

MEDICAL DIRECTOR SERVICES AGREEMENT

For the services of _____ **[insert physician/clinician name and/or department]**

This Medical Director Services Agreement (“Agreement”) is dated as of _____ (the “Effective Date”) by and between [_____], a [non-profit/for-profit] corporation organized under the laws of the State of [_____] (the “Contractor”), and The Administrators of the Tulane Educational Fund on behalf of Tulane University Medical Group (“TUMG”). Together, the Contractor and TUMG are referred to as the “Parties,” and each is a “Party.”

WHEREAS, the Contractor currently owns and operates a [_____]
located at [_____] (the “Facility”) and Contractor wishes to obtain the services of an experienced physician to provide medical director services on a part-time basis at the Facility;

WHEREAS, TUMG employs or contracts with a physician who is board certified and qualified to practice [_____] (“Physician’s Specialties”) in the State of [_____] and meets the qualifications to perform the medical services specified in this Agreement at the Facility; and

WHEREAS, Contractor desires to engage TUMG to provide the services specified in this Agreement, and TUMG desires to provide such services for Contractor in accordance with the provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter expressed, the Parties hereby agree as follows:

1. SELECTION OF THE PHYSICIAN:

Contractor hereby engages TUMG to make available [_____], M.D. (the “Physician”) to provide services to Contractor.

2. RESPONSIBILITIES OF TUMG:

2.1. Medical Director Services. TUMG shall cause Physician to meet the criteria set forth in Section 2.3 hereof and to render the medical director services to Contractor as more specifically set forth in **Exhibit A** attached hereto and incorporated herein (the “Services”);

2.2. Schedule. During the term of this Agreement, TUMG shall cause Physician to dedicate a minimum of [_____] hours per week (for a total of [_____] hours per year) to the Services in accordance with this Section 2.2. TUMG shall cause Physician to perform his/her duties within the context of the existing Medical Staff structure and to be accountable to Contractor’s [Chief Executive Officer/President] or his/her designee. TUMG shall cause Physician to provide sufficient advance notice of vacation or other scheduled absent time to Contractor. In addition, TUMG shall

cause Physician to communicate directly to Contractor in order to establish coverage for Services during planned absences.

2.3. Qualifications. To be qualified to render Services pursuant to this Agreement, TUMG shall ensure that Physician at all times during the course of this Agreement:

- (a) is board certified in Physician's Specialties;
- (b) is, and remains, a participating provider in the Medicare and Medicaid programs (Titles XVIII and XIX of the Social Security Act, respectively), and with any managed care program with which Contractor is now or hereafter becomes affiliated;
- (c) possesses a valid and unlimited license to practice medicine pursuant to the laws of the State of [_____];
- (d) possesses a valid federal narcotics number;
- (e) obtains and maintains professional liability insurance coverage in accordance with Section 2.6;
- (f) maintains membership in good standing on the Medical Staff of the Facility;
- (g) meets any and all such other requirements of the Bylaws, Rules and Regulations of the Facility and the Facility's Medical Staff, a copy of which shall be provided to TUMG and Physician; and
- (h) is not convicted of, and has not pled nolo contendere to, any criminal activity.

This Agreement is not and shall not be construed as any form of guarantee or assurance by Contractor that the Physician will receive or retain necessary Medical Staff membership or privileges for purpose of discharging his/her responsibilities hereunder; application, appointment, reappointment and granting of privileges shall be governed solely by the Medical Staff Bylaws of the Facility then in effect.

2.4. Standards of Practice. TUMG shall ensure that all Services are at all times rendered in a competent and professional manner, consistent with quality assurance standards of the Facility and Contractor. TUMG shall and shall cause Physician to comply with (i) the Bylaws, Rules and Regulations of the Facility and the Facility's Medical Staff, a copy of which shall be provided to TUMG and Physician; (ii) applicable standards of the Joint Commission on Accreditation of Healthcare Organizations; and (iii) applicable standards of the Physician's board certifying organization. TUMG shall cause Physician to participate in committees related to Physician's Specialties, patient care conferences and other groups to monitor and improve delivery of care. Without limiting the generality of the foregoing, TUMG shall and shall cause Physician to comply with all applicable Medicare and Medicaid rules, laws and regulations.

