

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

HEALTH AFFAIRS COMMITTEE

10:30 a.m. EST
Thursday
February 28, 2013

Tennessee Room
University Center
Chattanooga, Tennessee

AGENDA

- I. Call to Order
- II. Roll Call
- III. Minutes of Last Meeting – **Action** **Tab 1**
- IV. UT Methodist Physicians, LLC (UTMP)--Fourth Amendment to 2009 Addendum A to the Amended and Restated Master Affiliation Agreement with Methodist Healthcare-Methodist Hospitals – **Action** **Tab 2**
- V. Other Business
- VI. Adjournment

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

MINUTES OF THE HEALTH AFFAIRS COMMITTEE

January 28, 2013
Nashville, Tennessee

The Health Affairs Committee of The University of Tennessee Board of Trustees met at 1:00 p.m. on Monday, January 28, 2013, in the offices of Bradley Arant Boult Cummings in Nashville, Tennessee.

I. CALL TO ORDER

Charles C. Anderson, Chair, called the meeting to order.

II. ROLL CALL

Steve J. Schwab, Chancellor of UTHSC, called the roll, and the following members of the Health Affairs Committee were present:

Charles C. Anderson, Jr.
Joseph A. DiPietro
D. Crawford Gallimore
Monice M. Hagler
David E. Millhorn
James L. Murphy, III
Don C. Stansberry, Jr.

Chancellor Schwab announced the presence of a quorum of the Committee. Other Trustees and members of the administrative staff were also present.

III. MINUTES OF LAST MEETING

Chair Anderson asked for any corrections to the minutes of the November 8, 2012 meeting of the Committee. Trustee Stansberry moved approval of the minutes as presented in the meeting materials. Trustee Murphy seconded the motion, and it carried unanimously.

IV. FINANCIAL REVIEW OF UT MEDICAL GROUP (UTMG) AND UT LE BONHEUR PEDIATRIC SPECIALISTS (ULPS)

Tony Ferrara, Vice Chancellor for Finance and Operations at UTHSC, presented the financial reviews of UTMG and ULPS for the period ending December 30, 2012 (Exhibit 1).

Concerning UTMG, Mr. Ferrara discussed operational variances, including physicians' start-up costs, and loss of current physicians. He also discussed the transition of the Vascular Access Center and its role in leading to a net profit. UTMG's totals for the period were under budget, although increases were experienced due to the rising costs of health insurance plans, external legal counsel and closing of the Imaging Center.

Mr. Ferrara then presented UTMG's consolidated balance sheet for December 2013 and June 2012, for a 6-month financial comparison. A Trustee asked about the long-term debt. Mr. Ferrara responded that debt is primarily for the building in Germantown, Tennessee.

Mr. Ferrara continued with the current financial status of ULPS. ULPS experienced good physician revenue and below budget in contracted revenue. On the expense side, savings were achieved in the delay of new physician hiring, facility cost and other miscellaneous savings. He presented the ULPS consolidated balance sheet for December 2012 and July 2012, showing financial stability.

Chancellor Schwab commented on the progress of both practice plans, noting they are on target with strategic planning for continued success.

V. UPDATE ON UT METHODIST PHYSICIANS, PHASE 2

Mr. Ferrara presented an update on negotiations for Phase 2 of UT-Methodist Physicians (UTMP) (Exhibit 2).

He reported that the agreement of the parties will be incorporated into an amendment to the existing affiliation agreement and will require cooperation between UT and Methodist in recruitment of healthcare professionals, as well as, physician transition from existing practice plans. UTMP will consist of several areas of specialty, such as cardiology, endocrinology, internal medicine, nephrology, urology and transplant surgery.

Mr. Ferrara said the practice plan will allow the UT-COM Executive Dean and Methodist CEO to appoint University faculty as physician service line leaders who will be employed by UTMP and UTCOM. In response to a Trustee question, Dr. Schwab highlighted the benefits of these physician leader positions, including the success and collaboration of the hospital and academic component within various areas.

Mr. Ferrara continued the presentation with information on the base programmatic investment payment Methodist will make to UT College of Medicine and the possibility of an additional payment measured on financial performance. He also noted that the Methodist Board of Directors has been realigned to include three UT representatives, the Chancellor, College of Medicine Executive Dean, a member of the Board of Trustees, and the possibility of physicians as members of the Board of Directors. The General Counsel asked what the bylaws of Methodist provide as to how appointment of a UT Trustee is to be made, and Mr. Ferrara said he would provide the General Counsel with a copy of the Methodist bylaws.

Mr. Ferrara noted that a UT physician mutually agreed on by UT and Methodist will serve as the Methodist Executive Vice President for Medical Affairs. Executive Dean Dr. Stern is currently serving in that position. Trustee Stansberry asked whether any UT member of the Methodist Board of Directors is being compensated by Methodist. Chancellor Schwab responded that Methodist will not be compensating the UT members of the Board of Directors.

Mr. Ferrara continued to present information on co-branding policies with Methodist and UT, as well as, guidelines on clinical research coordination. The amendment shall be effective July 1, 2013 and remain effective unless terminated in accordance with the terms of the amendment.

VI. UPDATE ON UT-MED PRATICE PLAN

Dr. Schwab began with opening remarks introducing Dr. Stern and Dr. Brown and their efforts in the planning and execution of the practice plan with the MED. Dr. Stern began the presentation (Exhibit 3) on the process of creating a practice plan with the MED and the recent signing of a non-binding memorandum of understating.

He further discussed the goals of the joint venture and the core objectives that will enable UT and the MED to function in an integrated and aligned manner, thus responding to the market focus and national trends by combining resources of both facilities. He also discussed the organizational structure and its

formation of the UT-MED Associates (UTMA). UTMA will be jointly governed by UT and the MED, with the board consisting of equal number of representatives from UT and the MED.

Dr. Stern continued to discuss the financial and budget agreement between UT and the practice infrastructure, including the management service organization (MSO). Trustee Hagler asked for clarification concerning the ownership of the MSO. Dr. Stern replied that the MSO will be jointly owned by all the hospital partners. The presentation continued with information regarding the academic affiliation agreement and graduate medical education at the MED.

Dr. Stern addressed the steps in which the MED is seeking an amendment to allow the UTHSC Chancellor to appoint two voting members to the MED board, which required approval from the current MED board and Shelby County Mayor.

Dr. Brown directed the presentation on the proposal for the Women's and Infant's Tower, explaining that UTHSC would be seeking funding in 2014 outside the capital budget process. The Tower will be built on UT property sitting adjacent to the MED. The affiliation agreement between UT and the MED will promote joint oversight and governance of programs within the Tower, such as neonatology, obstetrics and gynecology, in addition to a joint relationship with Le Bonheur Children's Hospital. The development of a charter, bylaws and physician employment agreement will be developed by UT and the MED.

Dr. Brown emphasized the significance the tower will have on the infant mortality rates in West Tennessee and the continued progress from both organizations in developing a program statement.

Trustee Cates asked whether the proposal would lead to downsizing of burn and trauma units of the MED into a smaller, modern hospital facility. Dr. Brown replied that the burn unit at the MED will experience substantial growth with the guidance of Dr. Stern and the team he is recruiting. He also explained the role the Women and Infant Tower will serve with no foreseen competition with other hospital partners.

Trustee Stansberry raised concern about the risk of the MED investing in other service lines leading to conflict with other hospital partners. Dr. Schwab said he is confident UTHSC can manage the conflicts, given that UTHSC has the physicians and will have voting rights on the MED board. Dr. Stern also added the importance of UT continually communicating with all hospital partner CEOs.

Trustee Hagler asked whether the UT-MED practice plan would have to go before the Shelby County Commission for approval. Dr. Schwab responded that the only required approval beyond the MED board is the Mayor's approval of adding UT members to the MED board.

VII. REVISION OF COMMITTEE CHARTER CONCERNING COMPOSITION OF THE COMMITTEE

Secretary Catherine Mizell reported that the Trusteeship Committee has approved a proposed Bylaw amendment allowing the Vice Chair to appoint an at-large voting Trustee with professional or business expertise beneficial to the committee as a member of the Health Affairs Committee. The proposed revision of the Health Affairs Committee Charter simply conforms the Charter to the Bylaw amendment.

Trustee Stansberry moved that the proposed revision of the Health Affairs Charter be recommended to the Board of Trustees for approval (Exhibit 4). Trustee Hagler seconded the motion, and it carried unanimously.

VIII. OTHER BUSINESS

The Chair called for any other business to come before the Committee. There was none.

IX. ADJOURNMENT

There being no further business to come before the Health Affairs Committee, the meeting was adjourned.

Respectfully Submitted,

Steve J. Schwab, MD
Chancellor, UT Health Science Center

Charles M. Peccolo
Treasurer and Chief Financial Officer

THE UNIVERSITY OF TENNESSEE
BOARD OF TRUSTEES

ACTION ITEM

DATE: February 28, 2013

COMMITTEE: Health Affairs

CAMPUS/UNIT: UTHSC

ITEM: **UT Methodist Physicians, LLC (UTMP) – Fourth Amendment to 2009 Addendum A to the Amended and Restated Master Affiliation Agreement with Methodist Healthcare-Methodist Hospitals**

RECOMMENDATION: Approval

PRESENTED BY: Steve J. Schwab, Chancellor, UT Health Science Center

In February 2012, the Board of Trustees approved designation of UT Methodist Physicians, LLC (UTMP) as a faculty practice plan for the limited purpose of employing new adult multi-specialty care physicians in the short term (UTMP-Phase 1), pending development of a larger plan under which certain physicians would be transitioned from UT Medical Group to UTMP (UTMP-Phase 2). The developing UTMP-Phase 2 proposal was reviewed with the Health Affairs Committee at its June and October 2012 and January 2013 meetings. The following draft agreement concerning UTMP-Phase 2 was prepared by the Office of the General Counsel in consultation with the Healthcare Department of the Waller, Lansden, Dortch, and Davis firm in Nashville. The draft agreement is currently being reviewed by Methodist.

The proposed implementation date for UTMP-Phase 2 is July 1, 2013. Because a final agreement will not be ready for approval at the March 1 meeting of the Board of Trustees, the administration requests that the Board authorize execution of the final agreement after approval by the Chair of the Health Affairs Committee upon the recommendation of the General Counsel, the Chief Financial Officer, and the President.

