

ADDENDUM B

MEDICAL DIRECTOR AGREEMENT

between

**PALOMAR POMERADO HEALTH,
a local hospital district**

and

Alan Conrad, M.D.

May 1, 2006

MEDICAL DIRECTOR AGREEMENT

THIS MEDICAL DIRECTOR AGREEMENT (“Agreement”) is made and entered into effective May 1, 2006 by and between Palomar Pomerado Health, a local health care district organized pursuant to Division 23 of California Health and Safety Code (“Hospital”) and Alan Conrad, M.D. (“Medical Director”).

R E C I T A L S

A. Hospital is the owner and operator of Palomar Medical Center, a general acute care hospital located at 555 East Valley Parkway, Escondido, California and Pomerado Hospital, a general acute care hospital located at 15615 Pomerado Road, Poway, California (“Hospital”).

B. Medical Director is a physician who is qualified and licensed to practice medicine in the State of California, is experienced and qualified in the specialized field of Endocrinology or Internal Medicine, and who is a member of the Medical Staff of Hospital (“Medical Staff”).

D. Departments consist of facilities and equipment owned by Hospital and staffed by Hospital employees.

E. Hospital desires to retain Medical Director as an independent contractor to provide certain administrative services (“Administrative Services”) in the operation of the Department and has determined that this proposed arrangement with Medical Director will enhance the Department’s and Hospital’s organization, procedure standardization, economic efficiency, professional proficiency, and provide other benefits to enhance coordination and cooperation among the Department’s providers and users.

F. Hospital and Medical Director acknowledge and agree that this Agreement shall supercede the agreements, if any, previously entered into by the parties for the provision of Administrative Services.

G. It is the intent of both Hospital and Medical Director that the terms and conditions of this Agreement, and the manner in which services are to be performed hereunder, fulfill and comply with all applicable requirements of any applicable “safe harbor” or exception to Stark I and II including, but in no way limited to, the applicable requirements set forth in regulations promulgated by the Department of Health and Human Services, Office of Inspector General, and in the Ethics in Patient Referral Act.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. MEDICAL DIRECTOR SERVICES

1.1 **Medical Director of Department.** Medical Director shall act as the medical director of the Department in accordance with the terms of this Agreement, the Medical Staff bylaws (“Medical Staff Bylaws”), and Hospital’s bylaws, rules, regulations, policies, and procedures (collectively, “Hospital Bylaws”). Medical Director, at all times during the term of this Agreement, shall be duly licensed as a physician under California law, shall be a member in good standing of the active Medical Staff, shall comply with all applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations (“JCAHO”), and shall hold all clinical privileges on the active Medical Staff of Hospital appropriate to the discharge of his or her obligations under this Agreement.

1.2 **Medical Director Administrative Duties.** Medical Director shall perform the Administrative Services as set forth on **Exhibit A**. Medical Director and Hospital shall use best efforts to meet monthly to discuss the performance of Administrative Services in the Department.

1.3 **Administrative Hours.** Medical Director shall commit to a minimum of sixteen hours per month and Medical Director shall set his or her own work schedule consistent with the proper operation of the Department. In the event Medical Director seeks to provide more than sixteen hours per month during any week in connection with this Agreement, Medical Director shall obtain advance approval from Hospital’s Chief Clinical Outreach Officer.

1.4 **Use of Premises.** In order to preserve Hospital’s exemption from property and other taxes, pursuant to state and federal law, Hospital space must be used for Hospital purposes only, which include the provision of Administrative Services hereunder by Medical Director. Consequently, no part of the Department premises shall be used at any time by Medical Director as an office for personal use, including for the general/private practice of medicine. Medical Director shall not incur any financial obligation on behalf of Hospital without Hospital’s prior written consent, which consent shall be in Hospital’s sole and absolute discretion.

1.5 **Private Practice.** Physician shall not have any Services under this Agreement performed by outside personnel without prior approval of PPH and the Palomar Medical Staff Executive Committee. Physician shall not act as a diabetes services medical director of any other diabetes service department or program in San Diego, or perform similar administrative services for any other hospital system in San

Diego. Physician may engage in private practice and shall have the same privileges to admit patients to diabetes services programs as other Medical Staff members.

1.6 **Referral Prohibition.** Medical Director shall in no event refer or admit any patient to any hospital or other provider of health care services which has been excluded from participation in the Medicare program while acting in his capacity as Medical Director.

