any such visit must be conducted so as to not interrupt employee work schedules or disrupt the Employer's operations. The Union representative accessing the Employer's premises must comply with all rules and regulations of the Employer. The Union representative must check in at the Employer.

Section 3: The Employer shall permit the Union to hang a bulletin board, supplied by the Union, at the Employer, for the posting of official notices or bulletins concerning official Union business affecting the Employees' terms or conditions of employment. The bulletin board shall not be any larger than 24 x 36 inches, and located in the Employee locker room or the break room, upon mutual agreement of the parties. The bulletin board shall not be used for any other purpose. Such notices or bulletins may be posted there only by the Union, by or through its authorized and designated officers and representatives, and may not be posted in any other location or place on the Employer's property. No individual employee may post such notices or bulletins on the Employer's property.

Section 4: No notice, bulletin or other writing posted by or on behalf of the Union on its designated bulletin board shall violate Company policy and shall not contain anything which is religious, ethnic or racial, or which is profane or obscene, or which is defamatory toward or disparaging of the Employer, its services, or any of its officers, managers, supervisors, employees, affiliates, patients, families or visitors.

Section 5: Copies of all such notices, at the time of posting, shall be submitted to the Clinical Manager, or in the alternative, the Area Manager or Director of Operations, as applicable.

Section 6: The Employer may require the Union to remove any material which it determines violates Section four (4) of this Article. If the Union fails to promptly comply, the Employer may itself remove the material.



## **ARTICLE VI - MANAGEMENT RIGHTS**

Section 1: The management of the business, including the right to plan, determine, direct and control operations and hours; the right to study and introduce new operational methods, facilities and products; the right to direct and control the work force, including the determination of its size and composition, the scheduling and assignment of work and also including the right to hire, assign, demote, promote, to contract out or subcontract work, to elect to perform such business or operations through subcontractors and transfer, to layoff or reduce the hours of work because of lack of work, to discipline, suspend or discharge for proper cause; and to establish and maintain reasonable rules and regulations covering the operation, a violation of which shall be among the causes for discipline or discharge, is vested in the Employer; provided, however, that these rights shall be exercised with due regard for the rights of the Employees. The listing of specific rights in this Agreement is not intended to be, nor shall it be considered restrictive of or a waiver of any rights of management not listed and not specifically surrendered herein, whether or not such rights have been exercised by the Employer in the past.

Section 2: All rights heretofore exercised by the Employer or inherent in the Employer's rights and not expressly contracted away by the specific provisions of this Agreement are retained solely by the Employer. The failure of the Employer to exercise any function, power, or right reserved or retained by it, or the exercise of any power, function or right in a particular manner, shall not be deemed a waiver of the right of the Employer to exercise such power, function, authority, or right, or preclude the Employer from exercising the same in some manner so long as it does not conflict with an express provision of this Agreement, or the National Labor Relations Act.

Section 3: It is further agreed that the rights of the Employer specified herein or elsewhere in this Agreement may not be impaired, in whole or in part, by an arbitrator or in arbitration even though the parties may agree to arbitrate the issue involved in the manner provided in the Grievance and Arbitration procedures of this Agreement.

Section 4: The Company may introduce a revision in the method or methods of operation which will produce a change in job duties or functions and a reduction in personnel. Nothing in this Agreement shall prevent the implementation of any program whether or not the implementation of such program results in a reduction of the work force; provided, however, that nothing in this Article relieves the Employer from bargaining with the Union concerning the impact of such a program.

## **ARTICLE VII – LABOR MANAGEMENT COMMITTEE**

Section 1: In order to continue and ensure the positive relationship between the parties to this agreement, the Employer and Union shall establish a joint committee made up of two members of management and two members of the bargaining unit.

Section 2: This committee will meet on call at either party, but not more than quarterly.

Section 3: Such meeting will be held in conjunction with the regularly scheduled Clinic Staff Meeting, either in advance or after that meeting.

Section 4: While the agenda will include an open discussion of mutual concerns, no collective bargaining, presentation or adjustment of grievances, are within the scope of the Committee's purpose or mission.

## **ARTICLE VIII - PROBATIONARY PERIOD**

Section 1: The initial ninety (90) calendar days of a new Regular Full-Time, Regular Part-Time and Part-Time Employee's employment shall be considered to be a probationary period, excluding any calendar days missed for illness or other reasons. All such missed calendar days shall be added to and will extend the employee's probationary period. The Employer may, in its discretion, extend the probationary period for an additional thirty (30) calendar days post the initial ninety (90) calendar day probationary period, to more fully evaluate an Employee's performance.

Section 2: During an Employee's probationary period the Employee may be disciplined or terminated from employment with or without cause, at the sole discretion of the Employer. Any discipline or termination from employment occurring within the probationary period shall not be subject to or reviewable under the Grievance and Arbitration provisions of this Agreement.

