

## BRANDING AND MARKETING AGREEMENT

THIS BRANDING AND MARKETING AGREEMENT (the “**Agreement**”) is entered into as of September 28, 2018 (the “**Execution Date**”), by and among the Regents of the University of Minnesota, a Minnesota constitutional corporation (“**University**”), Fairview Health Services, a Minnesota nonprofit corporation (“**Fairview**”), and University of Minnesota Physicians, a Minnesota nonprofit corporation, (“**UMPhysicians**”), each having its principal place of business in Minnesota (each a “**Party**” and collectively, the “**Parties**”).

### RECITALS

A. The Parties desire to create a nationally-renowned, high-performing academic health system comprised of academic and community resources serving patients and communities in a coordinated manner, and a system that also strongly supports the education and research missions of the University across the care delivery system.

B. In pursuit of such goal, the Parties are entering into (contemporaneously herewith) a Master Academic Health System Agreement (the “**MAHSA**”) and other agreements contemplated by the MAHSA (collectively, the “**Transaction**”).

C. In connection with the Transaction and in order to further the success of the Joint Clinical Enterprise (“**JCE**”) (as defined in the MAHSA), the Parties desire to leverage the brand equities of the “**M Health**” brand (owned by the University) and the “**Fairview**” brand (owned by Fairview) in the market through the brand of “**M Health Fairview**.”

### AGREEMENT

NOW THEREFORE, in consideration of their respective covenants, agreements and obligations set forth in this Agreement, the Parties agree as follows:

#### 1. Commitment to Enhanced Use of the Collaboration Brand.

1.1 **Collaboration Brand.** The Parties agree to leverage the brand equities of both the M Health and Fairview brands in the market, and convey to the public the Parties’ collaboration for the JCE through the brand “**M Health Fairview**,” in accordance with the terms hereof. The parties, through a written amendment to this Agreement, may decide to use a revised, different or additional brand for the JCE. For purposes of this Agreement, the “**M Health Fairview**” brand and such revised, different or additional brand set forth in a written amendment shall be referred to as the “**Collaboration Brand**.”

1.2 **Alignment.** The Collaboration Brand will be used to achieve alignment, maximum brand awareness, positive imaging, and market benefit, with the ability to use the Collaboration Brand flexibly within the Permitted Uses (as defined in Section 4 of this Agreement) for facilities and services within the JCE, all in accordance with the terms hereof. The Parties will present the JCE to the public (consistent with any regulatory requirements) as a single care delivery system for all areas where the Parties have the defined level of aligned management set forth in the MAHSA, and accordingly where the Collaboration Brand is authorized to be used. The Parties will review the

effectiveness of their branding practices and conventions in 2023 and will adjust such practices and conventions if mutually agreed.

2. **Term.** This Agreement shall be effective on the Execution Date and shall terminate automatically upon the earlier of (a) termination of the MAHSA or (b) termination of this Agreement pursuant to Section 9 hereof.

3. **Licenses.**

3.1 **License of M Health Brand.** The University grants to Fairview and UMPHysicians a non-exclusive, royalty-free, non-transferable, non-assignable right and license to use the marks M HEALTH and  HEALTH and the color combination of maroon and gold (the “**University Marks**”), as part of the Collaboration Brand, within the Permitted Uses for the JCE and subject to the terms and conditions of this Agreement and the MAHSA.

3.2 **License of Fairview Brand.** Fairview grants to the University and UMPHysicians a non-exclusive, royalty-free, non-transferable, non-assignable right and license to use the marks FAIRVIEW and  FAIRVIEW (the “**Fairview Marks**”) as part of the Collaboration Brand within the Permitted Uses for the JCE, and subject to the terms and conditions of this Agreement and the MAHSA.