1.7 **Independent Contractor.**

1.7.1 In the performance of the duties and obligations of Medical Director hereunder, it is mutually understood and agreed that Medical Director is at all times acting and performing as an independent contractor, and nothing in this Agreement is intended nor shall be construed to create between Hospital and Medical Director, an employer/employee, joint venture, lease or landlord/tenant relationship. In that regard, Hospital shall neither have nor exercise any control or direction over the methods by which Medical Director performs, his or her duties, work, functions or Administrative Services or over Medical Director's best medical, professional or clinical judgment. The standards of medical practice and professional duties of Medical Director shall be determined by the Medical Staff and prevailing professional standards. In furtherance of the independent status of the parties, Medical Director shall not hold himself or herself out as an officer, agent or employee of Hospital, and shall take all reasonable steps to disavow such status or relationship in every instance where a reasonable party might assume that such a relationship exists between the parties. Medical Director shall reimburse or otherwise indemnify Hospital for all costs incurred, if Medical Director is held to be an employee or agent of Hospital for any purpose. The sole interest and responsibility of Hospital is to assure that the Administrative Services covered by this Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner.

1.7.2 In the event any governmental entity, including without limitation, the Internal Revenue Service should question or challenge the independent contractor status of Medical Director with respect to Hospital and the Administrative Services rendered hereunder, the parties hereto mutually agree that both Medical Director and Hospital shall have the right to participate in any discussion or negotiation occurring with such governmental entity, regardless of who initiated such discussions or negotiations. In the event the governmental entity concludes that an independent contractor relationship does not exist, Hospital may terminate this Agreement immediately upon written notice to Medical Director.

1.8 **Loss or Limitation.** Medical Director shall promptly notify Hospital if Medical Director is subject to any loss, sanction, suspension or material limitation of his or her license, federal Drug Enforcement Agency ("DEA") number, right to participate in the Medicare or Medi-Cal programs, malpractice insurance or Medical Staff membership or clinical privileges at Hospital or any other hospital or managed care organization.

1.9 **Medical Director Warranties.** Medical Director represents and warrants to Hospital that Medical Director is now and shall remain throughout the term hereof (a) duly licensed to practice medicine in the State of California; (b) a member of the active professional staff of Hospital, with clinical privileges sufficient to permit Medical Director to perform all services required of Medical Director under Section 1 hereinabove; (c) in legitimate possession of all customary narcotics and controlled substances numbers and licenses. Medical Director further represents and warrants to Hospital that (a) Medical Director's license to practice medicine in any state has never been suspended, revoked or restricted; (b) Medical Director has never been reprimanded, sanctioned or disciplined by any licensing board or state or local medical society or specialty board; (c) Medical Director has never been excluded from participation in, or sanctioned by, any state or federal health care Department, including, but not limited to Medicare or Medicaid; and (d) Medical Director has never been denied membership or reappointment of membership on the medical staff of any hospital and no hospital medical staff membership or clinical privileges of Medical Director have ever been suspended, curtailed or revoked for a medical disciplinary cause or reason.

2. HOSPITAL OBLIGATIONS

2.1 **Administrative Director.** Hospital shall provide an administrative director of the Department who shall be responsible and accountable to Hospital for administrative and technical functions, including supervision, selection, assignment, and evaluation of Hospital personnel; maintenance of equipment; development of annual budget; and acquisition of materials, supplies, and equipment ("Administrative Director"). In the event of any dispute between Medical Director and Administrative Director regarding their respective administrative responsibilities, such dispute shall be submitted to Chief Clinical Outreach officer, or his or her designee, whose decision shall be final and binding upon the parties hereto.

2.2 **Space and Use of Premises.** Hospital shall furnish for the use of Medical Director such space and facilities as may be deemed necessary by Hospital for the proper operation and conduct of the Department. Such space and facilities may change from time to time depending upon needs as determined by Hospital in its sole discretion.

2.3 **Equipment.** Hospital shall furnish for the use of the Department such equipment as is deemed necessary by Hospital for the proper operation and conduct of the Department. Hospital shall keep and maintain this equipment in good order and repair and replace such equipment or any part of it, which becomes worn out. Obligations of Hospital under this Section shall be subject to the availability of funds, and to obtaining all necessary government approvals, if any.