MOTION:

That the Chancellor of the UT Health Science Center and the Chief Financial Officer of the University be authorized to execute the Fourth Amendment to 2009 Addendum A to the Amended and Restated Master Affiliation Agreement with Methodist Healthcare-Methodist Hospitals after approval by the Chair of the Health Affairs Committee upon the recommendation of the General Counsel, the Chief Financial Officer, and the President.

**FOURTH AMENDMENT TO 2009 ADDENDUM A
 TO THE
 AMENDED AND RESTATED MASTER AFFILIATION AGREEMENT
 BETWEEN
 THE UNIVERSITY OF TENNESSEE
 AND
 METHODIST HEALTHCARE - METHODIST HOSPITALS**

Summary of Key Provisions

Section	Page	Summary
1.b.	2	UT and Methodist both have approval rights over all affiliation agreements the other party has with UTMP.
1.c.	2-3	UT has approval rights over agreements Methodist and/or UTMP have with UTMG or other UT faculty practice plan concerning the transition of physician practices and related assets to Methodist and/or UTMP and concerning termination of a physician’s employment relationship with UTMP.
1.e., f.	3	Recruitment of physicians and other health care professionals to UTMP will be done cooperatively and pursuant to a multi-year recruitment plan to be developed by the parties.
3.b.	4	Methodist will make an annual Base Programmatic Investment (BPI) payment of \$3.25 million to UT.
3.c.	4	The BPI may increase or decrease from time to time on the mutual recommendation of the UT Executive Dean and the Methodist CEO and pursuant to a written amendment signed by the parties.
3.d.	4	Beginning July 1, 2014 and on each July 1 thereafter, the BPI will increase automatically by the % increase in the medical care index portion of the Consumer Price Index for All Urban Consumers.
4.	4-5	[Still under negotiation] Methodist will make an additional payment to UT, known as the Financial Performance Supplement (FPS), if Methodist’s net operating margin in a given year exceeds the previous year’s net operating margin by 3.5%. The FPS will be 25% of the amount by which the increase in net operating margin exceeds 3.5%. 33% of the FPS will be paid immediately; remaining 67% will be distributed on the basis of UTMP performance.

Section	Page	Summary
5.	5	Methodist is responsible for all financial liability associated with operations of UTMP, and neither the state nor UT will have any obligation to finance the deficits of UTMP.
6.	5	<p>While the Fourth Amendment is in effect, Methodist’s charter and bylaws will provide that the UTHSC Chancellor, Executive Dean, and a Trustee from the Memphis area will serve as ex officio voting members of the Methodist board of directors (UT Directors), and UT Directors will constitute not less than 1/6 of the total number of votes entitled to be cast. At least 1 UT Director will serve on the following standing committees: Corporate Governance, Finance, Physician Alignment, and Quality.</p> <p>Up to 3 physicians who are full-time faculty of UTHSC will also be voting members of the Methodist board.</p>
7.	6-9	<p>A physician leader employed full-time by UT, and acceptable to both UT and Methodist (currently Executive Dean Dave Stern), will provide the services of Executive Vice President for Medical Affairs of Methodist (EVPMA).</p> <p>The compensation of the UT employee providing EVPMA services will be determined solely by UT, and Methodist will not provide any compensation, benefits, or any other remuneration, directly or indirectly, to the UT employee providing EVPMA services.</p> <p>Methodist acknowledges the multiple capacities in which Executive Dean Stern currently serves with UT and its faculty practice plans. Methodist agrees to indemnify, defend, and hold harmless UT (and its agents, Trustees, officers, and employees) against certain losses, including those arising from a breach of a fiduciary duty or other duty by any UT employee providing EVPMA services. The UT employee must acknowledge in writing the terms and conditions of Section 7 and state law limitations on a non-profit corporation’s authority to indemnify an officer and director for a breach of the fiduciary duty of loyalty to the non-profit corporation.</p>
7.n.	9	Section 7 concerning EVPMA services can be terminated without terminating the Fourth Amendment in its entirety.
8.	9-10	Co-Branding of programs and services will be in accordance with licensing agreements and a policy statement to be developed by the parties. (No additional compensation is anticipated for the parties’ use of each other’s brand.)

Section	Page	Summary
8.	10	Methodist University Hospital will be renamed “UT Methodist Medical Center.” Co-branding of Le Bonheur Children’s Hospital will be as mutually agreed by the parties (still under negotiation).
9.	10	All clinical research activities by UT faculty as PI or co-PI, including those concurrently employed by UTMP, will flow through UT as prime contractor.
10.a.	10	Fourth Amendment will be in effect from the Effective Date, July 1, 2013, until terminated in accordance with its terms.
10.c.	11-13	Termination of the Fourth Amendment: (i) mutual written agreement; (ii) without cause on 1 year’s written notice; (iii) for cause after following procedures for informal resolution (an option for mediation is also provided); (iv) for insolvency; and (v) upon the occurrence of certain circumstances related to federal law and regulatory requirements.
11.a., b. c.	13-14	In the event of termination without cause, for cause, for insolvency, or upon the occurrence of one of the circumstances outlined in subsection 10.c.v., the non-terminating party may require that the terminating party transfer all its rights and interests in UTMP to the non-terminating party without additional consideration (but only as allowed by law in the event of termination for insolvency).
11.e.	14	In the event of termination of the Fourth Amendment for any reason, any UTMP physician or other health care professional who holds any faculty appointment with UTHSC will be entitled to terminate his or her employment with UTMP upon 30 days’ written notice for the purpose of becoming an employee or contractor of another UT-designated faculty practice plan. Neither UT nor the UT faculty member will be required to pay UTMP or Methodist any amount in order for the UT faculty member to terminate his or her employment with UTMP to become an employee or contractor of another UT-designated faculty practice plan.

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**FOURTH AMENDMENT TO 2009 ADDENDUM A
TO THE AMENDED AND RESTATED MASTER AFFILIATION AGREEMENT
BETWEEN
THE UNIVERSITY OF TENNESSEE AND METHODIST HEALTHCARE – MEMPHIS
HOSPITALS**

This Amendment, effective on July 1, 2013 (the “Effective Date”), is to Addendum A effective July 1, 2009 (“2009 Addendum A”) to the Amended and Restated Master Affiliation Agreement effective July 1, 2003 (“Amended and Restated Master Affiliation Agreement”) by and between The University of Tennessee (“UT”), on behalf of The University of Tennessee Health Science Center in Memphis (“UTHSC”), and Methodist Healthcare - Memphis Hospitals (“Methodist”) (UT and Methodist are hereafter sometimes referred to individually as a “Party” or collectively as the “Parties”). This Amendment shall hereafter be referred to as the “Fourth Amendment.”

RECITALS

WHEREAS, the Parties have previously determined that their respective institutions and the communities they serve will be better served through the establishment of one or more faculty group practices under the joint governance, management and support of UT, through UTHSC, and Methodist;

WHEREAS, for the past several years, UT has maintained and continues to maintain an affiliation agreement with UT’s primary faculty practice plan, UT Medical Group, Inc. (“UTMG”), which is a nonprofit, mutual benefit corporation organized under Tennessee law and exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and which operates a multi-specialty physician practice that as of 2010 employed approximately 360 physicians, all of whom are faculty of the UT College of Medicine’s Memphis campus (“UTCOM”);

WHEREAS, on September 8, 2010, the Parties caused to be formed UT Le Bonheur Pediatric Specialists, Inc. (“ULPS”), a nonprofit, public benefit corporation, which has no corporate members, and which is governed by a Board of Directors, to which Methodist and UT each appoint an equal number of members;

WHEREAS, pursuant to various written agreements between UT, Methodist, ULPS, and UTMG, including but not limited to the First Amendment, dated December 28, 2010, to the 2009 Addendum A to the Amended and Restated Master Affiliation Agreement, ULPS was designated as a pediatric faculty practice plan of UT, and the employment of approximately 90-100 physicians practicing in a variety of pediatric-related specialties at UTMG was transitioned from UTMG to ULPS pursuant to written employment agreements between ULPS and such pediatric physicians;

WHEREAS, on February 7, 2012, Methodist formed UT Methodist Physicians, LLC (“UTMP”), a nonprofit limited liability company with Methodist as its sole member, and which is governed by a Board of Directors, to which Methodist and UT each appoint an equal number of members;

WHEREAS, pursuant to various written agreements between UT, Methodist, and The West Clinic, P.C. (“TWC”), including but not limited to the Second Amendment, effective January 1, 2012, to the 2009 Addendum A to the Amended and Restated Master Affiliation Agreement, as revised by the Parties on August 6, 2012, TWC was designated as an oncology/hematology faculty practice plan of UT;

WHEREAS, pursuant to the Third Amendment, dated June 13, 2012, to the 2009 Addendum A to the Amended and Restated Master Affiliation Agreement, UTMP was designated as a multispecialty faculty practice plan of UT;

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WHEREAS, pursuant to a Professional Services Agreement entered into by the Parties effective October 1, 2012, UT is providing certain professional services to Methodist with respect to the oversight and management of the physician enterprise at Methodist through the services of UTCOM's Executive Dean, David M. Stern, M.D.; and

WHEREAS, the Parties desire to become more clinically and operationally integrated through, among other things, transitioning the employment of additional physicians who are currently practicing in a variety of specialties and subspecialties from UTMG to UTMP pursuant to one or more separate written agreements between UT, Methodist, UTMP, UTMG, and/or individual physicians (if necessary).