## **ARTICLE IX - DISCIPLINE AND DISCHARGE**

Section 1: No Employee will be discharged, suspended or disciplined without just cause. The Employer maintains sole discretion in deciding whether to discharge, suspend or otherwise discipline any Employee.

Section 2: An Employee is required to sign a discipline document as evidence of receipt. The employee shall be presented with and sign any performance-related document that would be used for future discipline prior to insertion in his/her personnel file. The Employee's signature on the discipline document shall signify that the Employee has received a copy of the discipline document and shall not signify an admission of guilt.

Section 3: All objections made by the Union to disciplinary action must be processed through the Grievance and Arbitration provisions as outlined in this Agreement.

Section 4: One progressive discipline procedure will exist for all appropriate discipline including, but not limited to, violations of the Employer's attendance policy, work rules, and other Company policies. The progressive discipline procedure will typically consist of one or more of the following steps:

Documented Counseling

Written Warning

Final Written Warning

Termination

A Documented Counseling and a Written Warning shall remain in effect for one (1) year from the date of issuance. A Final Written Warning shall remain in effect for two (2) years from the date of issuance. The parties acknowledge that there may be circumstances justifying immediate discharge or skipping one or more of the steps of progressive discipline.

Section 5: In the event that disciplinary action is submitted to arbitration under the Grievance and Arbitration provisions, the arbitrator shall not base his or her decision solely on the failure of either party to call a patient, visitor or employee witness to appear at a hearing. Furthermore, the arbitrator shall not issue any subpoena or compulsion to attend to any such patient or visitor.

## **ARTICLE X - SENIORITY**

Section 1: Seniority shall mean the length of continuous active employment by the Employee with the Employer and shall accrue from one's most recent date of hire into a bargaining unit position by the Employer; however, the principles of seniority shall not apply to any Employee within the probationary period. If an Employee takes a position out of the bargaining unit, the Employee's seniority will be frozen during the time the Employee is out of the bargaining unit and will resume upon re-entry into the bargaining unit. If more than one Employee is hired on the same date, then the method of determining the senior Employee shall be to compare each Employee's birth month and the Employee with a birth month earlier in the calendar year shall be the more senior Employee. If there is a tie breaker regarding birth month, the birth day shall be used in determining seniority. The Employee with the earlier date in the month shall be more senior. Employees hired on May 15, 2011 as part of the acquisition shall retain their previous employer's seniority date.

Section 2: One seniority list for the Employees shall be kept by the Employer.

Section 3: In the event it becomes necessary to layoff Employees, the Employer shall conduct the layoff in the following order: volunteers, Temporary, and then Part-Time, Regular Part-Time and Regular Full-Time Employees in the reverse order of seniority.

Section 4: The Employer will give written notice to the affected Employee(s) and the Union at least two (2) weeks prior to the affected Employee's or Employees' final day of employment, or pay in lieu thereof.

Section 5: Seniority rights shall be lost and an Employee's employment with Employer shall end for any of the following reasons:

- (a) An Employee resigns, quits, or retires;
- (b) An Employee who has been laid off, who does not accept an offer of employment within two (2) calendar days, and who does not report to work from recall within fourteen (14) calendar days after the Employee has been notified in writing, by telephone, telecopy, hand delivery, overnight mail or registered mail to return to work. It shall be the responsibility of the Employee to keep the Employer advised of his/her current mailing address;
- (c) An Employee is discharged; or
- (d) An Employee is on layoff in excess of six (6) months.

#### **ARTICLE XI - HOURS OF WORK**

Section 1: The work week will consist of seven (7) consecutive twenty-four hour periods beginning at 12:00 midnight Sunday and ending at 11:59 p.m. Saturday. The weekend starts on 12:00 midnight Saturday and ends 11:59 p.m. Sunday.

Section 2: Any number of actual hours worked in excess of forty (40) hours per work week shall be considered as overtime hours. Overtime at the rate of one and one half (1 ½) times the regular rate of pay (as defined under applicable law) shall be paid to Employees for all hours worked in excess of forty (40) hours in a work week.

Section 3: Each Employee must timely report to work by his/her scheduled start time and be prepared to commence work at the start of the Employee's shift. No Employee may punch in at the time clock earlier than seven (7) minutes prior to the start of the Employee's scheduled work time. No Employee may start work prior to the scheduled starting time of his/her shift. No Employee may punch out at the time clock prior to the end of the Employee's scheduled work time unless the Employee has been authorized to leave work early. Generally, Employees are expected to complete their work by the end of their shift.