3.3 **No Use or Registration of M Health Fairview as Company Name or Trade Name.** Fairview shall not register the Collaboration Brand or one or more of the University Marks, as defined herein, as all or a part of a trade name, assumed name, or business or corporate name, or as a trademark or service mark with the U.S. Patent and Trademark Office or any other body on a national, state, or local level. Neither the University nor UMPHysicians shall register the Collaboration Brand or one or more of the Fairview Marks, as defined herein, as all or a part of its trade name, assumed name, or business or corporate name, or as a trademark or service mark with the U.S. Patent and Trademark Office or other body on a national, state, or local level.

3.4 **Separate Assumed Name Filings.** In order to facilitate marketing activities and identification of the JCE with payors and patients under the Collaboration Brand, UMPHysicians shall file “M Health” as an assumed name with the Minnesota Secretary of State and Fairview shall file “Fairview” (apart from Fairview Health Services) as an assumed name with the Minnesota Secretary of State as allowed by law.

3.5 **Future Re-Evaluation.** The parties agree to re-evaluate in 2023, or at such earlier time as may be deemed appropriate by the Fairview CEO and the University’s Medical School Dean (the “UMMS Dean”), whether the University, at that time, is willing, upon approval of the Board of Regents, to allow Fairview to register “M Health Fairview” or any other Collaboration Brand as an assumed name or other trade or business name.

#### 4. **Collaboration Brand Use.**

**4.1 Permitted Uses and Prohibited Uses.** The Parties agree that use of the Collaboration Brand shall be permitted hereunder only for facilities, sites and programs within the JCE as described in and operated pursuant to the MAHSA and as set forth in this Agreement. Permitted uses of the Collaboration Brand by the Parties include both “core” healthcare services of the JCE (e.g., inpatient, outpatient, telemedicine) and other related functions or services if (a) UMPHysicians is then exercising the management authority and quality oversight of the facilities and services in the manner described in the MAHSA or (b) such use is otherwise specifically approved in writing by authorized representatives of the University and Fairview (“Permitted Uses”). Prohibited uses of the Collaboration Brand are political campaigns, endorsements, ownership or operations of college or professional sports, alcoholic products, tobacco or vapor products, illegal drugs, or for any non-JCE activities of any Party (“Prohibited Uses”). For the avoidance of doubt, any use determined to be a Prohibited Use under this Agreement shall not be permitted without a written amendment to this Agreement, which amendment shall be subject to each Party’s approval in its sole discretion. In addition to the Prohibited Uses, the Collaboration Brand may not be used in any way that is misleading, could cause confusion regarding the relationship of the Parties, or that could harm the reputation of the JCE or any Party to this Agreement.

**4.2 Presentation to the Public as One System.** The Parties desire to maximize the impact of the Collaboration Brand in the market for the benefit of the JCE. In furtherance of this goal, the Parties desire that Fairview and UMPHysicians be identified in payor directories for their JCE activities under the Collaboration Brand, and that the Collaboration Brand be used in marketing and advertising for the JCE. The Parties agree that this Agreement creates the legal authority for Fairview and UMPHysicians to be identified under the Collaboration Brand for the JCE, and that the Parties will work together to provide payors with evidence (including evidence of the assumed name registrations made pursuant to Section 3.3) to support the use of the Collaboration Brand to identify Fairview and UMPHysicians in payor directories for JCE services. The Parties recognize that if one or more of the Parties cannot, due to third party restrictions, use the Collaboration Brand for JCE activities, the Parties may use their individual names and brands to carry out those activities; provided that before any Party so uses its individual name or brand, it shall use best efforts to communicate the third party restrictions to the other Parties.

**4.3 Parties’ Use of Brands Apart from JCE.** The Parties acknowledge that each of the University, Fairview, and UMPHysicians will use its separate names and brands, provided they are not confusingly similar or otherwise unlawful, in areas that are outside of the JCE and in areas where the Parties do not have shared decision-making as described in the MAHSA. Fairview shall not use the University’s maroon and gold color scheme outside of the JCE. The University Marks may continue to be used for any program, site or facility of the University or UMPHysicians which uses the University Mark as of the Effective Date of this Agreement.

