

MEDICAL DIRECTOR SERVICES AGREEMENT

For the services of _____ [insert physician/clinician name, specific specialty service and/or TUMG Department]

This Medical Director Services Agreement (“Agreement”) is dated as of _____, 20__ (the “Effective Date”) by and between [_____], a [non-profit/for-profit] corporation organized under the laws of the State of [_____] (the “Practice”), and The Administrators of the Tulane Educational Fund on behalf of Tulane University Medical Group (“TUMG”). Together, the Practice and TUMG are referred to as the “Parties,” and each is a “Party.”

WHEREAS, the Practice owns and operates _____ (name of facility) located at [_____] which is set forth on Exhibit A (the “Facility”);

WHEREAS, the Practice wishes to obtain medical director services on a part-time basis at the Facility;

WHEREAS, Practice desires to engage TUMG to provide the medical director services specified in this Agreement, and TUMG desires to provide such services for Practice 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:

Practice hereby engages TUMG to make available on an independent contractor basis, the services of [_____], M.D. (the “Physician”) to provide medical director services to Practice and its patients as more specifically described in Exhibit A (the “Services”).

2. RESPONSIBILITIES OF TUMG:

2.1.The Services. Physician currently meets and shall continue to meet the criteria set forth in Section 2.3 hereof. TUMG shall make available Physician to Practice to render the Services to the Practice and its patients at the Facility identified on Exhibit A and to be accountable to Practice’s (CEO/President/COO or his/her designee);

2.2.Schedule. During the term of this Agreement, Physician shall dedicate a minimum/approximately of [_____] hours per week (for a total of [_____] hours per year) to the Services in accordance with this Section 2.2 Physician shall provide reasonable advance notice to Practice and TUMG of vacation or other scheduled absent time. Physician shall provide notice as soon as practicable to Practice and TUMG of emergency or unplanned absence. Physician shall communicate directly with Practice in order to establish coverage for Services during absences.

2.3.Qualifications. Physician shall at all times during the course of this Agreement:

- (a) be board certified or board eligible in [];
- (b) be, and remain, 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 Practice is now or hereafter becomes affiliated;
- (c) possess a valid and unlimited license to practice medicine pursuant to the laws of the State of [_____];
- (d) possess a valid federal narcotics number;
- (e) obtain and maintain professional liability insurance coverage in accordance with Section 2.6;
- (f) maintain membership in good standing on the Medical Staff of the Facility;
- (g) meet any and all such other requirements of the Bylaws, Rules and Regulations of the Practice or Facility as applicable to medical director, a copy of which shall be provided to TUMG and Physician pursuant to 2.4 herein; and
- (h) not be convicted of, nor pled nolo contendere to, any crime.

This Agreement is not and shall not be construed as any form of guarantee or assurance by Practice 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 Practice then in effect.

2.4. Standards of Practice. Physician shall comply with (i) the bylaws and/or, rules and corporate compliance program, if any, of Practice (**cite the precise name of bylaws or the Practice's equivalent**), a copy of which shall be provided to TUMG and Physician at least seven business days before the Effective Date and is attached hereto as Exhibit C, and (ii) all applicable Medicaid and Medicare rules. Practice agrees to provide reasonable written notice to TUMG and Physician of any change to its bylaws and/or rules and/or corporate compliance program.

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 Practice 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 Practice of any cancellation.

2.7. Outside Practice. Practice 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.

3. RESPONSIBILITIES OF PRACTICE:

3.1. General Liability and Professional Liability Insurance. Practice shall, at its expense, maintain in full force during this Agreement policies of general and professional liability insurance covering TUMG and Physician for Services rendered under this Agreement with minimum limits specified below. Practice shall also maintain qualification with and participation in the Louisiana Patients' Compensation Fund. Practice's insurance shall be primary with respect to any insurance carried by TUMG that may be applicable.

- (a) Commercial General Liability with minimum limits not less than \$1,000,000 per occurrence, bodily injury and property damage liability; \$1,000,000 personal and advertising injury liability; \$1,000,000 products and completed operations policy aggregate and \$3,000,000 policy general aggregate. The General Liability insurance shall be on an occurrence coverage form, at least as broad as the *Insurance Services Office of Commercial General Liability Policy form CG 0001* ©, current edition and shall include coverage for Products/Completed Operations and Personal Injury. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices ERISA and professional liability, there shall be no additional limitations or exclusions beyond those contained in the above referenced policy form, including but not limited to additional limitations or exclusions applicable to products and completed operations, contractual liability and XC&U. The Administrators of the Tulane Educational Fund, TUMG and Physician shall be named as additional insured on this policy and the policy shall be endorsed to provide a full waiver of subrogation in favor of The Administrators of the Tulane Educational Fund, TUMG and Physician.
- (b) Professional Liability insurance with minimum limits of \$1,000,000 per each wrongful act, and a \$5,000,000 general aggregate (in excess of any coverage that may be provided by the Louisiana Patient Compensation Fund for qualified and enrolled medical personnel).
- (c) Prior to the Effective Date, Practice shall provide TUMG with an insurance certificate evidencing the coverage and limits required under this Agreement, a copy of which is attached hereto as Exhibit D. Practice shall provide at least thirty (30) days prior written notice to TUMG before any material alteration of coverage may take effect.
- (d) The indemnity obligations of Practice shall not be limited to available insurance including self insurance or self retention. The limit of any available insurance including Commercial General Liability or Professional Liability insurance shall not establish the limits for Practice's indemnity obligations.
- (e) Practice shall insure that any contracted Ancillary Personnel (as defined below) carry the same professional liability and general liability coverage and limits as Practice.