Section 4: When an Employee is unable to report for work at his or her regularly scheduled starting time, such Employee must give his or her supervisor, or designee, as much advance notice as possible, but in no event less than two (2) hours notice of his or her inability to report. Both the Company and the Union recognize the importance of reporting an absence or late report as soon as possible to optimize success of finding a replacement employee.

Section 5: The Employer retains the sole discretion to establish the work schedule, reestablish or modify the work week, the number of hours that an employee is regularly scheduled to work each work day, and the times that employees are regularly scheduled for breaks during the work day, as more fully described in the Management Rights Article of this Agreement. The Employer will develop the schedule according to staffing and patient care needs. Schedules will be posted two (2) weeks prior to the first day of the new schedule. Schedules shall be for a minimum of four (4) weeks in duration, and shall include all staff meetings and/or education required of the Nurse. If notice of less than two (2) weeks is given for any mandatory staff meeting, failure of the Nurse to attend shall not be grounds for disciplinary action.

The Employees currently work twelve (12) hour shifts. If the Employer, in its sole discretion, determines to change the length of the work shift, the Employer will ask for volunteers and if an insufficient number of Employees volunteer, the Employer shall assign Employees in the reverse order of seniority. The Employer shall provide the Union notice and the opportunity to meet and confer concerning permanent changes in the work schedules. This Section does not limit the Employer's right to change the length of the work shift for all Employees.

Section 6: Management will make reasonable efforts to reduce the number of Saturdays worked by the Employees.

Section 7: The Employees must request days off prior to the posting of the schedule in accordance with the Paid Time Off, Article XVII herein. If the Employee wishes to change his or her posted schedule, the Employee must arrange to have another Employee who is fully qualified fill the shift and must obtain his or her Clinical Manager or designee's approval of such change. Once the schedule is posted, changes must be made in writing only with mutual consent of the Employee and the Employer.

Section 8: The Employer does not guarantee any minimum number of hours of work per work day, work week or per year for Employees covered by this Agreement. The Employer retains the sole discretion to require an Employee to not work, to arrive later than the Employee's regular start time, and/or leave prior to the end of the Employee's regular end time on any work day based on business needs. If Employees are sent home before the end of their scheduled shift employees will be paid only for hours actually worked.

Section 9: There shall be no pyramiding of overtime.

Section 10: The Employer shall use reasonable efforts to provide Employees with one hour advance notification of the need to work overtime, unless business circumstances prevent such advance notice.

Section 11: In the event that the Employer requires additional shifts to be worked by the bargaining unit Employees, then it shall assign as set forth herein. Initially, the Employer will seek volunteers for the additional shifts and award them on a first come first serve basis. In the event that an insufficient number of Employees have volunteered to satisfy the need, then the Employer may assign employees to work the additional shifts on a mandatory rotating basis in reverse order of seniority, as equitably as possible. Failure to work overtime when required is subject to discipline by the Employer. The Employer reserves the right to select or deny Employees overtime.

Section 12: Employees shall receive one (1) paid fifteen (15) minute break period for each four (4) hours worked when working conditions allow.

Section 13: Employees may take a thirty (30) minute unpaid meal period. In the event an Employee is unable to take his or her meal period due to patient care or other operational needs, with prior management approval, the Employee will be compensated and will be responsible for canceling his or her meal deduction in accordance with the applicable time-keeping procedure.

The scheduling of rest and meal periods is within the discretion of the Employer.

Section 14: An Employee will not be scheduled to work a split shift unless mutually agreed to by the Employee and the Employer.

## **ARTICLE XII - PERFORMANCE OF BARGAINING UNIT WORK**

Employees excluded from the Agreement may not displace an Employee performing bargaining unit work, however, they may provide assistance to meet patient care deadlines, assist with training and orientation of new Employees, cover bargaining unit Employees for meal periods and breaks, work shifts related to unexpected absences, emergencies or other intermittent work.

## **ARTICLE XIII - LOW CENSUS**

Section 1: At the time the schedule is posted, a low census calendar mirroring the schedule time period shall also be posted. The Employees who volunteer for low census hours will indicate their desire on the low census calendar.

Section 2: If the Employer needs to temporarily reduce staffing on a particular shift, the Clinical Manager, or in the alternative, the Area Manager or Director of Operations, as applicable, shall consult the low census calendar for volunteers. Voluntary low census days shall be distributed as equitably as reasonably possible among the volunteer Employees.

Section 3: If there are insufficient volunteer Employees for low census hours, the Clinical Manager, or in the alternative, the Area Manager or Director of Operations, as applicable, will assign an Employee or Employees to be off work. Such assignment shall adhere to the provisions set forth in Article XIV, Section 4.

Section 4: At management discretion based on the needs of the business, Employees placed on low census, may be classified as either “low census on-call” or “low census no recall”, and shall be given reasonable advance notice based on the needs of the business while the Employees are on duty. If the Employees have not yet reported to work, they shall be given at least two (2) hours’ notice of the low census designated or pay in lieu thereof.