## 5. Standards.

**5.1 University Standards.** All University Marks used in the Collaboration Brand shall comply with any standards as may be adopted by the University's Board of Regents from time to time, as established and carried out by the Office of University Relations (such standards, and any amendments thereto, the "**University Standards**"). For current standards, see <https://university-relations.umn.edu/resources/brand-resources>. Without limiting the foregoing, the University's maroon and gold color scheme shall be the color scheme of the Collaboration Brand.

**5.2 Licensor Standards.** Each of Fairview and UMPhysicians (in the case of the University Marks) and each of the University and UMPhysicians (in the case of the Fairview Marks) shall at all times maintain and adhere to a standard of quality in the use of the Collaborative Brand that meets or exceeds the standards observed by the respective licensor in connection with its existing uses of the University Marks or Fairview Marks, respectively ("**Licensor Standards**"). In addition to other limitations imposed pursuant to this Agreement and the MAHSA, each of Fairview and UMPhysicians (in the case of the University Marks) and each of the University and UMPhysicians (in the case of the Fairview Marks) agrees not to use the University Marks or the Fairview Marks, respectively, in a way that would injure the reputation of the University or Fairview.

### **5.3 Quality Standards.**

**5.3.1** The Parties agree that the MAHSA establishes leadership, management and reporting structures for the JCE intended to create a coordinated delivery system, inclusive of UMMC, that is holistic and grounded in centralized or coordinated decision-making and effectively leverages the JCE infrastructure and resources to deliver market-leading outcomes, and that academic physician leaders will have genuine and appropriate authority over the quality of care delivered within the JCE. Before and while the Collaboration Brand is used for Permitted Uses to identify a facility, site or program within the JCE to the public, at a minimum, the following standards must be met (the "**Quality Standards**"):

(a) All academic physician leaders of Service Lines, Shared Clinical Services and Domains (all as defined in the MAHSA), as well as the Chief Quality Officer (also defined in the MAHSA), shall have been named by UMPhysicians and the operational structure for the JCE described in the MAHSA shall have been implemented at the facility or site or for the program, with evidence that policies and clinical protocols developed by and with such academic physician leaders have been implemented and are being followed at such facility or site or for such program.

(b) For a hospital within the JCE, the hospital must be satisfying all Joint Commission accreditation standards and CMS Hospital Medicare Conditions of Participation.

(c) For clinics within the JCE, strive to achieve top tier metrics as measured by the appropriate monitoring organizations selected by the UMPhysicians CEO, the Chief Quality Officer and the Fairview CMO..

**5.3.2** Approval that a facility, site or program within the JCE satisfies the Quality Standards must be granted by the UMMS Dean and the Fairview CEO prior to, and as a condition of, use of the Collaboration Brand for Permitted Uses for such facility, site or program. The same Quality Standards and process of UMMS Dean and Fairview CEO approval shall apply before the Collaboration Brand may be used for Permitted Uses on new facilities, sites and programs added to the JCE in the future.

**5.4 Provider Identification.** Name badges and other forms of identification of physicians and other providers employed by UMPhysicians shall include a designation approved by the UMPhysicians CEO that clearly and uniquely identifies those physicians and providers as UMPhysicians employees. The manner of identification of providers outside of the JCE shall be set forth in the Brand Use Guidelines (defined in Section 5.5).

**5.5 Brand Use Guidelines.** The Parties agree, as soon as possible (with the goal being within 30 days following execution of this Agreement), to develop a chart in the form of the chart attached to this Agreement as Exhibit #1, or another form acceptable to the Fairview CEO and UMMS Dean that more specifically identifies how the Collaboration Brand may be used within the JCE (the "Brand Use Guidelines"). The Brand Use Guidelines may be modified from time to time upon the written agreement of the Fairview CEO and UMMS Dean. The Fairview CEO and UMMS Dean may, from time to time, approve uses of the Collaboration Brand in a manner that is not approved by the Brand Use Guidelines upon request of a Party.