- 3.2. Compliance with Laws. The Practice shall be solely responsible for complying with all applicable laws, regulations and ordinances, including, without limitation, all such laws, regulations and ordinances associated with environmental compliance, including arrangements for the proper disposal of hazardous waste.
- 3.3. Space and Equipment. The Practice shall, at its expense make available space, equipment and supplies adequate for provision of the Services.
- 3.4. Ancillary Personnel. The Practice shall retain and make available to Physician qualified professional, technical and clerical personnel, whether contracted or employed (“Ancillary Personnel”) for the provisions of Services. Such Ancillary Personnel shall not be deemed to be employees of TUMG for any purposes. The Practice shall be solely responsible for the payment of the salary, social security, workers’ compensation and other employee benefits of any kind for the Ancillary Personnel. Practice shall be responsible for any liabilities of its employees, included contracted Ancillary Personnel of the Practice.
- 3.5. Notice. Practice shall promptly notify TUMG and Physician, in writing, of (i) any dissatisfaction or complaint with Services or any actual or potential variance from this Agreement (collectively “Complaint”) and shall allow reasonable opportunity for TUMG or Physician to cure or respond to any such Complaint; (ii) any potential or actual claim or lawsuit against Practice, TUMG or Physician arising from or associated with this Agreement, and (iii) any inquiry from any governmental or regulatory agency (“Inquiry”) that may arise from, be associated with or have bearing on Services. TUMG and/or Physician shall be provided opportunity to fully participate in any investigation, analysis and/or response to any such Inquiry.
- 3.6. Access. The Practice will permit TUMG and the authorized representatives of TUMG, during normal business hours and as often as reasonably requested, to visit and inspect, at the expense of TUMG, the site, including its books, records and patient records, for purposes of monitoring the quality and amount of Services rendered by the Physicians pursuant to this Agreement.

4. COMPENSATION:

- 4.1. Compensation. In full consideration of Services provided by TUMG hereunder and upon receipt of the time records required pursuant to Section 4.2, the Practice shall pay TUMG [_____] dollars (\$[____]) per hour/month/year, payable in [_____] [monthly/quarterly]. Practice shall remit payment to “Administrators of the Tulane Educational Fund” within [] business days of receipt of the time records for the previous [month]quarter]. Payment shall be sent to the following address:

- 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 Medical Director in a form reasonably acceptable to Practice certifying the numbers of hours spent during the previous [month/quarter] performing Services required under this Agreement with a description of such activities.

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 and each Physician shall at all times act as an independent contractor with respect to Practice, and not as an employee or agent of Practice. 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. In no event shall either Party or Physician be liable for the debts or obligations of any other except as otherwise specifically provided in this Agreement.
- 5.2. Tax and Withholdings. The Practice agrees that: (a) Physician will not be treated as employees of the Practice for federal tax purposes; (b) the Practice will not withhold on behalf of Physician any sums for income tax, unemployment insurance, social security, or any other withholdings pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of the Practice; and (c) all of such payments, withholdings, and benefits, if any, are the sole responsibility of TUMG. TUMG agrees to indemnify and hold the Practice harmless from any and all loss or liability arising from its failure to make such payments, withholdings, and benefits, if any. In the event the Internal Revenue Service or any other governmental agency should question or challenge the independent contractor status of Physician or TUMG, the Parties hereby agree that TUMG and the Practice have the right to participate in any discussion or negotiation occurring with such agency or agencies, regardless of with whom or by whom such discussions or negotiations were initiated.