If designated as “low census on-call”, the Employee shall be on-call for a four hour period following the time of low census and shall receive on-call pay during this period when they are on-call but not working. If recalled, the Employee must report to work within one hour, and shall receive \$5.00 per hour, for every hour worked on recall. Low Census on-call will not be used to create split shifts.

If designated as “low census no recall”, the Employee will not be recalled and is under no obligation to report back to work during that shift, nor will the Employee be paid on-call pay.

When both “low census on-call” and “low census no-recall” are needed, the affected Employees will be permitted to collaboratively determine which Employee will assume which designation of low census. The Employer and Employee agree that Employees will use their best and positive efforts to agree as to the determination among themselves. If it appears to the Employer that it has been made otherwise, that is not best efforts or not positive, the Employer may make the determination regarding the low census designation and document that decision. If the Employees are unable to determine who shall take which designation, the Employer shall assign the low census in a rotating equitable fashion.

#### **ARTICLE XIV - FILLING VACANCIES**

Section 1: In the event there are vacancies to be filled and the candidates for the vacant position(s) are internal, and provided that merit and ability are substantially equal, seniority will be the deciding factor in awarding the position(s).

Section 2: Nurse positions which are available for recruitment shall be posted in the clinic at least seven (7) calendar days prior to the application deadline. Postings will also occur on the Company website. Qualified internal candidates will be considered before external candidates.

## **ARTICLE XV - ON CALL**

The Employees who are assigned the responsibility of being available to be called to work at the clinic during a specified period will be designated as on call. The parties acknowledge that there are special qualifications attendant to working at the acute hospital/inpatient center and to providing home therapy. Therefore, only the Employees possessing those qualifications will be designated as on call. Every effort will be made by the Employer to train and orient new staff to the Inpatient Program (HD and PD services), or to the Home Therapy Program, per the Experience and Required Skills section of the Inpatient RN, or Home Therapies Registered Nurse, job description, which is subject to change.

On call is defined as the hours when there is not a regularly scheduled shift or Employee to cover the acute hospital/inpatient center or to attend to the home therapies patients. If the Employer requests that an Employee begin on-call coverage during hours where there are regularly scheduled shifts, that Employee will be compensated at the on call rate as set forth in this Article.

The Clinical Manager, or the Area Manager or the Director of Operations, if applicable, shall determine the number of on call shifts required for each schedule. The call shifts shall be divided equitably as possible amongst all Employees eligible for call. Employees shall sign up for call shifts on a rotating basis. If there are new Employees who become eligible for call, such Employees shall be added to the bottom of the rotation list. In the event that new Employees have the same eligibility date, birth dates shall be used to determine placement on the rotation list. In the event that an insufficient number of Employees have signed up to satisfy the on call need, then the Employer may assign Employees to be on call on a mandatory rotating basis in reverse order of seniority, as equitably as possible.

Once an Employee is scheduled to be on call, such an on call shift may be cancelled by the Company in its discretion, with two (2) hour notice. Failure to be on call when required is subject to discipline by the Employer



## **ARTICLE XVI - COMPENSATION**

Section 1: The minimum and maximum rates for each position are set forth in Appendix A.

Section 2: Effective the first pay period after December 1, 2015, all current Employees shall receive a 2.0% increase in their straight time hourly wage rate only. Effective first pay period after ratification all current Employees shall receive 4% increase in their hourly wage rate.

Effective the first pay period after April 1, 2016, all current Employees shall receive a 2.0% increase in their hourly wage rate.

Effective the first pay period after April 1, 2017, all current Employees shall receive a 2.0% increase in their hourly wage rate.

Effective the first pay period after April 1, 2018, all current Employees shall receive a 2% increase in their hourly wage rate.

Wage rates and other economic provisions established herein are minimums only and shall not prohibit the Employer from paying or granting greater rates of pay.

Section 3: All Employees shall receive an annual performance evaluation in accordance with the Employer's normal procedures.

Section 4: Effective the first pay period after April 1 for each year of this Agreement, Employees at or above the salary cap shall remain at their then current hourly wage rate and shall receive two (2) equal lump sum payments, on the first regular pay periods in April and October of each contract year, calculated using the applicable percentage increase for the Employee's annual base salary (assuming the Employee's regularly scheduled work week not to exceed 40 hours per week). Each lump sum payment shall equal half of the annual wage increase otherwise due to the Employee.

Section 5: Shift differentials are set forth in Appendix B attached hereto and made a part thereof.