2.4 **Hospital Services and Supplies.** Hospital shall provide or arrange for the provision of ordinary janitorial services, maintenance, housekeeping services, disposal of clinical waste, laundry and utilities, together with such other Hospital services, including medical records, administrative, local and long distance telephone services, engineering

services, and expendable supplies as Hospital deems necessary for the proper operation and conduct of the Department.

2.5 **Hospital Personnel.** Hospital shall provide all non-physician personnel, including nurses, technicians, and clerical personnel, that Hospital deems necessary for the proper operation and conduct of the Department. Hospital shall consult with Medical Director regarding Department personnel. With the advice and recommendation of Medical Director, Hospital shall establish and classify all non-physician positions and shall designate the persons assigned to each non-physician position. While Medical Director shall have input into non-physician employee performance reviews from a quality of care and technical standpoint, it is specifically agreed that Hospital shall retain ultimate control of the selection, scheduling, and discharge of such employees and/or any direct disciplinary measures as needed. Medical Director shall, at no time during the term of this Agreement, or for a period of one (1) year immediately following termination of this Agreement, interfere with any contractual relationship between Hospital and any of its employees.

2.6 **Hospital Performance.** The responsibilities of Hospital pursuant to Section 2 hereof shall be subject to Hospital's usual purchasing practices, budget limitations, governmental approvals, and applicable laws and regulations.

2.7 **Performance Evaluation.** Hospital's Chief Clinical Outreach Officer shall conduct an annual evaluation of the Medical Director's performance related to job duties, peer and Program satisfaction and project completion. Hospital's Chief Clinical Outreach Officer shall review the results of the evaluation with Medical Director.

3. BILLING AND COMPENSATION

3.1 **Administrative Services.** Medical Director shall, on a monthly basis on or before the fifth (5th) day of each calendar month during the entire term of this Agreement, commencing with the second (2nd) calendar month of the term of this Agreement, submit a written invoice to Hospital detailing to Hospital's satisfaction the date, time, number of hours and description of activities spent by Medical Director in performing the services required of Medical Director in Section 1 of this Agreement during the immediately preceding calendar month. Said monthly invoice shall be in addition to any time studies or work allocation agreements otherwise required of Medical Director pursuant to the terms of this Agreement.

In consideration of the Administrative Services to be provided by Medical Director to Hospital under Section 1 of this Agreement, and expressly conditioned upon Medical Director's timely submission to Hospital of the monthly invoice required pursuant to this Section 3.1, Hospital agrees to pay to Medical Director [REDACTED] [REDACTED] per hour during the term hereof, payable in monthly installments on or before the fifteenth day of each month, with respect to the preceding calendar month, provided that in no event shall such monthly installments exceed [REDACTED]

██████████ Medical Director, as an independent contractor, agrees to pay in a timely manner all social security and other payroll taxes relating to such compensation.

3.2 **Records.** Payment of the compensation provided herein is conditioned upon Medical Director maintaining such records and supporting documents as may, from time to time, be required to comply with the requirements of governmental agencies and third party payors, including:

3.2.1 Preparing complete and accurate time records which document separately all time spent providing Administrative Services hereunder, in a form acceptable to Hospital;

3.2.2 Executing and updating at such times and on such form(s) as requested by Hospital, a written allocation statement specifying the respective amounts of time to be spent in furnishing professional, Administrative Services, and services which do not fall into either category, in order to comply with Medicare requirements; and

3.2.3 Completing or assuring the prompt completion of all patient charts and other written records necessary to be maintained with respect to the Department, including all Administrative Services provided under this Agreement.

4. TERM AND TERMINATION

4.1 **Term.** This Agreement shall commence on May 1, 2006 and shall continue for two (2) years, unless sooner terminated as otherwise provided in this Agreement.

4.2 Either party shall have the right to terminate this Agreement immediately with cause or without cause upon not less than 90 days prior written notice to the other party; provided that, if this Agreement is terminated by either party prior to the first 12 months of the term, a same or similar agreement will not be entered into by the parties until after the first 12 months of the original term.

4.3 Termination of Agreement.

4.3.1 Notwithstanding any other provisions of this Agreement, this Agreement may be terminated upon any of the following:

4.3.1.1 Either party may terminate this Agreement, without cause or penalty, by giving no less than ninety (90) days' prior written notice to the other party.