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. Practice shall defend, indemnify and hold harmless TUMG and Physician from any claim, injury, damage lawsuit, cause of action, liability, or loss, including reasonable attorneys' fees (hereinafter "Claim") arising out of, related to or resulting from the alleged or actual acts, fault or omissions of the Physician, including the sole fault or negligence of Physician or TUMG: (i) in the performance of Services listed in Exhibit B under this Agreement; (ii) in the performance of any act, action or service Practice requests, instructs or demands of TUMG and/or Physician which are not listed under this Agreement ("Practice Request"); or (iii) for penalties or fines assessed for alleged or actual violation of any federal, state or municipal regulation or law. Each Party shall notify the other immediately in writing of any Claim related to Services or Practice Requests performed pursuant to this Agreement. The Parties shall cooperate with each

other in the investigation and disposition of any Claim arising out of the Services or Practice Requests 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. Notwithstanding the foregoing, TUMG shall defend, indemnify and hold harmless Practice from any Claim arising out of, related to or resulting from the alleged or actual acts, fault or omissions of the Physician, including the sole fault or negligence of Physician or TUMG, only for acts, actions or activities of Physician which are neither Services, nor Practice Requests.

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. If the Practice claims breach of Section 2.3, TUMG may cure the actual or claimed breach by providing Practice a similarly qualified physician subject to the approval of Practice. Such approval shall not be unreasonable withheld.
- 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. The Agreement will automatically terminate if: (a) Practice'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) Practice's or TUMG's license to operate is revoked or suspended; (c) Practice's insurance is canceled or non renewed; or (d) death or disability of Physician(s) with no similarly qualified TUMG Physician available for substitution.
- 8.4. 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.
- 8.5.Force Majeure. This Agreement shall terminate automatically upon the occurrence of a fortuitous event, including an occurrences caused by Act of God which render performance of this Agreement impossible.
- 8.6.Successor Agreement. In the event the Agreement is terminated with or without cause, no successor agreement may be entered into by the Parties during the first year of the initial term.
- 8.7.Survival. Sections 3.6, 5.2, 7.1, 10.1 and 13 shall survive expiration or termination of the Agreement.

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 Practice, 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 Practice 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 “PRACTICE” IS A HOSPITAL; OTHERWISE DELETE THIS SECTION 11):

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 Practice which sets forth the percentage of Physician’s total time compensated by Practice which the Parties anticipate the Physician will spend during the next ensuing fiscal year in furnishing the following services: (1) physician services to Practice, (2) physician services to individual patients of Practice, 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 Practice, TUMG shall cause Physician to execute promptly an allocation agreement in the form required by Medicare. It is agreed that Practice’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 Practice time records satisfactory to Practice which show the nature of the Services performed by the Physician and the time actually spent performing them. TUMG agrees to indemnify Practice 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 Practice, to execute promptly a new written time allocation agreement with Practice which shall reflect the actual time allocations shown by the time records of the Physician. It is understood by TUMG that Practice 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. USE OF NAMES AND LOGOS:

The Practice may not use the name, logo or corporate identity of TUMG or Physician for any purpose without the prior written consent of the entity whose name, logo or corporate identity is proposed to be used; provided, however, that nothing herein shall prohibit any Physician or the Practice from using the Tulane name solely to identify the Physician's status as a current member of the Tulane faculty. The Practice understands and agrees:

- (a) that any use of the Tulane name requires the prior written approval of Tulane;
- (b) that any restrictions on the use of the Tulane name that may be imposed on TUMG by Tulane from time to time shall be applicable to the Practice's use of the Tulane name;
- (c) that the use of the Tulane name by TUMG is subject to termination by Tulane, and that any such termination shall effect a termination of the Practice's right to use the Tulane name; and
- (d) that Tulane or TUMG has the right to terminate, with or without cause, the Practice's right to use the Tulane name upon 30 days' prior written notice to the Practice.

14. MISCELLANEOUS:

14.1. 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:

Jerold Feddersen
CEO, Tulane University
Medical Group
1430 Tulane Avenue TW-22
New Orleans, LA 70112

If to Practice:

With a copy to:

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

- 14.2. 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.
- 14.3. 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.
- 14.4. 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.
- 14.5. 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.
- 14.6. 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.
- 14.7. 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.
- 14.8. 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.
- 14.9. 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.

14.10. 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, Practice 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: Jerold Feddersen

Title: [_____]

Title: CEO, Tulane University Medical Group

Date: _____

By: _____

Name: Benjamin. Sachs, MB, BS

Title: Senior Vice President and Dean, Tulane
University School of Medicine

Date: _____

EXHIBIT A

The Facility

[Insert name and address of all facilities where Medical Director Services will be provided]

The Services

Physician shall: (SAMPLE SERVICES, REVISE AS NECESSARY)

1. Monitor compliance with Practice's clinical and administrative policies and protocols.
2. 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.
3. Conduct staff and physician educational programs.
4. Provide consultation on patient care issues both within [_____] and in the general acute care population.
5. 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.

EXHIBIT C

BYLAWS

EXHIBIT D

Copy of Insurance Certificate