NOW THEREFORE, in consideration of the mutual promises, benefits, and covenants herein contained and consistent with the goals and intentions of the parties and the Amended and Restated Master Affiliation Agreement, UT and Methodist do hereby agree as follows:

1. Incorporation of Third Amendment; Joint Development and Governance of UTMP as a UT Faculty Practice Plan

- a. Sections 1 and 2 of the Third Amendment to the 2009 Addendum A to the amended and Restated Master Affiliation Agreement are hereby incorporated by reference as if fully set forth herein, and the remainder of the Third Amendment is no longer of any force or effect.
- b. It is anticipated that UT and Methodist will enter into one or more separate written affiliation agreements with UTMP, all of which shall comply with all applicable laws, rules, and regulations, including, but not limited to, the federal physician self-referral statute, 42 U.S.C. § 1395nn (the "Stark Law"), and the federal anti-kickback statute, 42 U.S.C. § 1320a-7b (the "Anti-kickback Statute"). All affiliation agreements between Methodist and UTMP shall be subject to the approval of UT, and all affiliation agreements between UT and UTMP shall be subject to the approval of Methodist. If approved by UT and Methodist, each affiliation agreement shall indicate such approval on the signature page of the affiliation agreements. Any material breach by UT or Methodist of their respective affiliation agreements with UTMP, and any termination by UT or Methodist of their respective affiliation agreements with UTMP without the express written consent of the other Party to this Fourth Amendment, shall constitute a material breach of this Fourth Amendment.
- c. In connection with such affiliation agreements, it is anticipated that Methodist and/or UTMP will enter into one or more separate written agreements (including but not limited to asset purchase agreements, lease agreements, employment agreements and independent contractor agreements) with physicians and physician groups, including but not limited to UTMG or other UT faculty practice plans, in order to accomplish the transition of such physicians' practices and related assets to Methodist and/or UTMP. Although UT may or may not be a party to such agreements, all such agreements shall provide fair market value consideration for the item(s) or service(s) being provided and shall otherwise comply with all applicable laws, rules, and regulations, including, but not limited to, the Stark Law and the Anti-kickback Statute. In addition, all such agreements shall be subject to the approval of UT. If approved by UT, each agreement shall indicate such approval on the signature page of the agreement. Any agreements that may be entered into by Methodist and/or UTMP in connection with the termination of the employment relationship with UTMP (including but not limited to, separation agreements, settlement agreements, and severance agreements) shall be subject to the approval of UT. If approved by UT, each agreement shall indicate such approval on the signature page of the agreement.

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- d. It is anticipated that UTMP's designation as a faculty practice plan of UTCOM may include but not be limited to the following specialties: Cardiology, Cardiovascular Surgery, Endocrinology, Electrophysiology, Gastroenterology, General Surgery, Infectious Disease, Internal Medicine, Nephrology, Otolaryngology, Pulmonary, Rheumatology, Surgical Oncology, Transplant Surgery, Urology, and Vascular Surgery.
 - e. Consistent with the recruitment plan described in subsection f. of this Section 1, UT and Methodist will cooperate with one another in the recruitment of physicians and other health care professionals to employment with UTMP, including but not limited to physicians and other health care professionals currently employed or contracted by one or more existing UT designated faculty practice plans and/or by Methodist or one of its affiliates. The Parties agree that UTMP will employ only physicians who hold a faculty appointment with UT so as to meet the definition of a "faculty practice plan" as set forth in Tenn. Code Ann. § 63-6-204.
 - f. Physician recruitment will occur for UTMP with recognition that specific investments will be required to support programmatic growth and expansion. Thus, the qualifications of each recruited physician shall be subject to the approval of the Methodist CEO and UTCOM Executive Dean and, unless otherwise agreed by them, will be consistent with the multi-year clinical faculty recruitment plan to be developed and approved by the Methodist CEO and UTCOM Executive Dean. Such recruitment plan shall be updated on an annual basis and shall be designed to support the strategic priorities of Methodist and UT as set forth in the Amended and Restated Master Affiliation Agreement, the 2009 Addendum A, and amendments to the 2009 Addendum A. All physician recruitment activities conducted by or on behalf of UTMP shall be conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the Stark Law and the Anti-kickback Statute.
 - g. UT and Methodist agree that in cooperation with UT's Chief Financial Officer, UTMP shall implement the "common paymaster" status as authorized by section 125 of the Internal Revenue Code. UT will act as the common paymaster and will report all social security wages and earnings on applicable employees' annual statement of earnings, Form W-2.
 - h. As specified in Section 9.3 of the Operating Agreement of UTMP, the UTMP Board of Directors shall be comprised of representatives of UT, Methodist, and UTMP physicians, and may include outside directors.
 - i. The operations of UTMP shall be conducted in compliance with all applicable laws, rules, and regulations, including but not limited to the Stark Law, the Anti-Kickback Statute, the federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended by the federal Fraud Enforcement and Recovery Act of 2009 (the "False Claims Act"), and the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act ("HIPAA"). To the extent Methodist enters into any management agreement with UTMP, such management agreement shall provide fair market value compensation for the services being provided and shall comply with the applicable requirements of the Stark Law and the Anti-kickback Statute.
2. **Appointment of Physician Service Line Leaders.** The UTCOM Executive Dean and Methodist CEO shall jointly make appointments of a certain number of physicians who shall lead key service lines and who shall be employed by UTMP and hold a faculty appointment at UTCOM.

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3. Base Programmatic Investment

- a. Through the joint governance structure of UTMP and such other methods as may be agreed to by the Parties in writing, UT and Methodist will endeavor to further grow and develop clinical, medical education and research programs related to improving the health of the communities they serve.
- b. To foster long term growth and development of the academic enterprise associated with UTMP's multi-specialty clinical practice and related programs, Methodist shall make an annual payment of three million two hundred fifty thousand dollars (\$3,250,000.00) ("Base Programmatic Investment") to UT. The Base Programmatic Investment described in this Fourth Amendment is separate and distinct from other financial commitments reflected in or related to the Amended and Restated Master Affiliation Agreement and the 2009 Addendum A, as amended (e.g., Graduate Medical Education funding).
- c. The amount of the Base Programmatic Investment may increase or decrease from time to time upon the mutual recommendation of the UTCOM Executive Dean and the Methodist CEO pursuant to an amendment to this Fourth Amendment executed by the UTHSC Chancellor and UT Chief Financial Officer on behalf of UT and by the Methodist President and CEO on behalf of Methodist. The reason(s) for any such change may include, but shall not be limited to, UTMP's acquisition or addition of other physician practice groups and/or individual provider(s), or the divestiture of an any such practice group and/or individual provider(s).
- d. Beginning July 1, 2014 and on each July 1 thereafter while this Fourth Amendment is in effect, the Base Programmatic Investment in effect as of that date shall increase automatically by the percentage increase in the medical care index portion of the Consumer Price Index for All Urban Consumers issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the prior year.
- e. The Base Programmatic Investment payment shall be made in equal monthly installments throughout the applicable year, with the first installment being made to UT no later than July 5, 2013. Subsequent installments will be due on the first day of each month.
- f. One hundred percent (100%) of the Base Programmatic Investment payment shall be credited to a specified UT Restricted Account referred to hereafter as the "Base Programmatic Investment Fund."
- g. Periodically and upon request, the UTCOM Executive Dean will discuss with the Methodist CEO UT's plans for expenditure of funds deposited in the Base Programmatic Investment Fund.

4. Financial Performance Supplement

- a. In addition to the annual Base Programmatic Investment payment, Methodist shall make additional payments to UT in order to support specific faculty or other program development (such payments being referred to herein as "Financial Performance Supplement" or "FPS") in accordance with the remaining subsections of this Section 4.
- b. If Methodist's net operating margin (as defined by _____) exceeds the previous year's net operating margin by greater than three and one-half percent (3.5%), then Methodist shall

Comment [A1]: Under negotiation.

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pay to UT twenty-five percent (25%) of the amount greater than three and one-half percent (3.5%) as follows:

- i. Thirty-three percent (33%) of the FPS will be paid to UT following the determination that the net operating margin has met the 3.5% requirement.
 - ii. The remaining sixty-seven percent (67%) will be withheld by Methodist and distributed based on annual practice performance and mutual goals established with the concurrence of the UTCOM Executive Dean and Methodist CEO. Comment [A2]: Under negotiation.
- c. The Parties agree and acknowledge that the determination of such FPS payments shall in no event take into account the volume or value of any patient referrals made to, or other business generated for, Methodist, and shall in all events otherwise be in accordance with all applicable laws and regulations.
 - d. The payment of any FPS from Methodist to UT shall be subject to all policies and procedures of Methodist, such as, but not limited to, appropriate approvals within Methodist; provided, however, that once any FPS has been paid to UT, such conditions relative to Methodist's policies, procedures and approvals shall be deemed to have been satisfied and no portion of such FPS amounts shall be subject to any refund or recoupment from UT.

5. Methodist's Financial Responsibility for UTMP

- a. In accordance with the UTMP Operating Agreement, Methodist shall be responsible for all financial liability associated with the operations of UTMP.
- b. Debts, liabilities, and other obligations of UTMP shall not constitute debts, liabilities or obligations of the State of Tennessee or UT. Neither the State of Tennessee nor UT shall have any legal or other obligation to finance the deficits of UTMP.

6. Restructuring of Methodist's Board of Directors

- a. Methodist represents, warrants, and covenants to UT that at all times during the term of this Fourth Amendment, Methodist's Charter and Bylaws will be consistent with the following:
 - i. The UTHSC Chancellor, the UTCOM Executive Dean, and one UT Trustee from the Memphis area designated by the Vice Chair of the UT Board of Trustees shall be *ex officio* voting members (collectively, the "UT Directors") of the Methodist Board of Directors, and such UT Directors will constitute not less than one sixth (1/6) of the total number votes entitled to be cast by the Methodist's Board of Directors;
 - ii. Up to three (3) physicians who hold full-time faculty appointments at UTHSC who are elected by the medical staff of Methodist shall be voting members ("Physician Directors") of the Methodist Board of Directors; and
 - iii. At least one UT Director will serve on each of the following standing committees of Methodist's Board of Directors: (A) Corporate Governance, (B) Finance, (C) Physician Alignment, and (D) Quality.
- b. Methodist's organizational documents shall reflect at all times during the term of this Fourth Amendment that no amendment, deletion, or other change to such provisions required by

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Section 6.a of this Fourth Amendment shall be effective without the unanimous written consent of all the UT Directors.