4.3.1.2 Either party may terminate this Agreement on thirty (30) days' prior written notice to the other party if the party to whom such notice is given

is in breach of any material provision of this Agreement. The party giving such notice of termination shall set forth in the notice the facts underlying its claim that the other party is in breach of this Agreement. Notwithstanding the foregoing, this Agreement shall not terminate in the event that the breaching party cures the breach, to the satisfaction of the non-breaching party, within twenty (20) days of the receipt of such notice.

4.3.2 Notwithstanding the foregoing, Hospital shall have the right to immediately terminate this Agreement, by giving written notice to Medical Director, upon the occurrence of any one (1) or more of the following events:

4.3.2.1 If Hospital determines in good faith that any aspect of the performance of Medical Director hereunder endangers patient safety;

4.3.2.2 If the insurance required of Medical Director hereunder is cancelled, decreased or not renewed for any reason;

4.3.2.3 If Medical Director fails to maintain compliance with all of the representations and warranties set forth in this Agreement; or

4.3.2.4 Upon (i) the death or permanent disability of Medical Director, (ii) the loss, restriction or suspension of his or her status as a member of the active Medical Staff, or (iii) Medical Director's conviction of a crime punishable as a felony or exclusion from participation in any state or federal health care program, including, but not limited to Medicare or Medicaid; provided however, this Agreement shall not be immediately terminated by Hospital if the parties meet and agree that the Assistant Medical Director can adequately assume the duties of Medical Director. For purposes of this Agreement, the term "permanent disability" is defined as the inability of Medical Director to serve as Medical Director for a period in excess of ninety (90) consecutive days, or ninety (90) days in the aggregate over any three (3) month period.

4.3.3 In the event the parties are unable to develop a revised Agreement in accordance with Section 6.5, Hospital may elect to terminate this Agreement upon thirty (30) days written notice to Medical Director.

4.3.4 In the event legal counsel for either party advises that this Agreement or any practices which could be, or are, employed in exercising rights under this Agreement poses a material risk of violating any of the legal requirements referenced in Sections 6.4 or 6.6 or any legal requirement related to Hospital's tax exempt status or tax exempt bond financing, the parties in good faith shall undertake to revise this Agreement to comply with such legal requirements. In the event the parties are unable to agree upon the revised terms within thirty (30) days thereafter, either party may terminate this Agreement immediately upon written notice to the other.

4.4 **Effect of Termination.**

4.4.1 Upon expiration or termination of this Agreement, neither party shall have any further obligation hereunder except for (i) obligations due and owing, which arose prior to the date of termination, and (ii) obligations, promises or covenants contained herein which expressly extend beyond the term of this Agreement.

4.4.2 Upon expiration or termination of this Agreement, and upon Hospital's request, Medical Director shall immediately vacate the Department premises on the effective date of the termination or expiration, removing at such time any and all of Medical Director's personal property. Hospital may remove and store, at Medical Director's expense, any personal property that Medical Director has not so removed.

4.4.3 Following the expiration or termination of this Agreement, Medical Director shall not do anything that might interfere with any Hospital effort to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between Hospital and physicians who may replace Medical Director.

5. INSURANCE AND INDEMNIFICATION

5.1 **Medical Director Insurance.** Medical Director shall maintain at Medical Director's sole expense, a policy or policies of professional liability insurance as required by this Section. Such insurance shall provide coverage for Medical Director as the named insured, and such policy shall cover any acts of Medical Director's professional negligence which may have occurred during the relevant term and said policies of insurance shall be written with limits of liability of at least the minimum coverage required from time to time by Hospital's Medical Staff Bylaws, but in any event no less than One Million Dollars (\$1,000,000) per claim/Three Million Dollars (\$3,000,000) annual aggregate for "claims made" insurance coverage. Medical Director further shall maintain "continuous coverage", as defined by this Section for the entire relevant term. The relevant term shall commence with the effective date of the first agreement between the parties regarding the matters described herein, and shall continue through the term of this Agreement, as well as any extensions or renewals hereof, and for a period thereafter of no less than three (3) years. In order to maintain continuous coverage for the entire relevant term Medical Director shall, if it changes insurers for any reason, take the necessary actions required in order to provide continuous coverage by either obtaining "tail" insurance from the preceding carriers, or "nose" insurance from the subsequent carriers. In order to satisfy the requirements of this Section, the "tail" insurance must be of either an unlimited type or of the type, which would extend the discovery period beyond the last effective day of the last contract between the parties for a period of three (3) years. In order to satisfy the requirements of this Section for "nose" insurance, the retroactive effective date for such insurance must be at least the first date of the relevant term noted above. Medical Director will provide proof of current insurance and, in the event of modification, termination, expiration, non-renewal or cancellation of any of the

aforesaid policies of insurance, Medical Director shall give Hospital and PPH written notice thereof within five (5) business days of Medical Director's receipt of such notification from any of its insurers. In the event Medical Director fails to procure, maintain or pay for said insurance as required herein, Hospital shall have the right, but not be obligated to obtain such insurance. In that event, Medical Director shall reimburse Hospital for the cost thereof and failure to repay the same upon demand by Hospital shall constitute a material breach hereunder.