- 2.5. Protocols and Procedures. The Parties agree that both parties shall make a good faith effort to work cooperatively with each other to assure the Services are coordinated and provided on a timely and professional basis.
- 2.6. Professional Liability Insurance. At its own expense, TUMG and Physician will maintain a program of self-insurance and commercial professional liability insurance, in customary amounts, in full force during the term of this Agreement and maintain qualification with and participation in the Louisiana Patients' Compensation Fund. Upon request, TUMG will deliver to Contractor a certificate reflecting such insurance coverage prior to commencement of this Agreement, and will instruct its insurance broker to provide 30 days prior written notice to Contractor of any cancellation or material alteration of such insurance. TUMG and Physician agree to maintain insurance coverage for its indemnification obligation and for claims, liabilities or loss arising out of or resulting from acts or omissions of Physician activities pursuant to this Agreement that may be filed after the termination of this Agreement.
- 2.7. Outside Practice. Contractor acknowledges that TUMG and Physician currently maintain a private practice of medicine and that this Agreement shall not, in any way, limit TUMG's or Physician's private practice of medicine.
- 2.8. TUMG Representations. TUMG shall cause Physician to not take any action prejudicial to Contractor or its interests. TUMG hereby represents to Contractor that the execution of this Agreement and the performance of Services hereunder, does not and will not violate or conflict with the provisions of any other agreement to which TUMG or the Physician is a party or to which TUMG or the Physician is bound.
- 2.9. Compliance Program. TUMG shall and shall cause Physician to acknowledge hereby that it/he/she has received a copy of and reviewed Contractor's Corporate Compliance Program, if any. TUMG agrees and shall cause Physician to agree to comply with Contractor's Corporate Compliance Program and use its/his/her best efforts to assist Contractor in its implementation and continued operation of such Corporate Compliance Program. Contractor agrees to give TUMG prompt written notice of any change to its Corporate Compliance Program.

3. **RESPONSIBILITIES OF CONTRACTOR**

- 3.1. General Liability and Professional Liability Insurance. Contractor shall, at its expense, maintain policies of general and professional liability insurance, in customary amounts, in full force during the term of this Agreement and maintain qualification with and participation in the Louisiana Patients' Compensation Fund. Contractor shall provide at least thirty (30) days' prior written notice to TUMG before any material alteration or cancellation of coverage may take effect. Contractor shall name Physician as an additional insured on its general and professional liability insurance policies and shall provide insurance coverage for the Medical Director Services provided pursuant to this Agreement. Contractor's

insurance shall be primary with respect to any insurance carried by TUMG that may be applicable.

Contractor agrees to maintain insurance coverage for its indemnification obligation and for claims, liabilities or losses arising out of or resulting from acts or omissions of Contractor, its employees, agents or contracted personnel that may occur during the term of this Agreement but that may be filed after the termination of this Agreement.

4. COMPENSATION:

4.1 Compensation. Subject to performance of TUMG's duties and obligations to the Contractor pursuant to this Agreement or otherwise, TUMG shall receive compensation as set forth in this Section 4.1. In full consideration of all Services provided hereunder, TUMG shall be paid [_____] dollars (\$[____]) per year, payable in [_____] equal [monthly/quarterly] installments. All payments should be made payable to "Administrators of the Tulane Educational Fund."

4.2 Time Records; Adjustment and Compensation. No later than the [____] day of [each/every third] month following the Effective Date, TUMG must submit detailed [monthly/quarterly] time records signed by the Physician in a form reasonably acceptable to Contractor certifying the numbers of hours spent during the previous [month/quarter] performing Services required under this Agreement with a description of such activities. TUMG shall be paid by Contractor within [____] days of receiving the time records for the previous [month/quarter].

5. STATUS OF THE PARTIES:

5.1. Independent Contractor. It is expressly understood and agreed that, in the performance of Services under this Agreement, TUMG shall and shall cause Physician to at all times act as an independent contractor with respect to Contractor, and not as an employee or agent of Contractor. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement will be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties. Accordingly, Contractor will neither have nor exercise any specific control or direction over the particular methods by which Physician will perform the Services required by this Agreement. In no event will either Party be liable for the debts or obligations of the other of them, except as otherwise specifically provided in this Agreement.