## **6. Ownership.**

**6.1 University Marks.** Each of Fairview and UMPhysicians acknowledges and agrees to the following: (a) the University is the owner of the University Marks, and that it will do nothing inconsistent with such ownership; (b) nothing in this Agreement shall give it or them any right, title or interest in or to the University Marks, other than the right to use the University Marks as part of the Collaboration Brand in accordance with this Agreement; (c) all use of the University Marks by either shall inure to the benefit of and be on behalf of the University; and (d) not to attack the title of the University to the University Marks or attack the validity of the license to the University Marks contained in this Agreement.

**6.2 Fairview Marks.** Each of the University and UMPhysicians acknowledges and agrees to the following: (a) Fairview is the owner of the Fairview Marks, and that it will do nothing inconsistent with such ownership; (b) that nothing in this Agreement shall give it or them any right, title or interest in or to the Fairview Marks, other than the right to use the Fairview Marks as part of the Collaboration Brands in accordance with this Agreement; (c) that all use of the Fairview Marks by either shall inure to the benefit of and be on behalf of Fairview; and (d) not to attack the title of

Fairview to the Fairview Marks or attack the validity of the license to the Fairview Marks contained in this Agreement.

7. **Marketing.**

7.1 **Collaboration Brands Marketing Plan.** The Parties, with the involvement of the Fairview Marketing Department, the University's Office of University Relations, UMPhysicians, and UMMS, agree to develop an expanded, enhanced marketing plan to increase the public recognition and value of the Collaboration Brand. Such plan shall be adopted only after it has been presented to and approved by both the UMMS Dean (upon such conditions, if any, as the Board of Regents may prescribe) and the Fairview CEO (upon such conditions, if any, as the Fairview Board of Directors may prescribe).

7.2 **M Health Fairview Marketing Communications Structure.** The Parties agree to the M Health Fairview Marketing and Communications Structure set forth on Exhibit #2, which identifies the organizational structure, reporting relationships and defined responsibilities of personnel of the Parties in order to maximize marketing and communications for the JCE. Unless otherwise agreed to in writing by the UMMS Dean and Fairview CEO, the Vice President of Marketing and Digital Communications (or such other title agreed to by the UMMS Dean and Fairview CEO) shown on Exhibit #2 (A) shall be an employee of Fairview but shall report dually to the UMMS Dean and the Fairview CEO, in a manner that is mindful of the core mission and core responsibilities of each Party; (B) shall be solely dedicated to marketing and communications for the JCE; and (C) must be agreed to by both the UMMS Dean and Fairview CEO, but may be removed from such position by either of them. For the avoidance of doubt, the Parties acknowledge and agree that the dual reporting mechanism is not intended to segregate various components of the marketing and communications function, but rather to assure that both Parties have a voice in the entire function.

8. **Breach.**

8.1 **Objection In Relation to the University Marks.** If the University objects to the use or manner of use of the University Marks by Fairview and/or UMPhysicians because such use does not comply with one or more of (a) the Brand Use Guidelines, (b) the Quality Standards, (c) the University Standards, (d) the Licensor Standards, or (e) other terms hereof, the University will notify such other Party or Parties in writing as to the concerns, and the other Party or Parties agree to use reasonable efforts to resolve the concerns as quickly as reasonably practicable under the circumstances and no later than thirty (30) business days after receipt of notice of any such concerns. The failure of Fairview and/or UMPhysicians to cure such concerns within such thirty (30) business day period shall constitute a breach of this Agreement.

8.2 **Objection In Relation to the Fairview Marks.** If Fairview objects to the use or manner of use of the Fairview Marks by the University and/or UMPhysicians because such use does not comply with either (a) the Brand Use Guidelines, (b) the Quality Standards, (c) the Licensor Standards, or (d) other terms hereof, Fairview will

notify such other Party or Parties in writing as to the concerns, and the other Party or Parties agree to use reasonable efforts to resolve the concerns as quickly as reasonably practicable under the circumstances and no later than thirty (30) business days after receipt of notice of any such concerns. The failure of the University and/or UMPhysicians to cure such concerns within such thirty (30) business day period shall constitute a breach of this Agreement.