7. Appointment of Executive Vice President for Medical Affairs of Methodist

- a. UTCOM's Executive Dean (who presently is David M. Stern, M.D.), or other physician leader employed by UT and acceptable to both UT and Methodist, shall serve as the Executive Vice President for Medical Affairs of Methodist ("EVPMA") on the terms and conditions contained in this Fourth Amendment. The EVPMA, on behalf of UT, shall provide management services related to the physician enterprise of Methodist ("EVPMA Services"). The EVPMA Services are more fully described in Exhibit A to this Fourth Amendment, the provisions of which are incorporated in this Section 7 by reference.
- b. Both Methodist and UT recognize and agree that a UT physician employee acting as EVPMA is consistent with and in furtherance of the mission and goals of both Methodist and UTHSC, including but not limited to the joint oversight and management of the clinical services provided through physicians practicing at Methodist and through UTMP and ULPS. However, the relationship of the Parties hereunder is that of independent contractors and not of joint venturers, partners, or agents of one another. Neither Party shall have the authority to create any contractual, financial, or other obligation on behalf of the other Party under this Fourth Amendment. Neither Party, nor any of their respective employees, managers, officers, directors, or trustees shall be construed to be, nor shall be held out by either Party to be, the employee or agent of the other Party, except the Parties acknowledge that the EVPMA shall serve as an unpaid corporate officer of Methodist while serving as a full-time paid employee of UT.
- c. The UT physician employee performing EVPMA Services shall at all times be a full-time employee of UT acting on behalf of UT and subject to the direction and control of UT, provided that when acting in the capacity of EVPMA, such UT physician employee have a dual reporting responsibility to the Chancellor of UTHSC and to the Methodist CEO. It is not the intention of UT or Methodist, however, that any UT physician employee who serves in the capacity of EVPMA be deemed to be jointly employed by UT and Methodist, nor deemed to be leased by UT to Methodist. Rather, such UT physician employee is to serve in the capacity of EVPMA directly by virtue of his or her employment and position with UT, and shall be acting in the scope of his/her UT employment when providing EVPMA Services. Although UT will provide the EVPMA Services that might otherwise be provided by an employee of Methodist, neither UT nor any UT employee who may perform EVPMA Services under this Fourth Amendment shall be deemed to be the employee of Methodist or the employer or joint employer of any Methodist employee. No UT employee who may perform EVPMA Services under this Fourth Amendment shall make any employment decisions with respect to any Methodist employee.
- d. Other than the provision of administrative support (such as office space, secretarial support, etc.) reasonably necessary in connection with the provision of the EVPMA Services, Methodist shall not provide any compensation, benefits, or any other remuneration, directly or indirectly, in cash or in kind to any UT employee who may perform EVPMA Services hereunder. The compensation of any UT employee who may perform EVPMA Services hereunder shall at all times be determined solely by UT on the basis of performance of his or her responsibilities as a UT employee and other appropriate factors as determined by UT in its sole discretion, including without limitation national benchmark market data; provided

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- that in no event shall such compensation decisions be based on the number of physicians recruited to Methodist, UTMP, or any Methodist affiliate.
- e. UT and Methodist acknowledge that, in connection with the provision of EVPMA Services, UT and the EVPMA may receive confidential information from Methodist, which is not published or otherwise in the public domain and the UT physician employee acting in the capacity of EVPMA will be expected to execute a mutually-acceptable Confidentiality Statement substantially in the form of the one attached as Exhibit B to this Fourth Amendment prior to being provided with access to such confidential information. During the term of this Fourth Amendment and for five (5) years thereafter, UT agrees to hold in confidence all information acquired by UT from Methodist relating to Methodist's business activities, subject to the other provisions of this Fourth Amendment. UT and Methodist acknowledge and agree that confidential information does not include:
- i. Information which at the time of disclosure to UT was in the public domain;
 - ii. Information which, after disclosure to UT, is published or otherwise has become part of the public domain through no fault of UT;
 - iii. Information which was in UT's possession at the time of disclosure and which was not acquired directly or indirectly from Methodist;
 - iv. Information which was received by UT from a third party who did not acquire it directly or indirectly from Methodist; and
 - v. Information and/or documents that are required to be disclosed by law, regulation, subpoena or court order, including but not limited to the Tennessee Public Records Act (Tenn. Code Ann. § 10-7-101 et seq.).
- f. Notwithstanding the foregoing, Methodist agrees not to disclose any confidential information to UT or to the EVPMA that is not reasonably necessary for UT or the EVPMA to fulfill its obligations under this Fourth Amendment. In addition, Methodist shall not disclose to the EVPMA any information that he or she is prohibited from sharing with UT or that is otherwise competitively sensitive information (as such term is understood in the context of applicable anti-trust laws, rules and regulations, including without limitation pricing, reimbursement rates, salaries and wages). Except as otherwise set forth herein, the Parties agree and acknowledge that any information shared by Methodist or its affiliates with the EVPMA may be shared with UT. To comply with obligations under HIPAA, UT shall execute a mutually acceptable HIPAA Business Associate Agreement substantially in the form attached as Exhibit C to this Fourth Amendment.
- g. UT shall provide the EVPMA Services to Methodist in good faith and in a competent manner that is consistent with generally recognized standards in the industry. Although UT agrees to use reasonable efforts to provide the EVPMA Services in a manner that is designed to assist Methodist in achieving its goals and objectives described herein, UT makes no representations or warranties, either express or implied, as to the results, usefulness, or value of the EVPMA Services. UT shall not be liable for any direct, consequential, or other damages suffered by Methodist or others resulting from any EVPMA Services provided by UT, including but not limited to any services provided by a UT physician employee acting as EVPMA. UT is self-insured for certain acts and omissions under the provisions of the

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Tennessee Claims Commission Act (Tenn. Code Ann. § 9-8-301 et seq.), and its liability to Methodist and others is limited by the provisions of the Act.

- h. Notwithstanding any other provision of this Fourth Amendment which may appear to be to the contrary, no provision of this Fourth Amendment is intended nor shall be construed to reduce the fiduciary duties the UT physician employee owes to UT when acting in the capacity of EVPMA. Accordingly, the Parties agree that nothing in this Fourth Amendment is intended to create, nor shall be construed to create, any fiduciary duty or other obligation requiring UT or any UT employee to act in the best interest of Methodist in providing EVPMA Services hereunder.
- i. Both Methodist and UT acknowledge and agree that, as a full-time UT employee, the EVPMA must at all times act in compliance with all UT policies and procedures as well as applicable state law, including but not limited to those regarding conflicts of interest. The Parties agree that neither UT nor any UT employee providing EVPMA Services shall be required to violate UT's Conflicts of Interest Policy (FI0125), nor any other UT policy, in order to fulfill UT's obligations hereunder. In the event that an actual or potential conflict of interest should arise during UT's provision of EVPMA Services to Methodist, the Parties acknowledge and agree that any such actual or potential conflict of interest shall be resolved in accordance with the UT's Conflicts of Interest Policy, taking into consideration Methodist's Conflict of Interest Policy to the extent practicable. Both Parties agree to take all reasonable steps to avoid the creation of any actual or potential conflict of interest under this Fourth Amendment. In the event that an actual or potential conflict of interest arises that cannot be resolved, either Party may terminate this Section 7 immediately upon written notice to the other Party, stating the basis for the actual or potential conflict of interest.
- j. The Parties specifically acknowledge and agree that, as of the Effective Date of this Fourth Amendment, Dr. Stern, who is currently serving as the EVPMA, is:
 - i. a full-time employee of UT, and serves as Executive Dean of UTCOM campuses statewide and as the UT's Vice Chancellor for Clinical Affairs statewide;
 - ii. the Chairman of the Board of Directors of UTMG, UTMP, and ULPS, as well as an *ex officio* member of the Tennessee Cancer Council advisory board with respect to UT's affiliation agreement with TWC;
 - iii. an *ex officio* voting member of Methodist's Board of Directors; and
 - iv. a member of the board of directors of Methodist-owned physician practices known as Specialty Practice Group (SPG) and Primary Care Group (PCG).
- k. The Parties further specifically acknowledge and agree that:
 - i. UT has affiliation agreements with UTMG, ULPS, UTMP, and TWC under which these entities are designated as faculty practice plans for UT;
 - ii. Neither UT nor the EVPMA shall perform, nor shall be requested to perform, any EVPMA Services under this Fourth Amendment that would potentially conflict with its, his or her contractual obligations or fiduciary duties to UT, UTMG, ULPS, UTMP, TWC, or any other UT-affiliated faculty practice plan including but not limited to Semmes-Murphey Clinic, P.C. and Campbell Clinic, P.C.

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- l. Methodist agrees to indemnify, defend (at UT's sole discretion), and hold harmless UT, UTHSC, UTCOM, and their respective agents, trustees, officers, and employees from and against any liability, loss, claim, settlement, award, judgment, release, damage, expense, including without limitation attorney's fees ("Losses") to the extent such Losses arise from any claim for breach of fiduciary duty, breach by Methodist of its obligations hereunder or any negligent acts or omissions or willful misconduct by Methodist or its employees or agents, or from any actions taken by any UT employee in providing the EVPMA Services, including the performance of his/her duties as EVPMA. Such Losses include, but shall not be limited to, those which are based on a breach of the fiduciary duty of loyalty or other duty owed to Methodist, UTMP, UTMG, or ULPS by UT or any UT employee serving under this Fourth Amendment as EVPMA to the extent such Losses arise from actions taken in conjunction with the performance of the EVPMA Services described herein or as otherwise requested by Methodist under this Fourth Amendment. Methodist acknowledges and agrees that in performing the EVPMA Services, UT or any UT employee may be required by fiduciary duties and other employment-related obligations owed to UT to refrain from executing certain acts, or from engaging in certain discussions or decision making processes (e.g., voluntary recusal obligations) that would otherwise be of benefit to Methodist, and that in such event, the failure by UT through any UT employee to act as directed by Methodist shall not be considered a breach of any obligation under this Fourth Amendment. The obligations of Methodist under this subsection l shall survive the termination of this Fourth Amendment.
 - m. The Parties acknowledge, however, that Methodist shall be obligated to indemnify any UT employee serving under this Fourth Amendment as EVPMA in his or her personal capacity only to the extent authorized by Tennessee law. Any UT employee who serves as EVPMA shall expressly acknowledge in writing (substantially in the form attached hereto as Exhibit B) the terms and conditions of this Section 7 and the limitations under Tennessee law of the authority of a non-profit corporation such as Methodist to indemnify an officer and director from liability in his or her personal capacity for a breach of his fiduciary duty of loyalty to the non-profit corporation. The obligations of Methodist under this subsection m shall survive the termination of this Fourth Amendment.
 - n. In addition to the other provisions of this Fourth Amendment allowing for the immediate termination of this Section 7, either Party may terminate this Section 7 at any time, without cause or penalty, upon thirty (30) days prior written notice to the non-terminating Party. In the event that either Party alleges a default by the other Party in the performance of this Section 7, the non-defaulting Party shall provide thirty (30) days advance written notice to the defaulting Party specifying the alleged default and the action required to cure the default, and if the alleged default is not cured to the reasonable satisfaction of the non-defaulting Party within thirty (30) days after receipt of such notice, the non-defaulting Party may terminate this Section 7 upon written notice to the defaulting Party. The Parties agree and acknowledge that the provisions of Section 10c.iii do not apply with respect to a breach or alleged breach of this Section 7.
- 8. Co-Branding of Methodist Facilities**
- a. Many of the programs and services subject to this Fourth Amendment may be operated and/or marketed using the brands and other intellectual property of both Methodist and UT ("Co-Branding"). Any such Co-Branding efforts shall comply with the terms and conditions of licensing agreements to be executed by the Parties.