## **ARTICLE XVII - BENEFITS**

Section 1: The Employer agrees to offer the Employees covered by the Agreement the same medical, dental, vision, life, short term disability and long term disability insurance programs as it offers to other FMCNA employees, as well as any other employee benefit program it offers to other FMCNA employees, on the same basis and to the same extent. The Employer may, in its discretion, make such changes in the programs (including but not limited to the type and amount of benefits, qualifications and the amount of employee contributions) as may from time to time be considered prudent by the Employer.

Section 2: In the event an employee is granted a personal or medical leave of absence, the employee is only eligible to receive benefits under the conditions set forth in Article XXI (Leaves of Absence) herein.

Section 3: *401(K) PLAN*. The Employees are eligible to participate in the Employer's 401(k) Plan, as may be modified from time to time in its sole discretion, consistent with the Employer's policy.

## **ARTICLE XVIII - PAID TIME OFF**

### Section 1: POLICY STATEMENT

The Paid Time Off (PTO) program recognizes the varying needs of employees to receive time off based on individual preferences and circumstances. Paid Time Off allows employees greater flexibility in determining when and how time off benefits may be used. Employees may draw from the Paid Time Off bank for vacation, holiday, short-term illness, and personal time off needs.

### Section 2: ELIGIBILITY

All regular full-time and regular part-time Employees whose standard weekly hours are twenty (20) or more per week are eligible for PTO. New Employees will be eligible to accrue and use PTO after the longer of the completion of their probationary period or three (3) months of employment.

### Section 3: GENERAL PROVISIONS

The Employees are subject to the Employer's PTO policy on the same basis and to the same extent as is applied to other FMCNA employees and as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 2.

## **ARTICLE XIX - EXTENDED SICK LEAVE**

### Section 1: POLICY STATEMENT

Extended Sick Leave (ESL) enables employees to receive pay during extended absences due to their own personal injury or illness.

### Section 2: ELIGIBILITY

All regular full-time and regular part-time employees whose standard weekly hours are twenty (20) or more are eligible for ESL. New Employees will be eligible to accrue and use ESL after the completion of their probationary period. New Employees will begin to accrue ESL the first full pay period after the completion of three (3) months of consistent eligible employment based on their standard weekly hours and length of service.

Section 3:        **GENERAL PROVISIONS**

The Employees are subject to the Employer's ESL Policy on the same basis and to the same extent as is applied to other FMCNA employees and as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 3.

**ARTICLE XX - BEREAVEMENT**

Section 1:        The Employees are subject to the Employer's Bereavement Policy on the same basis and to the same extent as is applied to other FMCNA employees and as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 4.

**ARTICLE XXI - JURY DUTY AND NATIONAL GUARD DUTY**

The Employees are subject to the Employer's Jury Duty and the Employer's National Guard Policies on the same basis and to the same extent as is applied to other FMCNA employees and as they may be amended from time to time within the discretion of the Employer; the current such policies attached hereto as Exhibit 5.

**ARTICLE XXII - LEAVES OF ABSENCE**

The Employees are subject to the Employer's Leaves of Absence policies on the same basis and to the same extent as is applied to other FMCNA employees and as they may be amended from time to time within the discretion of the Employer; the current such policies attached hereto as Exhibit 6.

**ARTICLE XXIII - GRIEVANCE AND ARBITRATION PROCEDURES**

Section 1:        An Employee is required to discuss, and make a reasonable effort to resolve, concerns and complaints with his/her immediate supervisor within ten (10) calendar days of the alleged violation of this Agreement, in an attempt to resolve the issue prior to it becoming a written grievance.

Section 2:        A grievance under this Article is hereby defined as a complaint by either the Employer or the Union that a specific Article or Section of this Agreement has been violated. Grievances shall be processed as follows:

Step 1:            All written grievances shall be presented to the Clinical Manager of the affected Employee(s), or to the Union, within ten (10) calendar days of the occurrence giving rise to such grievance. The Clinical Manager, or the Union, shall have ten (10) calendar days to respond to the grievance in writing. In the event the written grievance is not resolved by discussions amongst the Clinical Manager and the Union, the grievance may be taken to Step 2.

Step 2: A grievance not satisfactorily resolved in Step 1 shall, within ten (10) calendar days after the receipt of the written response in Step 1, be submitted in writing by the Union to the Director of Operations or Area Manager, as applicable, or by the Employer to the Union. A meeting will be scheduled to resolve the grievance and a written answer to the grievance will be due within ten (10) calendar days after the Director of Operations/Area Manager's receipt of the Step 2 written grievance, or the Union's receipt thereof.

Step 3: If a grievance has not been satisfactorily resolved in Step 2, a written request for a Step 3 meeting must be received within ten (10) calendar days of the receipt of the written response in Step 2. The meeting will be held at a mutually agreeable time with the Union Representative and the Regional Vice President or his/her designee. A written answer will be due within ten (10) calendar days after the Step 3 meeting.