5.2. Tax and Benefits. Neither TUMG nor Physician shall have any claim under this Agreement or otherwise against Contractor for vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or unemployment insurance benefits or other employee benefits of any kind. TUMG understands and agrees that: (a) Physician will not be treated as Contractor's employee for federal tax purposes; (b) Contractor will not withhold on behalf of

TUMG or Physician any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of Contractor; and (c) all of such payments, withholdings, and benefits, if any, are the sole responsibility of TUMG.

6. TERM:

6.1. Term. This Agreement shall be effective as of the Effective Date, and, unless sooner terminated pursuant to Section 8, shall continue in effect for an initial term of one year. This Agreement may be renewed for successive one (1) year periods thereafter only by written agreement of the parties. In the event this Agreement is terminated for any reason whatsoever prior to the first anniversary of the Effective Date, the Parties shall not enter into another similar agreement with each other within the original one (1) year term of this Agreement.

7. INDEMNIFICATION:

7.1. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other Party from any claim, liability, or loss (including reasonable attorneys' fees) arising out of or resulting from the acts or omissions of the indemnifying Party, or any of its agents, employees or contracted personnel whether based in tort (including negligence), strict liability or otherwise provided however, that Contractor shall indemnify TUMG and Physician from any claim, liability, or loss (including reasonable attorneys' fees) arising out of or resulting from the acts or omissions of Medical Director in the performance of administrative duties for Contractor. Each Party shall notify the other immediately in writing of any claim of injury or damage related to activities performed pursuant to this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities performed pursuant to this Agreement, provided that nothing shall require either Party to disclose any documents, records or communications that are protected under the peer review privilege, the attorney-client privilege or the attorney work-product privilege. This indemnification obligation shall survive termination of this Agreement.

8. TERMINATION:

8.1. For Cause. Upon material breach by either Party of its obligations under this Agreement, the other Party may terminate this Agreement if the breach remains uncured for more than ten (10) days after a Party gives written notice to the other Party of the breach, such notice to be effective upon the date of mailing.

8.2. Without Cause. This Agreement may be terminate by either party at any time upon 60 days prior written notice.

- 8.3. Immediate Termination. TUMG may immediately terminate this agreement if (a) Contractor's right to participate in the Medicare, Medicaid, or any other federal or state health program is terminated for any reason or is relinquished voluntarily; (b) Contractor's license to operate is revoked or suspended; or (c) Contractor's insurance is canceled or non renewed.
- 8.4. Automatic. This Agreement shall terminate automatically upon breach of any of the provisions of Section 2.3 hereof or upon the death or disability of the Physician.
- 8.5. Waiver. A waiver of the breach of any term or condition of this Agreement by either Party shall not constitute a waiver of any subsequent breach or breaches.

9. EFFECT OF TERMINATION:

- 9.1. Upon expiration or termination of this Agreement, neither Party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of termination, and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

10. ACCESS TO BOOKS AND RECORDS:

- 10.1. Until the expiration of four (4) years after the furnishing of the Services called for by this Agreement, TUMG and Contractor, upon request, shall make available to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this Agreement and all other books, documents and records as are necessary to certify the nature and extent of the costs incurred by Contractor in purchasing Services under this Agreement. If TUMG provides such Services through subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, the subcontract shall also contain a clause permitting access by the Secretary, Comptroller General, and their representatives to the books and records of the related organization.

11. TEFRA REQUIREMENTS (ONLY If "CONTRACTOR" IS A HOSPITAL; OTHERWISE DELETE THIS SECTION 10):

- 11.1. Written Allocation Agreement. Pursuant to 42 C.F.R. § 415.60, TUMG shall cause Physician to, at least as often as annually, enter into a written time allocation agreement with Contractor which sets forth the percentage of Physician's total time compensated by Contractor which the Parties anticipate the Physician will spend during the next ensuing fiscal year in furnishing the following services: (1) physician services to Contractor, (2) physician services to individual patients of Contractor, and (3) physician activities, such as research, that are not reimbursable under Part A or Part B of Medicare. In the event that Medicare authorities require a different form, upon notification by Contractor, TUMG shall cause Physician to execute promptly an allocation agreement in the form required by Medicare. It is agreed that Contractor's determination as to the form required by Medicare shall be binding on TUMG and Physician.