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- b. The Parties also agree to develop a joint Co-Branding policy statement (“Co-Branding Policy”) that will address placement and prominence of logos and trademarks, style guides, and associated requirements when advertising or promoting the value of the programs and services subject to this Fourth Amendment. For online collaborations, the Parties agree to share relevant statistical data concerning Co-Branded programs and services in a timely manner for the purpose of joint review and evaluation. The Co-Branding Policy developed by the Parties is not intended, and may not be relied on, to create any right or benefit, substantive or procedural, enforceable by law by any Party against any other Party to this Fourth Amendment.
- c. The Parties agree to the Co-Branding of certain Methodist facilities, specifically to include:
 - i. Methodist University Hospital to be renamed “UT Methodist Medical Center” and
 - ii. Le Bonheur Children’s Hospital to be Co-Branded with UT in a manner mutually agreed between Methodist and UT.
- d. The Parties agree that the licensing agreements and provisions of the Co-Branding Policy required by this Section 8 shall terminate automatically upon the termination of this Fourth Amendment. Furthermore, the licensing agreements will specify the process by which the Co-Branded programs, systems and other assets will wind down following the termination of this Fourth Amendment. Specifically, Methodist agrees that within thirty (30) days after termination of this Fourth Amendment, Methodist, at its expense, shall remove UT’s name, logo, and any other indicia from all Methodist facilities.

9. Coordination of Clinical Research Activities

- a. UT and Methodist acknowledge that:
 - i. Income generated by clinical research trials, industry sponsored research, investigator-initiated research studies, governmental research grants, and other research activities (“Research Activities”) is a significant source of revenue for UTCOM’s departments;
 - ii. The continuation of an individual’s UT faculty appointment is sometimes made contingent upon the continuation of the receipt of income from various Research Activities in which the faculty member is engaged; and
 - iii. Revenue from Research Activities may serve as the basis for a substantial portion of the academic payment UT is responsible for paying to UT faculty and other UT employees who will be concurrently employed by UTMP.
- b. Therefore, UT and Methodist acknowledge and agree that all Research Activities conducted by UT faculty as a principal investigator or co-investigator, including those who are concurrently employed by UTMP, shall flow through UT as the prime contractor, and shall be administered by UTHSC’s Office of Research Administration.

10. Term and Termination of this Amendment

- a. This Fourth Amendment shall commence on the Effective Date and shall remain in effect unless and until terminated as provided for in this Fourth Amendment.

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- b. The Parties agree and acknowledge that the terms and provisions of Section 7 may be terminated in accordance with the terms of Section 7 without terminating this Fourth Amendment in its entirety.
- c. Subject to compliance with the terms and conditions set forth in Section 11 concerning the effect of termination, the entire Fourth Amendment may be terminated as follows:
- i. Mutual Agreement. The Parties may terminate this Fourth Amendment by mutual written agreement.
 - ii. Without Cause. Either Party may terminate this Fourth Amendment without cause by providing at least one (1) year's advance written notice to the other Party.
 - iii. For Cause. Failure by either Party to comply in any material respect with any of its obligations under this Fourth Amendment shall entitle the other Party to give written notice ("Default Notice") to the Party in default. If such default is not cured to the reasonable satisfaction of the non-defaulting Party within thirty (30) days after the defaulting Party's receipt of the Default Notice, or a remedial plan acceptable to the non-defaulting Party has not been put in place within thirty (30) days after the defaulting Party's receipt of such notice, either Party shall be entitled to initiate the following procedure by written notice to the other (the "Resolution Notice"); provided that the Resolution Notice shall contain a copy of the Default Notice and any written responses thereto (collectively, the "Default Materials"):
 - (a) Within ten (10) Business Days after the delivery of the Resolution Notice, the UTHSC Chancellor and the Methodist CEO shall meet and negotiate in good faith to resolve the alleged default and terms and conditions of any remedial plan with respect thereto. In the event that the UTHSC Chancellor and the Methodist CEO are able to reach agreement with respect to such matters, the non-defaulting Party shall not have the right to terminate this Fourth Amendment for cause on account of such alleged default.
 - (b) In the event that, within twenty (20) Business Days after the delivery of the Resolution Notice, the UTHSC Chancellor and the Methodist CEO are unable to agree on whether a default has occurred or the terms of any remedial plan with respect thereto, either Party may, by written notice (the "Mediation Notice") to the other Party, obligate the Parties to attempt to resolve such matters through non-binding mediation in accordance with this Fourth Amendment. In the event that (i) the matter is not resolved pursuant to subsection (a) above and (ii) neither Party has provided the Mediation Notice within twenty five (25) Business Days after the delivery of the Resolution Notice, then the non-defaulting Party may terminate this Fourth Amendment for cause by written notice to the defaulting Party.
 - (c) Within five (5) Business Days after receipt of the Mediation Notice, the UTHSC Chancellor and the Methodist CEO shall identify a mutually acceptable independent third party mediator (the "Mediator"). If the identity of the Mediator cannot be agreed upon during such time period, each party shall designate a single mediator within ten (10) Business Days after the receipt of the Mediation Notice and those mediators shall select a third person that will serve as the Mediator.

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(d) The mediation shall be held in Memphis, Tennessee. The UTHSC Chancellor, the Methodist CEO, and the Mediator shall determine a convenient date for the mediation, which date shall not be more than twenty (20) Business Days after the receipt of the Mediation Notice without the written consent of both Parties to a later date. The UTHSC Chancellor and the Methodist CEO shall attempt in good faith to agree on procedures for the expeditious exchange of information in the possession of the other party which is desired to prepare for the mediation. Each Party shall deliver a concise summary of its view on the alleged default and any proposed remedial plan with respect thereto to the Mediator at least five (5) Business Days before the first scheduled session of the mediation.

(e) The Mediator shall determine the format for the meetings, and the mediation session shall be private. The Mediator will keep confidential all information learned in private caucus with any Party unless specifically authorized by such Party to make disclosure of the information to the other Party. The Parties agree that the mediation shall be governed by such rules as the Mediator shall prescribe after taking into account the preferences of the Parties. If the Mediator does not prescribe rules, the mediation shall be governed by the relevant provisions of Tennessee law.

(f) The Parties agree to participate in the mediation to its conclusion. The mediation shall be terminated by: (i) the execution of a settlement agreement or similar statement by the UTHSC Chancellor and UT Chief Financial Officer and the Methodist CEO, (ii) a declaration of the Mediator that mediation is terminated, or (iii) a written declaration by the UTHSC Chancellor or the Methodist CEO to the effect that the mediation process is terminated at the conclusion of five (5) full days.

(g) The costs and expenses of mediation, including compensation and expenses of the Mediator, shall be borne equally by the Parties. The Mediator shall be disqualified as a witness, expert or counsel for any Party with respect to the alleged default and any related matters. The entire mediation process is confidential, and such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence which is otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation.

(h) In the event that the mediation results in a successful resolution of the alleged default or any remedial plan with respect thereto, the non-defaulting Party may not terminate this Fourth Amendment for cause on account of the alleged default. In the event that the mediation does not result in the execution of a settlement agreement or similar statement by the UTHSC Chancellor and UT Chief Financial Officer and the Methodist CEO, the non-defaulting Party shall be entitled to send a written notice terminating this Fourth Amendment for cause on account of the alleged default. The right of either Party to terminate this Fourth Amendment for cause shall not be affected in any way by such Party's waiver of, or failure to take action with respect to, any previous default by a defaulting Party.

(i) The Parties agree and acknowledge that the terms and provisions of this Section 10c.iii do not apply with respect to breaches or alleged breaches of Section 7.

- iv. Insolvency. Either Party may terminate this Fourth Amendment immediately by written notice to the other Party if the other Party applies for or consents to the

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appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets; files a voluntary petition in bankruptcy; makes a general assignment for the benefit of creditors, or takes advantage of any insolvency law; or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor or otherwise, adjudicating such Party bankrupt or insolvent or approving a petition seeking reorganization or appointment of a receiver, trustee, or liquidator of all of a substantial part of its assets, and such order, judgment, or decree shall continue in effect for sixty (60) days after its entry.

- v. Either Party may terminate this Agreement on notice to the other Party in the event that the other Party:

(1) Is currently under indictment or prosecution for, or has been convicted (as defined in 42 C.F.R. Section 1001.2) of (A) any offense related to the delivery of an item or service under the Medicare or Medicaid programs or any program funded under Title V or Title XX of the Social Security Act (the Maternal and Child Health Services Program or the Block Grants to States for Social Security programs, respectively); (B) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service; (C) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service; or (D) obstructing an investigation of any crime referred to in (A) through (C) above;

(2) Has been required to pay any material civil monetary penalty under 42 U.S.C. § 1128A, regarding false, fraudulent, or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state or federal health care program, or is currently the subject of any investigation or proceeding which may result in such payment;

(3) Has been excluded from participation in the Medicare, Medicaid, or Maternal and Child Health Services (Title V) program, or any program funded under the Block Grants to States for Social Services (Title II) program, or from contracting with any agency of the federal government; or

(4) Has entered into a corporate integrity agreement with OIG or HHS.