5.2 **Indemnification.**

5.2.1 Medical Director shall indemnify Hospital, its parents and subsidiaries, officers, directors, trustees, attorneys, employees and agents, individually and collectively, from any claim, demand, liability, loss, judgement, settlement, suit, action, cost or expense, including attorneys fees, which result from Medical Director's provision or failure to provide Administrative Services required to be performed by Medical Director pursuant to this Agreement.

5.2.2 Hospital shall indemnify Medical Director, from any claim, demand, liability, loss, judgment, settlement, suit, action, cost or expense including attorney's fees, which result from Hospital's performance or failure to perform the obligation required to be performed by Hospital pursuant to this Agreement.

6. GENERAL PROVISIONS

6.1 **Litigation Consultation.** Medical Director shall make himself or herself available to Hospital, at no cost to Hospital, to testify as an expert witness, or otherwise, in the event of litigation being brought against Hospital, its directors, officers or employees based upon a claim of negligence, malpractice or any other cause of action, except where Medical Director is named as an adverse party.

6.2 **Confidentiality.**

6.2.1 This Agreement is personal and confidential between the parties, and the parties hereto shall not release information concerning this Agreement to any person without the consent of the other party. This prohibition against release of information shall not apply to any information required to be released by contracts existing as of the date of this Agreement, or to fiscal intermediaries, public agencies or commissions with government powers and duties related to disclosure of information having the right to compel disclosure of such information, nor to any information otherwise compelled to be released by process of law, nor to any information required to be disclosed to Hospital's representatives or others in connection with Hospital's or PPH's tax exempt bonds or other financing transactions.

6.2.2 All records, files, proceedings, and related information of Medical Director, Hospital, and the Medical Staff and its committees pertaining to the evaluation

and improvements of the quality of patient care at Hospital shall be kept strictly confidential by Medical Director. Medical Director shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by Hospital. This provision shall survive the termination of this Agreement.

6.2.3 Notwithstanding any provision herein to the contrary, any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the property of Hospital. Both during and after the term of this Agreement, Medical Director shall be permitted to inspect and/or duplicate, at Medical Director's expense, any individual chart or record to the extent necessary to meet its professional responsibilities to such patient(s) and/or to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, provided that such inspection or duplication is permitted and conducted in accordance with the applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Medical Director shall be solely responsible for maintaining patient confidentiality with respect to any information obtained by him or her pursuant to this Section.

6.2.4 Medical Director acknowledges that in connection with its performance under this Agreement, Medical Director may or will have access to and the use of confidential information and trade secrets (the "Confidential Information") of Hospital related to the Department and its operations which include, but are not limited to, financial statements, internal memoranda, reports, patient lists, and other materials or records of a proprietary nature. In order to protect the Confidential Information, Medical Director agrees that he or she will not, after the date of this Agreement and for so long as any such Confidential Information remains confidential, secret or otherwise wholly or partially protectable, use such information (except in connection with the performance of duties hereunder) or divulge the Confidential Information to any third party, without first obtaining the prior written consent of the Chief Executive Officer of PPH or his or her designee.

6.3 **Access to Medical Director Books and Records.**

6.3.1 Medical Director shall, in connection with the subject of this Agreement, cooperate fully with Hospital, by, among other things, maintaining and making available all necessary books, documents and records, in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public or private third party payment programs, including matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended.

6.3.2 For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, and any written regulations thereto, Medical Director shall comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

6.3.2.1 Until the expiration of four (4) years after the furnishing of services pursuant to the Agreement, Medical Director shall make available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly authorized representatives, upon written request of any of them, this Agreement, and all books, documents and records that are necessary to certify the nature and extent of the cost of services hereunder, and

6.3.2.2 If Medical Director carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars and No/100 (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature an extent of such costs.