Step 4: If a grievance has not been satisfactorily resolved in Step 3, the Union or the Employer may submit the matter to arbitration within ten (10) calendar days after receipt of the written answer in Step 3 by requesting the American Arbitration Association to provide the Employer and the Union a panel of seven (7) arbitrators. If the parties are unable to agree upon an arbitrator from the list, they will request a second panel from the American Arbitration Association and they shall alternately strike names from the second list with the Union striking the first name. The one person remaining shall be the arbitrator.

Section 3: If the Employer or the Union fails to file or process a grievance at any step within the time limits set forth above and the procedure is not waived by mutual written agreement, that grievance shall be considered and deemed waived or settled and such failure shall constitute a bar to all future actions thereon. Failure on the part of the Employer's designated representative to answer a grievance at any of the steps in the grievance procedure shall not be deemed acquiescence thereto, but the grievance may progress to the next step if so processed by the Union.

Section 4: An Employee shall comply with all instructions and perform all duties, when and as instructed, even though he or she may feel aggrieved provided that the Employee's health and safety are not placed in serious peril.

Section 5: Grievances resolved at any step of the grievance procedure will not be regarded as setting precedent for future interpretation of this Agreement. Any grievance may be moved directly to a more advanced step of the grievance procedure by mutual agreement by the parties.

Section 6: The arbitration of a grievance shall be extended only to those grievances which are arbitrable under this Agreement. In order for a grievance to be arbitrable: (1) it must have been processed through the grievance procedure properly and within the applicable time limits as set forth in this Agreement; (2) it must be referred to arbitration within the applicable time limits as set forth in this Agreement; and (3) it must not require the arbitrator, in order to rule in favor of the grievant, to exceed the scope of his or her jurisdiction as defined in this Article.

Section 7: The Arbitrator shall consider only the particular issue or issues presented in writing by the Employer and the Union. If the parties are not able to agree on the issue, the Arbitrator has the authority to determine the issues to be decided. The decision and award shall be based solely upon the Arbitrator's interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented. The Arbitrator has no authority or power to add to, delete from, modify, disregard, or alter any of the written terms of this Agreement. A decision of the arbitrator on any grievance within the scope of the issues submitted and within the arbitrator's authority shall be final and binding on the Company, the Union and the Employee(s) involved.

Section 8: Subject to the terms of the Discipline and Discharge Article, the Arbitrator shall have the authority to order or deny reinstatement of an Employee with or without back pay. In the event there is an award of any back pay, the Arbitrator is required to submit a copy of the arbitration award to the Unemployment Insurance Division. Any Employee who has been discharged shall have the duty to seek work so as to mitigate the claim for back wages. Amounts earnable with reasonable diligence by the grievant shall operate to reduce the back pay otherwise allowable. Back pay liability shall not accrue from a date more than ten (10) calendar days prior to the time a written grievance is filed with the Employer.

Section 9: The arbitrator's fees and expenses shall be borne equally by the parties to this Agreement. The expenses incidental to each party's witnesses shall be borne by the party calling the witnesses. Each party shall pay their own filing fees, attorneys' fees and costs. In the event one of the parties wants a transcript of the arbitration hearing, the party requesting the transcript shall pay the cost. If the other party wishes a copy of the transcript, the cost of the transcript shall be shared equally.

Section 10: The fact that a claim or dispute has been processed under the grievance procedure set forth in this Agreement will not preclude the raising of the question of arbitrability with respect to such claim or dispute before the arbitrator selected to hear such claim or dispute; provided that the question of arbitrability is raised no later than in response to the Union's demand for arbitration.

Section 11: No more than one (1) grievance shall be submitted to the same arbitrator at a single hearing, except by mutual agreement of the parties.

Section 12: With respect to the time limitations set forth herein this Article, the ten (10) calendar days begins the day after the alleged violation of the Agreement, or the day after receipt of a written answer. If the tenth calendar day falls on a Saturday, Sunday or holiday, such holiday defined in the Employer's Paid Time Off policy, the response date shall be the next working day thereafter.

#### **ARTICLE XXIV - POLICIES**

All Employees are required to follow the Company's clinical policies and procedures as they are subject to change from time to time within the sole discretion of the Employer.

#### **ARTICLE XXV - EXPOSURE TO INFECTIOUS DISEASE**

An Employee who is exposed to an infectious disease will be referred to the appropriate provider. If the Employee is required to leave during the shift where the Employee was exposed to seek treatment, the Employee will be compensated at the Employee's base hourly rate for the time spent seeking such treatment, up to a maximum of four (4) hours.

No Employee will be subject to mandatory vaccines or immunizations by the Employer. The parties acknowledge there may be circumstances where a third party may require the Employees to be vaccinated in order to work at the third party's facility. Failure to comply with this requirement shall subject the Employee to corrective action, up to and including discharge.