11. Effect of Termination

- a. In the event that either Party terminates this Fourth Amendment pursuant to Section 10(b)(ii), the terminating Party, at the written request of the non-terminating Party, shall immediately transfer any and all membership, financial, governance, voting, and other rights and interests the terminating Party has in UTMP to the non-terminating Party by signing or causing to be signed one or more documents (including but not limited to one or more written UTMP Resolutions, written amendments to the UTMP Articles, and/or written amendments to the UTMP Operating Agreement) in a form reasonably acceptable to the non-terminating Party for the purpose of transferring of all the terminating Party's rights and interests in UTMP without additional consideration. Unless the Parties otherwise agree in writing, any such transfer shall be effective as of the termination of this Fourth Amendment and any such termination shall not be effective unless such transfer occurs.

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- b. In the event that either Party terminates this Fourth Amendment pursuant to Section 10(b)(iii) or 10(b)(iv), the insolvent or defaulting Party, at the written request of the terminating Party, shall immediately transfer any and all membership, financial, governance, voting, and other rights and interests the insolvent or defaulting Party has in UTMP to the terminating Party by signing or causing to be signed one or more documents (including but not limited to one or more written UTMP Resolutions, written amendments to the UTMP Articles, and/or written amendments to the UTMP Operating Agreement) in a form reasonably acceptable to the terminating Party for the purpose of transferring all the insolvent or defaulting Party's rights and interests in UTMP without additional consideration. Unless the Parties otherwise agree in writing, any such transfer shall be effective as of the termination of this Fourth Amendment and any such termination shall not be effective unless such transfer occurs.
- c. In the event that either Party terminates this Fourth Amendment pursuant to Section 10(b)(v), at the written request of the terminating Party, the other Party shall immediately transfer any and all membership, financial, governance, voting, and other rights and interests such Party has in UTMP to the terminating Party by signing or causing to be signed one or more documents (including but not limited to one or more written UTMP Resolutions, written amendments to the UTMP Articles, and/or written amendments to the UTMP Operating Agreement) in a form reasonably acceptable to the terminating Party for the purpose of transferring all such Party's rights and interests in UTMP without additional consideration. Unless the Parties otherwise agree in writing, any such transfer shall be effective as of the termination of this Fourth Amendment and any such termination shall not be effective unless such transfer occurs.
- d. The Parties expressly acknowledge and agree that no provision of this Fourth Amendment, nor any other agreement between UT and Methodist, nor any agreement between UT and any UT-designated faculty practice plan is intended to, nor shall be construed to, in any way conflict with or take precedence over any UT policies and procedures or any agreements between UT and its faculty (e.g., faculty appointment letters) with respect to UT's authority over UT faculty, including but not limited to the authority of the UTCOM Executive Dean regarding the appointment of UT faculty, the maintenance, continuation, and termination of UT faculty appointments, and the determination as to where and in which entity or entities UT faculty will maintain their clinical practices.
- e. Notwithstanding any other provision of this Fourth Amendment, the UTMP Articles of Organization, the UTMP Operating Agreement, any related UTMP policies, or any other agreement between the Parties or between UT and any UT-designated faculty practice plan which may appear to be to the contrary, in the event of any termination of this Fourth Amendment for any reason, the following provisions shall apply with respect to all physicians or other health care professionals employed or contracted by UTMP who hold any faculty appointment with UTHSC ("UT Faculty Member"):
- i. No UT Faculty Member shall be prohibited by UTMP or Methodist from terminating his or her employment with UTMP upon thirty (30) days' advance written notice to UTMP solely for the purpose of such UT Faculty Member becoming an employee or contractor of another UT-designated faculty practice plan at UT's sole election and discretion; and
 - ii. Neither UT nor any UT Faculty Member nor any other UT-designated faculty practice plan shall be required to pay to UTMP or Methodist any penalty or cost, including but

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not limited to any buy back amount, liquidated damages, or noncompetition covenant buyout price in order for such UT Faculty Member to terminate his or her employment with UTMP solely for the purpose of such physician becoming an employee or contractor of one of UT's other designated faculty practice plan at UT's sole election and discretion; and

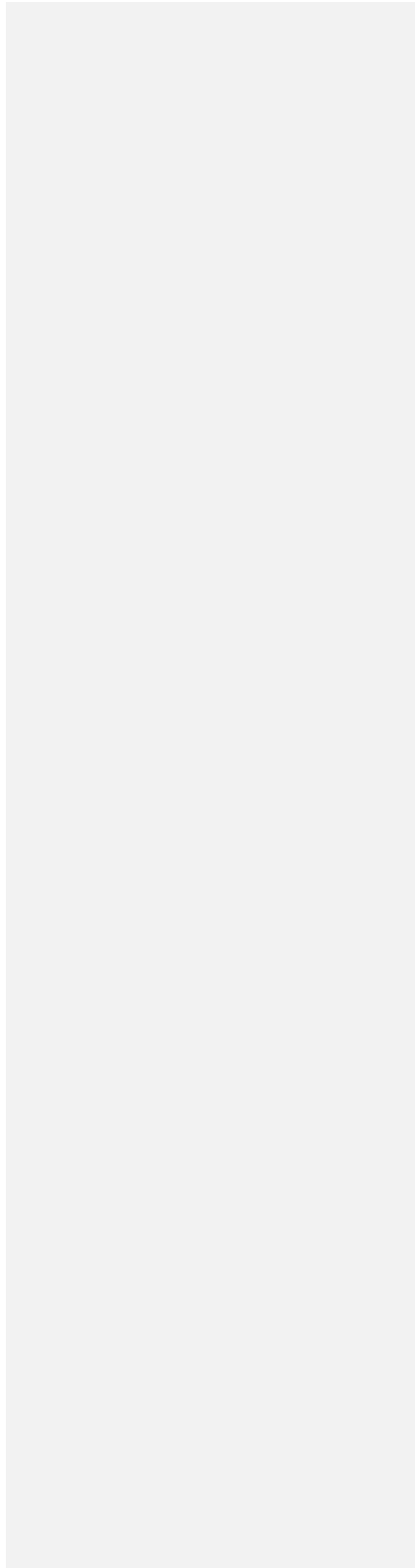
- iii. In the event that UT elects for such UT Faculty Member to be employed or contracted by another of UT's other designated faculty practice plans, including but not limited to UTMG, ULPS, The West Clinic, P.C., Semmes-Murphey Clinic, P.C., and Campbell Clinic, P.C., and such UT Faculty Member will not agree to such employment or contract with such other UT-designated faculty practice plan, UTMP shall execute an assignment of such UT Faculty Member's employment agreement with UTMP to a UT-designated faculty practice plan selected by UT in its sole discretion, and UT and such faculty practice plan may determine whether or not to terminate the UT Faculty Member's employment agreement and enforce any non-competition restrictions contained therein.
 - f. Methodist and UT hereby agree to cause UTMP's Operating Agreement to be amended to expressly set forth the provisions of this Section 11 of this Fourth Amendment, which shall survive termination of this Fourth Amendment and the UTMP Operating Agreement for any reason.
- 12. Governing Documents; Amendments.** All governance, management and fiscal affairs of UTMP shall be carried out in accordance with (a) UTMP's Articles of Organization, (b) UTMP's Operating Agreement, (c) this Fourth Amendment, and (d) any related UTMP policies, all of which may only be adopted, amended, modified, or terminated expressly in a writing manually signed by the authorized representatives of both parties (which shall include UT's Chief Financial Officer and UTHSC's Chancellor) and as may be further provided for in each of these governing documents.
- 13. Fraud and Abuse.**
- a. The parties hereby acknowledge and agree that no benefits to the parties hereunder require or are in any way contingent upon the admission, recommendation, referral or any other arrangement for the provision of any item or service offered by Methodist or any of its affiliates. None of UT's activities contemplated under this Agreement or otherwise shall constitute obligations of the UT to generate patient flow or business to Methodist, and there is absolutely no intent for UT in any manner to be compensated to generate patients for Methodist.
 - b. Methodist represents, covenants, and warrants that it will conduct all of its activities in connection with this Fourth Amendment, including but not limited to its relationships with and its billing for services provided, ordered, or referred to Methodist by UTMP and/or UTMP's physicians, in compliance with all applicable laws, rules, and regulations, including but not limited to the Stark Law, the Anti-Kickback Statute, the False Claims Act, and HIPAA.
- 14. Execution in Multiple Counterparts.** This Fourth Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

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15. **Continuing Effect of Amended and Restated Master Affiliation Agreement.** Except as modified by previous amendments to the 2009 Addendum A and by this Fourth Amendment, all terms and conditions of the 2009 Addendum A and the Amended and Restated Master Affiliation Agreement remain in full force and effect.

[signature page follows]

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IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment by signature of their duly authorized representatives on the date set forth below their signatures.