6.3.3 If Medical Director is requested to disclose books, documents or records pursuant to this Section, Medical Director shall notify Hospital of the nature and scope of such request and Medical Director shall make available, upon written request of Hospital, all such books, documents or records, during regular business hours of Medical Director.

6.3.4 This Section pertains solely to the maintenance and disclosure of specified records and shall have no effect on the right of the parties to this Agreement to make assignments or delegations.

6.4 **Compliance with Laws.**

6.4.1 Medical Director shall comply with the bylaws, rules, regulations, policies and standards of Hospital and its Medical Staff, as may be in effect from time to time. Medical Director shall comply with all applicable laws, rules, and regulations of all governmental authorities and accrediting agencies, having jurisdiction over Hospital, physicians, and/or this Agreement, including all hospital and professional licensure and reimbursement laws, regulations, and policies.

6.4.2 Medical Director agrees not to differentiate or discriminate in its provision of medical services to patients due to race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law, or the rules and regulations of Hospital, with respect to such matters. In this regard and not by way of limitation to any other provision hereof, Medical Director shall comply with the Age Discrimination Act of 1975 and the Americans with Disabilities Act, as amended, and all regulations issued pursuant thereto applicable to Medical Director's services under this Agreement.

6.5 **Changes in Laws.** In the event there are any changes in Medi-Cal, Medicare, JCAHO accreditation guidelines or requirements, federal or state tax exemption requirements, and/or substantial changes under other public or private health and/or hospital care insurance programs or policies which may have a material effect on the operations of Hospital, Hospital may elect to renegotiate this Agreement. Hospital shall indicate the basis upon which it has determined that such a material impact on its operations may result. In any case where such notice is provided, both parties shall negotiate in good faith during the thirty (30) day period thereafter in an effort to develop a revised Agreement, which, to the extent reasonably practicable, will adequately protect the interests of both parties in light of the changes which constituted the basis for the exercise of this provision.

6.6 **Verification of Costs.**

6.6.1 If and to the extent required by Section 1395x(v)(1) of title 42 of the United States Code, until the expiration of four (4) years after termination of this agreement, Palomar Pomerado Health shall make available, upon written request to the Secretary of the United States Program of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this agreement such books, documents and records as are necessary to certify the nature and extent of costs of services provided by Palomar Pomerado Health under this Agreement. Palomar Pomerado Health further agrees that in the event Palomar Pomerado Health carries out any of its duties under this agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period, such subcontract shall contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract upon written request to the Secretary of the United States Program of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs.

6.7 **Anti-Referral Laws.**

6.7.1 Nothing in this Agreement, nor any other written or oral agreement, nor any consideration in connection with this Agreement contemplates or requires the admission or referral of any patient to Hospital. This Agreement is not intended to influence Medical Director's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients.

6.7.2 Hospital and Medical Director acknowledge and agree that (i) this Agreement covers all of the services provided by Medical Director to Hospital or by Hospital to Medical Director with respect to Department, and (ii) the overall value of the services by and between Hospital and Medical Director are substantially equivalent. In

the event Hospital and Medical Director enter into any other agreements pursuant to which Medical Director provides services to Hospital or Hospital provides services to Medical Director, Hospital and Medical Director shall execute and attach hereto an addendum, which cross-references any such other agreements.

6.8 **Disclosure of Interests.** In order to permit compliance with federal anti-referral statutes and regulations commonly known as Stark I and II (42 U.S.C. Section 1395nn), as those statutes and regulations may be amended from time to time, Medical Director agrees to provide to Hospital upon execution of this Agreement with information sufficient to disclose any ownership, investment or compensation interest or arrangement of Medical Director or any of Medical Director's immediate family members, in any entity providing "designated health services", as that term is defined in applicable statutes and regulations. In addition Medical Director shall immediately inform Hospital of any other arrangements that may present a conflict of interest or materially interfere with Medical Director's performance of its duties under this Agreement. Hospital may exercise its right to terminate this Agreement under Section 4.2.2 above if Medical Director pursues or engages in conduct that does constitute a conflict of interest or that materially interferes with (or is reasonably anticipated to interfere with) Medical Director's performance under this Agreement.