#### **ARTICLE XXVI - EXHAUSTION RELIEF**

If an Employee, while working on a scheduled shift, reaches a point of exhaustion related to performing work for the Employer and is impaired, the Employee shall notify the Clinical Manager who shall make reasonable efforts to designate relief. The Clinical Manager has the discretion to designate as a "scheduled/excused absence" any time off that occurs when an Employee leaves his or her scheduled shift due to exhaustion as specified in this Article.

#### **ARTICLE XXVII - PROFESSIONAL RIGHTS AND RESPONSIBILITIES**

Employees shall comply with applicable laws governing the practice of nursing, and to provide the nursing care in compliance with the Montana Nurse Practice Act and the ANA Code of Ethics for Registered Nurses. MNA will provide copies of the referenced Act and Code.

#### **ARTICLE XXVIII – NO DISCRIMINATION, NO HOSTILE WORKING ENVIRONMENT**

The Employer strives to provide a work environment free from all forms of discrimination and harassment, and expects employees to treat each other in a respectful and professional

manner consistent with our values.

The Employer will not tolerate harassment under any circumstances. Harassment includes verbal or physical behavior that creates an intimidating, hostile or offensive work environment for another employee. Employees are subject to the Company's policies regarding Equal Employment Opportunity, Harassment, Sexual Harassment, Reporting Sexual Harassment & Other Harassment and Problem Review and Response Procedure Policy on the same basis and to the same extent as is applied to other FMCNA employees and as they may be amended from time to time within the discretion of the Employer. The current Equal Employment Opportunity Policy, Harassment Policy, Sexual Harassment Policy, Reporting Sexual Harassment and Other Harassment policy and Problem Review and Response Procedure Policy are attached hereto in Exhibit C. If these policies change, the Employer, upon receipt, will notify the Employees and the Union Representative on site before the changes take effect.

### **ARTICLE XXIX - STRIKES AND LOCKOUTS**

Section 1: There will be no strikes, lockouts or work stoppages during the life of the Agreement. Violation of this Article may result in the immediate discharge of the Employee or Employees committing such violation.

Section 2: During the life of this Agreement, the Employees shall not participate in any "coercive activity" which is directed, in whole or in part, at the Employer or corporate affiliates of the Employer. For purposes of this Article only, the term "coercive activity" includes, but is not limited to, boycotts of the Employer's services or products, bannering, picketing, and hand billing. Violation of this Section may result in the immediate discharge of the Employee or Employees committing such violation.

Section 3: Discharge for the conduct noted above shall not be subject to submittal through the Grievance and Arbitration procedures except on the limited issue as to whether the Employee has engaged in such proscribed activity. If the Employer is able to prove that an Employee, after notice provided herein by the Union did not immediately cease such proscribed activity, the arbitrator shall have no authority to change the penalty of discharge of the Employee.

Section 4: In the event of conduct by an Employee or Employees prohibited by this Article, the Union shall, after notification by the Employer of such conduct:

(a) promptly and publicly (both verbally and in writing) disavow the prohibited action;  
and

(b) promptly and publicly notify (both orally and in writing) all the Employees involved that they are violating the Union's agreement with the Employer.

### **ARTICLE XXX - SEVERABILITY**

In the event that any provision(s) of the Agreement shall be held to be invalid, illegal or otherwise prohibited by law, then such provision (or portion thereof) shall be deemed amended so as to comply with such law, to the extent possible, or if such amendment is not possible, then such provision shall be null and void but such invalidity shall not affect the enforceability of the remainder of the Agreement.

### **ARTICLE XXXI - SUBSTANCE ABUSE**

The Employees are subject to the Employer's Drug and Alcohol Free Workplace policy on the same basis and to the same extent as is applied to other FMCNA employees and as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 7.

### **ARTICLE XXXII - ATTENDANCE AND ABSENTEEISM**

The Employees are subject to the Employer's Attendance and Tardiness policy on the same basis and to the same extent as is applied to other FMCNA employees and as it may be amended from time to time within the discretion of the Employer; the current such policy attached hereto as Exhibit 8.

### **ARTICLE XXXIII - DURATION**

Section 1: The Agreement shall become effective as of 12:01 a.m. on the day after ratification, 2016, and shall remain in full force and effect until 12:00 p.m. midnight on the 1st day of November 2018; and shall renew itself without change from year to year thereafter, unless written notice of termination or desire to modify is given at least ninety (90) calendar days prior to the expiration date of the Agreement, or any succeeding yearly term, by either of the parties hereto.