**METHODIST HEALTHCARE –
MEMPHIS HOSPITALS**

THE UNIVERSITY OF TENNESSEE

By: _____
Gary Shorb
President and CEO

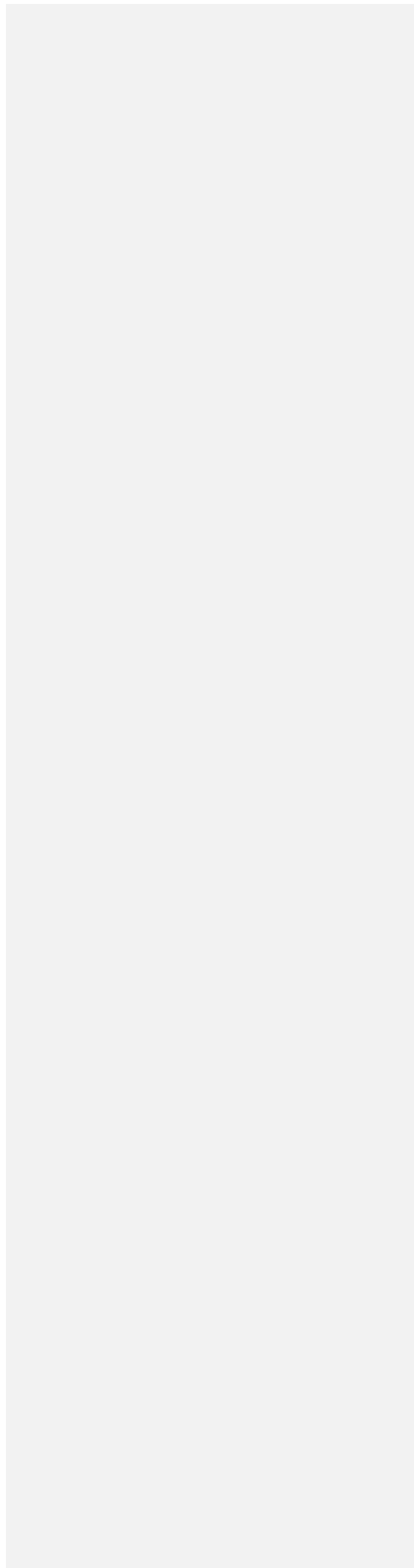
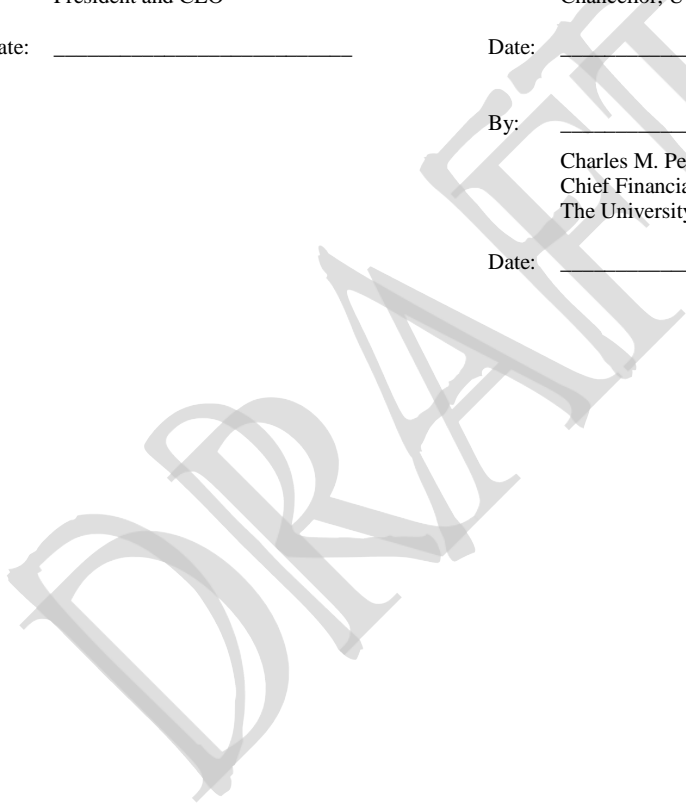
By: _____
Steve J. Schwab, MD
Chancellor, UTHSC

Date: _____

Date: _____

By: _____
Charles M. Peccolo, Treasurer and
Chief Financial Officer
The University of Tennessee

Date: _____



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**EXHIBIT A
Executive Vice President for Medical Affairs Services**

Services to be provided by the Executive Vice President for Medical Affairs of Methodist (“EVPMA”) on behalf of UT are anticipated to include service line development, physician integration and alignment to enhance quality of care, cost efficiencies and unique programs, and maximizing the opportunities of working with UTHSC. Fostering a highly functional hybrid culture in which UTHSC physicians work together seamlessly as part of larger health care teams is a key goal of the services to be provided by the EVPMA on behalf of UT. This physician integration is intended to help position Methodist to effectively address the health care needs of the populations that it serves as well as to address potential changes in the reimbursement environment such as bundled payments, accountable care organizations, and medical homes. Promoting a collaborative, accountable and innovative environment that is compatible with Methodist’s Vision, Mission, Values and Power of One Culture is another key goal of the services that UT will provide through the EVPMA.

Specific services to be provided by UT through the EVPMA will include:

1. Promotion of physician integration and alignment with Methodist in order to develop world-class service lines (cancer, cardiovascular) and to maximize capabilities of the primary care network.
2. Development of clinical programs of value to Methodist (rheumatology, endocrinology, etc.) outside of the cancer and cardiovascular major service lines, as necessary.
3. Provision of a continuous emphasis on coordination and quality of care with hospital-based physicians, hospitalists and intensivists, as well as employed physicians.
4. Development of UTMP as a major (though not exclusive) vehicle through which Methodist may indirectly employ specialists and facilitate other Methodist-physician relationships, as necessary.
5. Continuation of the development of ULPS, working closely with the CEO of Le Bonheur Children’s Hospital.
6. Fostering productive physician relationships with Methodist.
7. Upon request, providing Methodist with feedback concerning physician accountability and evaluation.

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EXHIBIT B
Acknowledgment and Confidentiality Agreement

I, _____, M.D., hereby acknowledge having received a copy of and having read Section 7 of the Fourth Amendment, and I specifically acknowledge the provisions of Section 7(m) of the Fourth Amendment.

In compliance with Section 7(e) of the Fourth Amendment, I further specifically acknowledge and agree that in the performance of services on behalf of UT under Section 7 of the Fourth Amendment, I may be exposed to information relating to Methodist’s operations, methods of doing business, research and development, patients, trade secrets, computer programs, finances, and other confidential and proprietary information belonging to Methodist (all of which are hereinafter collectively called “Confidential Information,” subject to the exceptions and other provisions set forth in the Fourth Amendment). I agree to use Methodist’s Confidential Information only for the direct and sole benefit of Methodist and I will not, without written authorization of Methodist, acquire, use or copy, in whole or in part, the Confidential Information or disclose the Confidential Information to any other person or entity, except as provided for in Section 7 of the Fourth Amendment.

I shall take all appropriate precautions, whether by instruction, agreement or otherwise, to ensure the protection, confidentiality and security of the Confidential Information and to satisfy my obligations under this Confidentiality Agreement. I agree that my obligations with respect to the confidentiality and security of the Confidential Information disclosed to me shall survive the termination of any agreement or relationship between Methodist and the University. I agree that this Acknowledgement and Confidentiality Agreement shall be governed by the laws of the State of Tennessee. I acknowledge that I have received a copy of this Acknowledgement and Confidentiality Agreement as executed by me.

Witness

[Insert Name of Physician]

Date: _____

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EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made as of the 1st day of July, 2013, by and between Methodist Le Bonheur Healthcare on behalf of itself and all of its affiliates ("Covered Entity"), and The University of Tennessee on behalf of the University of Tennessee Health Science Center ("Business Associate").

In consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section 1. Definitions

- (a) Business Associate. "Business Associate" shall mean University of Tennessee.
- (b) Covered Entity. "Covered Entity" shall mean Methodist Le Bonheur Healthcare and all of its affiliates.
- (c) Breach. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Regulations which compromises the security or privacy of the Protected Health Information. For the purposes of this definition, "compromises the security or privacy" means that there is not a demonstrated low probability that the Protected Health Information has been compromised based on a documented risk assessment addressing the four factors set forth in 45 C.F.R. §164.402. In the event of any inconsistency between the definition of "Breach" in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
- (d) HITECH Act. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act, Pub. L. No. 111-5.
- (e) Privacy Regulations. "Privacy Regulations" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- (f) Security Regulations. "Security Regulations" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- (g) Secretary. "Secretary" shall mean the Secretary of the federal Department of Health and Human Services.
- (h) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall mean Protected Health Information in any form, including electronic, paper or verbal that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

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Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§160.103, 164.304 and 164.501.

Section 2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- (b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (c) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;
- (d) immediately report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware; with respect to Breaches of Unsecured Protected Health Information, such report shall include at least the following information:
 - (1) the identity of each individual, whose information was accessed, acquired or disclosed during the breach;
 - (2) a brief description of what happened;
 - (3) the date of discovery of the breach;
 - (4) the nature of the Unsecured Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);
 - (5) any steps individuals should take to protect themselves from potential harm resulting from the breach; and
 - (6) a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches;
- (e) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information;
- (f) provide access to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C. F .R. § 164.524;
- (g) make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of

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Covered Entity or an Individual , and in the time and manner designated by Covered Entity;

- (h) make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purpose of the Secretary determining Covered Entity's compliance with the Privacy Regulations;
- (i) document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity or Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528;
- (j) provide to Covered Entity or an Individual information collected in accordance with Section 2(i) of this Agreement, to satisfy the requirements for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528 or Section 13405(c) (3) of the HITECH Act;
- (k) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in Section 3(a)(l)(B) of this Agreement;
- (l) ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and
- (m) report to Covered Entity any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operation in an information system.

Section 3. Permitted Uses and Disclosures by Business Associate

- (a) Statutory Duties.
 - (1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:
 - (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and
 - (B) effective February 17, 2010, complies with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401 (c)

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of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.

- (2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and /or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.
- (b) General Use and Disclosure Provisions:
- Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the underlying service agreement between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (c) Specific Use and Disclosure Provisions.
- (1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached .
- (3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
- (4) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authority, consistent with 45 C.F.R. §164.502(j)(l).
- (5) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

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Section 4. Obligations of Covered Entity

Covered Entity shall:

- (a) notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;
- (b) notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;
- (c) notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Section 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

Section 6. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of October 1, 2012 and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is not feasible to return or destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (3) if neither termination nor cure is feasible, report the violation to the Secretary.
- (c) Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors

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or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Section 7. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- (b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act and its implementing regulations.
- (c) Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Regulations, the Security Regulations, the Health Insurance Portability and Accountability Act, and the HITECH Act.
- (e) Identity Theft Regulations. To the extent that Business Associate provides services in connection with an account maintained by the Covered Entity that permits patients to make multiple payments for services rendered by the Covered Entity (including, but not limited to, billing and collection services), Business Associate shall have and follow policies to detect and prevent identity theft in accordance with the identity theft regulations of the Federal Trade Commission, 16 C.F.R. §681.2. In addition, in such case Business Associate shall: (1) report to Covered Entity any pattern, practice, or specific activity that indicates the possible existence of identity theft ("Red Flags") involving anyone associated with Covered Entity, including its patients, employees, and contractors, and (2) take appropriate steps to prevent or mitigate identity theft when a Red Flag is detected.

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The parties have caused this Agreement to be executed on the date first written above.