**9. Termination.** Either the University or Fairview may terminate this Agreement at any time for cause due to a material breach or other violation of the terms of this Agreement that is not cured within the time set forth in this Agreement; provided, that the Parties agree that except in cases where a Party reasonably believes delay in termination will result in irreparable harm to such Party, the Parties will seek to resolve any disagreements about compliance with this Agreement through the Dispute Resolution Process set forth in Article 8 of the MAHSA.

**10. Effect and Obligations Upon Termination.** Upon the termination of this Agreement, the Parties will immediately cease all use of the Collaboration Brand. The University will send a written statement to Fairview confirming that it has ceased all use of the Fairview Marks and the Collaboration Brand; Fairview will send a written statement to the University confirming that it has ceased all such use of the University Marks and the Collaboration Brand; and UMPhysicians will send written notice (a) to the University confirming that it has ceased all use of the Collaboration Brand and all uses of the University Marks licensed under this Agreement and (b) to Fairview confirming that it has ceased all use of the Fairview Marks and the Collaboration Brand. For the avoidance of doubt, cessation shall include without limitation the destruction of any physical materials (such as uniforms, stationery, business cards and printed marketing materials) and the deactivation of websites and social media pages and corresponding surrender of domain names and social media handles that bear the Collaboration Brand and/or the respective mark(s) of another Party licensed under this Agreement. The time frames for cessation of use shall be (a) within 15 days for websites and social media, (b) 120 days for external or internal signage, (c) 120 days for uniforms, printed matter, etc. and (d) 30 days for other uses.

**11. Infringement Proceedings.** Each of Fairview and UMPhysicians (in the case of the University Marks) and each of the University and UMPhysicians (in the case of the Fairview Marks) agrees to notify the University or Fairview, respectively, of (a) any conflicting uses of, or any applications of or registrations for, a trademark that may conflict with the University Marks or Fairview Marks, respectively, or any of them; (b) any acts of infringement or unfair competition, or other violations of the University Marks or the Fairview Marks, respectively that come to the attention of the Party's management; or (c) any allegations that the use of the University Marks or the Fairview Marks, respectively, or any of them, by a Party infringes the trademark, service mark or other rights of any other person.

**12. Notices.** All notices, requests, demands, claims and other communications hereunder must be in writing. Any notice, request, demand, claim or other communication hereunder will be deemed duly given if it is delivered personally or sent by recognized overnight courier services (such as FedEx or DHL) and addressed to the intended recipient as set forth below:

If to University at:

Attn: UMMS Dean of the Medical School  
420 Delaware Street SE  
Minneapolis MN 55454

If to UMPHysicians at:

Attn: Chief Executive Officer  
720 Washington Avenue SE, Suite 200  
Minneapolis, MN 55414

If to Fairview at:

Attn: President and CEO  
2450 Riverside Avenue  
Minneapolis, MN 55353

**13. No Responsibility for Other Parties Acts or Omissions.** Each Party shall be liable for its own acts or omissions, and nothing in this Agreement shall make any Party responsible or liable for acts or omissions of any other Party.

**14. Relationship to Certain Existing or Prior Agreements.** Fairview is party to that certain Academic Affiliation Agreement of December 31, 1996, as amended April 14, 2005, which contains a license to use the University name in certain limited ways, subject to certain terms and conditions. Such agreement continues in full force and effect; although the Parties expect that the use of M Health Fairview will begin to replace or reduce the uses permitted under such agreement.

**15. Incorporation of Terms of the MAHSA.** The provisions of (a) Article 8 (Dispute Resolution) and (b) Article 9 (Legal Provisions) of the MAHSA shall apply to this Agreement.