Section 2: The Employer and the Union acknowledge that during the negotiations that resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreement arrived at by the parties after the exercise of that right and opportunity is set forth in full in the Agreement. Therefore, it is agreed that the terms set forth in this Agreement constitute




the sole and entire agreement between the parties and supersedes any and all prior agreements, practices or understandings, either oral or written. The Employer and the Union agree that the Agreement may only be modified, in writing, by mutual agreement of the parties.

Section 3: For the term of the Agreement, the Employer and the Union agree that neither shall be obligated to bargain collectively with regard to any matter which is dealt with in the Agreement and each party expressly waives any obligation or duty of the other party to bargain collectively regarding any term or condition of employment or any other matter covered or not covered in the Agreement, even though such matter may not have been within the knowledge or contemplation of either party as of the date of execution of the Agreement. It is further agreed that the Agreement may only be reopened for discussion of specific items by mutual written consent of the parties.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives have executed this Agreement on this 1 day of December 2016

FRESENIUS MEDICAL CARE OF MONTANA, LLC d/b/a FRESENIUS MEDICAL CARE MISSOULA



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MONTANA NURSES ASSOCIATION



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## **Letter of Understanding**

In addition to the Employees set forth in Article I, Recognition, of that certain collective bargaining agreement between the Montana Nurses Association and Fresenius Medical Care of Montana LLC d/b/a Fresenius Medical Care Missoula, [insert date] (the “CBA”), the parties thereto agree that the current four (4) employees classified as Per Diem status have been or will be offered to become Regular Full-Time, Regular Part-Time or Part-Time Employees. In that event, there are no, nor will be, any employee in a Per Diem status by November 1, 2012. If, after such time, the Employer, based on its operational needs, determines to reintroduce employees classified as Per Diem, the Employer shall meet and confer with the Union about the inclusion of such employee(s) in the bargaining unit as set forth herein and will endeavor to reach an agreement in a non-capricious nor arbitrary manner. If the parties do not reach an agreement, the parties shall submit the matter to arbitration as set forth in Article XXII.

**APPENDIX A**

The following hourly wage rate minimums and maximums shall apply for the duration of the Agreement.

<u>Position</u>	<u>Minimum</u>	<u>Maximum</u>
Staff Nurse	\$24.78	\$38.50
Acute Nurse	\$27.22	\$43.25
Home Therapies Nurse	\$25.97	\$40.75

An Employee will not receive a regular hourly wage rate more than the maximum hourly wage rates noted above for the respective job positions during the term of this Agreement.

## APPENDIX B

Charge Nurse Differential: Employees designated by their Clinical Manager, or designee, to serve as a Charge Nurse on a specific shift shall receive an hourly differential of \$2.00 per hour for each hour worked in that capacity.

Evening Shift Differential: Employees who work between the hours of 5:00 p.m. to 10:59 p.m. will receive an Evening Shift differential of \$2.00 per hour. If an Employee works 50% or more of his or her shift hours after 5:00 p.m., the Employee will receive the evening shift differential for the entire shift. If an Employee works less than 50% of his or her shift hours after 5:00 p.m., but at least three hours after 5:00 p.m., the Employee shall receive the Evening Shift differential for only those hours worked after 5:00 p.m.

Night Shift Differential – Employees who work between the hours of 11:00 p.m. to 6 a.m. will receive a Night Shift differential of \$3.75 per hour for each hour worked during that period of time. Night Shift Differential does not apply to regularly scheduled day shifts that commence prior to 6 am or end after 11:00 pm.

Preceptor Pay: Retroactive to November 1, 2011, Employees who precept shall receive \$1.00 per hour for each hour precepting. The Employer has the discretion to determine which Employee(s) shall precept.

Weekend Shift Differential: Employees who work between the hours of 11:00 p.m. Friday to 6:00 a.m. Monday will receive a weekend shift differential of \$2.00 per hour.

On-Call Pay: The on-call pay rate is \$5.00 per hour.

Call Back Pay: Employees who are on call and who are called into work shall be paid at one and one half times (1.5) of their base hourly wage rate.

Extra Shift Differential: Employees who work an unscheduled shift will receive \$3.00 per hour for all extra hours worked, beyond their profiled hours for the week and up to 40 hours in a work week. PTO hours do not count towards hours worked for the weekly total/calculation

Acute Differential: Employees who are required to float to the hospital to perform dialysis care, during their shift or while on call, will receive \$2.50 per hour for all hours worked at the hospital.

Float Differential: Employees who are required to float to a clinic outside Missoula to perform dialysis care, will receive \$3.00 per hour for all hours worked at the clinic and while traveling to and from the assignment.

Shift Extension: Employees who are required to work for more than two hours past their scheduled end of shift, shall be paid a shift extension differential of \$3.00 per hour for all hours worked beyond the end of regularly scheduled shift. Such extensions require prior approval of management.







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