WITNESS:

METHODIST LE BONHEUR HEALTHCARE

THE UNIVERSITY OF TENNESSEE

By: _____
Gary Shorb
President and CEO

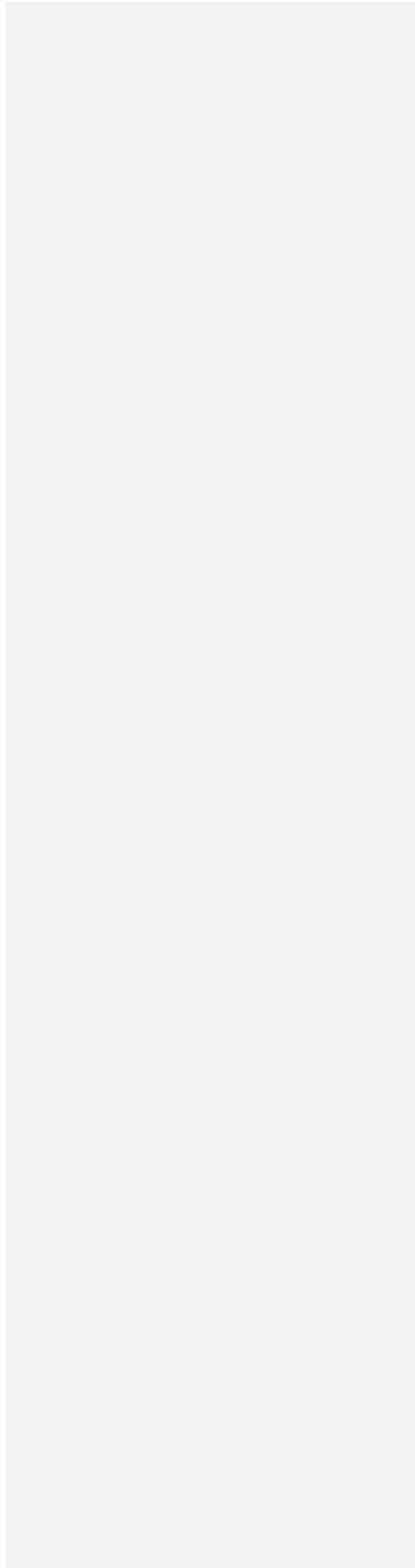
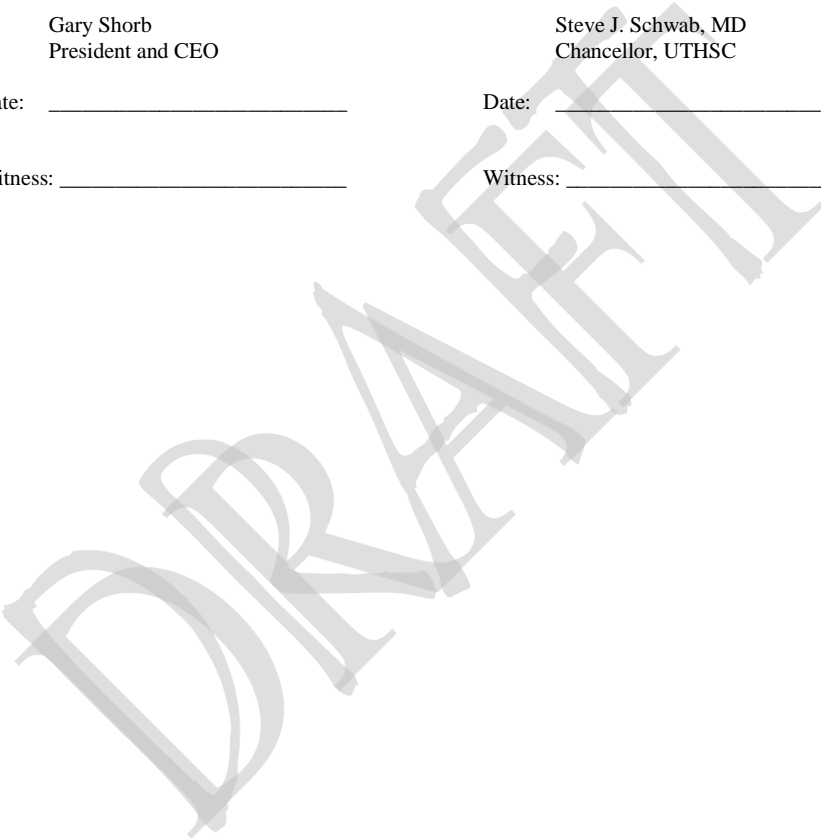
By: _____
Steve J. Schwab, MD
Chancellor, UTHSC

Date: _____

Date: _____

Witness: _____

Witness: _____





Proposed 4th Amendment to the Methodist Affiliation Agreement for UTMP -- Phase 2

Presented to the
Health Affairs Committee
February 28, 2013

Presentations to Date:

- **Background**
 - **February 2012** – BOT authorized the designation of UTMP as a Faculty Practice Plan
 - **June 2012** – HAC presentation on proposed next steps for UTMP and integration Methodist Le Bonheur Health Care
 - **October 2012** – Initial presentation on key components for UTMP Phase 2
 - **January 2013** – Review of draft Amendment

- **Today**
 - **Review of *Fourth Amendment to 2009 Addendum A to the Amended and Restated Master Affiliation Agreement with Methodist Le Bonheur Healthcare***

§1. Governance of UTMP

- **Methodist is sole member of UTMP, LLC, but it is jointly governed by UT and Methodist.**
- **Each party has approval rights over the other party's affiliation agreements with UTMP.**
- **UT has approval rights over any agreements Methodist and/or UTMP have with UTMG or another UT faculty practice plan.**
- **Recruitment of new physicians and transition of physicians from other UT practice plans will be pursuant to a jointly developed recruitment plan.**

§1. Governance of UTMP (cont.)

- Identifies the following specialties to be included in UTMP, among others:

- | | |
|---|---|
| <input type="checkbox"/> Cardiology | <input type="checkbox"/> Nephrology |
| <input type="checkbox"/> Cardiovascular Surgery | <input type="checkbox"/> Otolaryngology |
| <input type="checkbox"/> Endocrinology | <input type="checkbox"/> Pulmonary |
| <input type="checkbox"/> Electrophysiology | <input type="checkbox"/> Rheumatology |
| <input type="checkbox"/> Gastroenterology | <input type="checkbox"/> Surgical Oncology |
| <input type="checkbox"/> General Surgery | <input type="checkbox"/> Transplant Surgery |
| <input type="checkbox"/> Infectious Disease | <input type="checkbox"/> Urology |
| <input type="checkbox"/> Internal Medicine | <input type="checkbox"/> Vascular Surgery |

§2. Physician Service Line Directors

- **UTCUM Executive Dean and the Methodist CEO will appoint physicians concurrently employed by UT and UTMP to lead key service lines.**
- **These service line directors are not members of the UTMP board, but are key managers responsible for services across both inpatient and outpatient areas.**

§3. Base Programmatic Investment

- In support of the growth and development of the academic enterprise, Methodist shall make an annual payment of \$3.25 million to the UT College of Medicine.



§4. Financial Performance Supplement

- In addition to the Base Programmatic Investment, Methodist will make an additional payment based on financial performance in the circumstances described below.
- The FPS will be based on the Methodist System net operating margin year to year.
- If the net operating margin is more than 3.5% greater than the previous year, UT will be paid 25% of the amount over the 3.5%.
 - One third of the funds will be distributed immediately
 - Two thirds will be distributed based on UTMP performance/ goals to be negotiated annually.
- Details of the FPS remain under negotiation.

§6. Methodist Board of Directors

- **Methodist has restructured its Board of Directors to include 3 UT representatives:**
 - **UT Trustee from the Memphis area**
 - **UTHSC Chancellor**
 - **UTCOM Executive Dean**
- **In addition, up to 3 UT faculty physicians may be elected as voting members of the UTMP board by the Methodist medical staff.**
- **At least 1 UT director shall serve on each of the following committees:**
 - **Governance**
 - **Finance**
 - **Physician Alignment**
 - **Quality**

§7. Methodist EVP for Medical Affairs

- A UT physician leader (currently Dr. Stern) will be named the Methodist Executive Vice President for Medical Affairs.
- Primary responsibilities of the EVPMA:
 - Promotion of physician integration and alignment
 - Development of clinical programs.
 - Continuous emphasis on coordination and quality of care with hospital-based physicians, hospitalists, and intensivists
- As a UT employee, the individual serving as the EVPMA will only be paid by UT, not Methodist.

§8. Co-Branding of Facilities

- Provides for co-branding of programs, services, and facilities pursuant to licensing agreements and a mutually developed co-branding statement.
- Provides for renaming of Methodist University Hospital as “UT Methodist Medical Center.”
- Provides for Le Bonheur Children’s Hospital to be co-branded as mutually agreed by the parties to ensure greatest impact for both UT and Le Bonheur.

§9. Clinical Research Coordination

- Acknowledges UT as the primary institution for clinical research conducted by UT faculty.
- Requires all research activities conducted by UT faculty to flow through UT as the prime contractor administered through the Office of Research Administration.



§10. Term and Termination

- **The Fourth Amendment will be effective July 1, 2013 and remain in effect unless terminated as provided in the amendment.**

- **Allows for termination:**
 - **By both parties through mutual written agreement**
 - **By either party without cause on 1 year's notice**
 - **By either party for cause**
 - **By insolvency of either party**
 - **By either party upon occurrence of certain circumstances related to federal law and regulatory requirements**

§11. Effect of Termination

- In the event of termination without cause, for cause, for insolvency, or upon the occurrence of one of the circumstances related to federal law and regulatory requirements, the non-terminating party may require the terminating party to transfer all its rights and interests in UTMP to the non-terminating party without additional consideration (but only as allowed by law in the event of termination for insolvency).
- In all cases, regardless of the reason for termination, UT retains the sole right to designate the appropriate clinical practice plan for UT faculty members.

Request for Action

- **Move that the Chancellor of the UT Health Science Center and the University's Chief Financial Officer be authorized to execute the *Fourth Amendment to 2009 Addendum A to the Amended and Restated Master Affiliation Agreement with Methodist Healthcare-Methodist Hospitals* after approval by the Chair of the Health Affairs Committee upon the recommendation of the General Counsel, the Chief Financial Officer, and the President.**

Thank You !

QUESTIONS ? ?