**SO AGREED:**

**Regents of the University of Minnesota**

By:   
Title: President  
Date: 28 Sept 2018

By: TOLAR  
Title: Dean, Medical School and  
Vice President of Clinical Affairs  
Date: 28 SEP 18

**Fairview Health Services**

By:   
Title: President and Chief Executive Officer  
Date: 9.28.18

**University of Minnesota Physicians**

By:   
Title: Chief Executive Officer  
Date: 9/28/18

## **Exhibits**

#1 Brand Use Guidelines

#2 M Health Fairview Marketing and Communications Structure

**M Health Fairview Brand Use Grid**

	<b>Proposed Use</b>	<b>Pre-Approved Core</b>	<b>Pre-Approved Non-Core</b>	<b>Requires Specific Approval</b>	<b>Not Permitted</b>	<b>Criteria (Beyond Dean/Fairview CEO Approval that Quality Standards Met)</b>
1.	Signage on hospital or other licensed facilities	√				
2.	Signage on clinics or physician offices	√				
3.	Patient communications (intake forms, Notice of Privacy Practices, consent forms, bills, etc.)	√				
4.	Lab coats; uniforms	√				
5.	Stationary	√				
6.	Contracts and legal documents				√	
7.	Written marketing/advertising materials for MHealth clinical services	√				
8.	Radio/TV other media advertising/marketing for MHealth services	√				
9.	Web sites	√				
10.	Controlled joint ventures of Fairview or UMP with others			√		

	<b>Proposed Use</b>	<b>Pre-Approved Core</b>	<b>Pre-Approved Non-Core</b>	<b>Requires Specific Approval</b>	<b>Not Permitted</b>	<b>Criteria (Beyond Dean/Fairview CEO Approval that Quality Standards Met)</b>
11.	Minority interest (non-controlled) joint ventures of Fairview or UMP				√	
12.	Hospital or medical group affiliations or networks such as ACOs, or regional networks			√		
13.	Medical transport (air ambulance; ground ambulance business)			√		
14.	Event Medicine		√			
15.	Reference lab services to other providers		[N]	[N]		
16.	Retail pharmacy services		√			
17.	Specialty pharmacy services		[N]	[N]		
18.	Forensic consulting		√			
19.	Animal care/veterinary services		√			
20.	Charity events sponsored/run by Fairview or UMP (Health Fair, Fun Run for Heart Health)		√			
21.	Charity events sponsored by <u>other</u> organizations in which Fairview or UMP participates			√		

	<b>Proposed Use</b>	<b>Pre-Approved Core</b>	<b>Pre-Approved Non-Core</b>	<b>Requires Specific Approval</b>	<b>Not Permitted</b>	<b>Criteria (Beyond Dean/Fairview CEO Approval that Quality Standards Met)</b>
22.	Minor promotional items (mugs, pens, t-shirts)		√			
23.	Other products offered for commercial sale				√	
24.	Alcoholic beverages				√	
25.	Tobacco products				√	
26.	Other activities with potential to be viewed as inconsistent with dignity of parties or their health promotion values				√	
27.	Operating fee-paying sporting events				√	
28.	Inventions licensed under technology transfer process				√	
29.	Conduct of research	√				
30.	Research publications		[N]	[N]		
31.	Academic and Research Presentations at Conferences, etc.			√		
32.	Publications controlled by a party (e.g., "Harvard Health Letter")			√		
33.	Conduct of UME clinical education	√				

	<b>Proposed Use</b>	<b>Pre-Approved Core</b>	<b>Pre-Approved Non-Core</b>	<b>Requires Specific Approval</b>	<b>Not Permitted</b>	<b>Criteria (Beyond Dean/Fairview CEO Approval that Quality Standards Met)</b>
34.	Conduct of GME programs	√				
35.	Philanthropic solicitations and other communications for fundraising	√				
36.	Affiliations/Uses Outside the Territory				√	
37.	Uses not Described Here or Otherwise Anticipated			√		
38.	Uses in "Double Branding" in conjunction with marks held by third parties			√		



Exhibit #2

# Marketing Communications Structure

M HEALTH FAIRVIEW