6.9 **Dispute Resolution.**

6.9.1 In the event of any dispute or disagreement between the parties with respect to this Agreement, either party may request in writing for a special meeting for the resolution of the dispute (the "Special Meeting"). The Special Meeting shall be held at a mutually agreeable location within ten (10) days of a written request for the meeting, which request shall specify the nature of the dispute to be resolved. The Special Meeting shall be attended by representatives of Hospital and Medical Director (who may or may not be accompanied by legal counsel, in their respective discretion), who shall attempt in good faith to resolve the dispute and shall have reasonable authority to do so.

6.9.2 If a dispute has not been resolved through the Special Meeting process described in Section 6.9.1 above, the arbitration process shall be utilized and either party may commence arbitration by giving a written notice to the other party demanding arbitration. There shall be one (1) impartial third party arbitrator. If the parties are unable to agree upon a mutually acceptable arbitrator within thirty (30) days after the demand for arbitration is given, then the parties stipulate to the arbitration before a single impartial third party arbitrator who is a retired judge on the San Diego panel of JAMS/Endispute, Inc. and who is selected by the then serving chief administrative officer of JAMS/Endispute, Inc. The substantive internal law (and not the conflict of laws) of the State of California shall be applied by the arbitrator to the resolution of the dispute. The parties shall have the rights of discovery as provided for in Part 4 of the California Civil Code Procedure and the provisions of Section 1283.05 of the California Code of

Civil Procedure are hereby incorporated by reference into this Agreement pursuant to the provisions of Section 1283.1(b) of the California Code of Civil Procedure.

6.9.3 The arbitration shall take place in the County of San Diego State of California, unless the parties otherwise agree in writing. All decisions of the arbitrator shall be final, binding, and conclusive on all parties subject to appeal or being set aside only on the grounds set forth in the California Code of Civil Procedure, and, except as otherwise set forth in Section 6.9.4 below, shall be the only method of resolving disputes or matters subject to arbitration pursuant to this Agreement.

6.9.4 Notwithstanding the contrary provisions of this Section 6.9, each of the parties hereto shall have the right to apply for and obtain a temporary restraining order or other temporary, interim or permanent injunctive or equitable relief from a court of competent jurisdiction in order to enforce the provisions of any part of this Agreement as may be necessary to protect its rights under those Sections.

6.10 **Assignment and Delegation.** Neither this Agreement nor any of the rights or duties under this Agreement may be assigned or delegated by Medical Director without the prior written consent of Hospital in its sole discretion, except as expressly authorized in this Agreement. Any attempted or purported assignment by Medical Director in violation of this provision shall be void. Hospital, in the exercise of its sole and absolute discretion, shall have the right at any time to assign, delegate or in any manner transfer all or any portion of its interests, obligations or duties under this Agreement to any person, group or entity without the consent of Medical Director.

6.11 **Binding on Successors in Interest.** The provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon and inure to the benefit of the assigns and successors of each of the parties hereto.

6.12 **Notice.** Any notice required to be given hereunder shall be in writing and delivered personally or by overnight delivery or sent by registered or certified mail, return receipt requested, at the applicable addresses listed below, or at such other addresses as a party may hereafter designate to the other:

If to PPH and/or Hospital: Palomar Pomerado Health
15255 Innovation Drive, Suite 204
San Diego, CA 92128
Attention: Administrator/Chief Operating
Officer, Palomar Pomerado Health

If to Medical Director: Alan Conrad, MD
15721 Pomerado Rd
Poway, CA 92064

All notices shall be deemed give on the date of delivery if delivered personally or by overnight delivery, or three (3) business days after such notice is deposited in the United States mail, addressed and sent as provided above.

6.13 **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California and the United States.

6.14 **Severability.** The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

6.15 **Compliance with Hospital Standards.** Medical Director shall comply with Hospital's corporate compliance programs, including but not limited to the Performance Improvement Plan, Provision of Patient Care Plan, Safety Plan, Infection Surveillance Plan, Confidentiality Policy and Management of Information Plan. Medical Director shall cooperate with Hospital corporate compliance audits, reviews, and investigations, which relate to Medical Director and/or any of the services provided by Medical Director under this Agreement. Subject to request by Hospital, such cooperation shall include without limitation the provision of any and all Medical Director documents and/or information related to Medical Director activities including the provision of Administrative Services under this Agreement. In addition, as requested by Hospital, Medical Director shall participate in corporate compliance-related seminars and educational programs sponsored by Hospital as part of Hospital's corporate compliance program. Medical Director shall ensure that all personnel retained by Medical Director either directly or indirectly to provide services under this Agreement have not been subject, or are currently not subject, to sanction or exclusion from participation under any federal or state health care program. Any such personnel retained by Medical Director who become so sanctioned or excluded during the term of this Agreement shall be immediately removed by Medical Director and shall be thereafter excluded from the provision of services under this Agreement.