- 11.2. Time Records. TUMG agrees as a condition for receiving the compensation called for by this Agreement to submit to Contractor time records satisfactory to Contractor which show the nature of the Services performed by the Physician and the time actually spent performing them. TUMG agrees to indemnify Contractor for any reimbursement it loses as a result of its failure to comply with this subparagraph or otherwise maintain adequate and proper time records.

If the time records kept by Physician pursuant to this section show a materially different allocation than the percentages indicated on the then current written time allocation agreement, TUMG shall cause Physician, upon the request of Contractor, to execute promptly a new written time allocation agreement with Contractor which shall reflect the actual time allocations shown by the time records of the Physician. It is understood by TUMG that Contractor is required to notify its Medicare Intermediary of any such revisions.

12. HIPAA COMPLIANCE:

- 12.1. The Parties shall execute the Business Associate Addendum, in the form of **Exhibit B** attached hereto and incorporated herein, in order to ensure compliance with the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.

13. MISCELLANEOUS:

- 13.1. Notices: Notices or communications required or permitted to be given under this Agreement shall be given to the respective Parties by hand or by registered or certified mail (said notice being deemed given as of the date of mailing) at the following addresses unless a Party shall otherwise designate its address by notice:

If to TUMG:

Benjamin P. Sachs
Senior Vice President for Health
Sciences, Dean Tulane School of
Medicine
1430 Tulane Avenue SL-77
New Orleans, LA 70112

If to Contractor:

With a copy to:

Office of Associate General Counsel
Tulane University Health Sciences
Center
1440 Canal Street, TB 33
New Orleans, LA 70112

- 13.2. Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

- 13.3. Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to conflict of law rules.
- 13.4. Assignment. No assignment or delegation of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both Parties hereto.
- 13.5. Entire Agreement. This Agreement supersedes all previous contracts or agreements between the Parties with respect to the subject matter hereof, and constitutes the entire Agreement between the Parties.
- 13.6. Amendments. This Agreement may be amended only by an instrument in writing signed by a duly authorized officer of each of the Parties, effective as of the date stipulated therein.
- 13.7. Severability. Should any provision of this Agreement or application thereof be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this Agreement.
- 13.8. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 13.9. Non-Referral. Nothing in this Agreement or in any other written or oral agreement between the Parties, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patient to the Facility. Any consideration specified in this Agreement is consistent with what the Parties reasonably believe to be fair market value for the Services provided hereunder.
- 13.10. Coordination with Other Agreements. Pursuant to 42 C.F.R. § 411.357, the Parties specifically confirm that they have no other currently effective agreements with each other.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Contractor by its duly authorized officer, and TUMG have caused this Agreement to be signed and sealed as of the day and year first above written.

[_____]

THE ADMINISTRATORS OF THE TULANE
EDUCATIONAL FUND d/b/a TULANE
UNIVERSITY MEDICAL GROUP

By: _____

By: _____

Name: [_____]

Name: Benjamin P. Sachs

Title: [_____]

Title: Senior Vice President for Health
Sciences, Dean, Tulane University
School of Medicine

By: _____

Name: Jerold Feddersen

Title: CEO, Tulane University Medical Group

EXHIBIT A
SERVICES

TUMG shall cause Physician to:

1. Monitor compliance with Contractor's clinical and administrative policies and protocols by all attending [_____].
2. Conduct utilization review with physicians and non-physician staff to ensure efficient and effective [_____] care.
3. Conduct patient care rounds, review of treatment plans and case management for inpatients.
4. Participate in planning for new clinical services, revisions to current services and assist in developing programs related to cost effective and clinically effective patient care.
5. Conduct staff and physician educational programs.
6. Provide consultation on patient care issues both within [_____] and in the general acute care population.
7. Be responsible for the overall quality review of clinical services within [_____].
8. Participate in or chair appropriate committees to effect quality of care and administrative problem solving and planning.

EXHIBIT B

BUSINESS ASSOCIATE ADDENDUM

See attached TUMG Business Associate Agreement.