6.16 **Captions.** Any captions to or headings of the articles, sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used for interpretation or determination of the validity of this Agreement or any provision hereof.

6.17 **Entire Agreement; Amendment.** The making, execution, and delivery of this Agreement by the parties has not been induced by any representations, statements, warranties or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties hereto relating to the subject matter hereof, unless expressly referred to by reference herein. This Agreement supersedes and terminates any previous oral or written agreements between the parties hereto with respect to the subject matter of this Agreement, and any such prior agreement

is null and void. This Agreement may be amended or modified only by an instrument in writing signed by both parties to this Agreement.

6.18 **Waiver of Provisions.** Any waiver of any terms, covenants and/or conditions hereof must be in writing, and signed by the parties hereto. A waiver of any of the terms, covenants and/or conditions hereof shall not be construed as a waiver of any other terms, covenants and/or conditions hereof, nor shall any waiver constitute a continuing waiver.

6.19 **Attorneys' Fees.** In the event that any action, including mediation or arbitration, is brought by either party hereto to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to its costs and reasonable attorneys' fees and costs (including allocated costs of in-house counsel) incurred therein from the nonprevailing party, in addition to such other relief as the court or arbitrator may deem appropriate.

6.20 **Force Majeure.** Neither party shall be liable nor deemed to be in default for any delay, interruption or failure in performance under this Agreement deemed resulting, directly or indirectly, from Acts of God, civil or military authority, war, accidents, fires explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, riots, civil disturbances, strike or other work interruptions by either party's employees, or any similar or dissimilar cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances. In the event Hospital determines that Hospital facilities have been entirely or substantially destroyed by any of the above, this Agreement may be terminated by either party upon ten (10) days written notice to the other.

6.21 **Gender And Number.** Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

6.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

6.23 **Tax Exempt Financing.** In the event PPH or Hospital decides to seek tax exempt financing, Medical Director agrees to amend this Agreement as may be necessary in order for Hospital to obtain such financing. Immediately upon request for Hospital, Medical Director shall execute any and all such amendments presented by Hospital and shall return promptly said fully executed original amendments to Hospital.

6.24 **Non-Discrimination.** Each of the parties hereto represents and warrants that it is and at all times during the term of this Agreement will be in full compliance with

Section 504 of the Rehabilitation Act of 1973 and Titles VI and VII of the 1964 Civil Rights Act, as amended and all regulations issued pursuant thereto.

6.25 **Incorporation of Exhibits**. All schedules, exhibits, and recitals referred to in this Agreement are an integral part of this Agreement and are incorporated in full in this Agreement by this reference.

This Medical Director Agreement is executed at Escondido, California as of the date set forth above.

**PALOMAR POMERADO HEALTH
("PPH")**

By: _____
Its _____

("Medical Director")

**EXHIBIT A
ADMINISTRATIVE SERVICES**

PALOMAR POMERADO HEALTH

**DIABETES HEALTH SERVICES
JOB DESCRIPTION**

POSITION TITLE: Medical Director Diabetes Health Services

Qualifications:

A physician member of the active medical staff at Palomar Medical Center and Pomerado Hospital, who has special interest and specific knowledge in the assessment, diagnosis and treatment of patients with endocrine problems, shall provide medical direction for Diabetes Health. The Medical Director shall be qualified as a board-certified Internist by the American Board of Internal Medicine or a board-certified Endocrinologist by the American College of Endocrinology and be in good standing with that organization.

General Responsibilities:

- A. The Medical Director for Diabetes Health shall provide for overall medical direction of the Department and insure that professional standards of care and ethical practice are adhered in all situations of patient care.

In general Medical Director shall:

- (a) Provide overall clinical direction for the Program.
- (b) Participating in and supervising quality measurement activities conducted for the Program.
- (c) Advising individuals regarding the Program services.
- (d) Supporting PPH in working with third-party payers to provide or expand coverage for all components and services of the Program.
- (e) Assisting in developing Program policies, protocols, and procedures, and guidelines.

- (f) Monitoring implementation and execution of medical policies, procedures, protocols, and guidelines pertaining to the Program.
- (g) Conducting professional continuing educational sessions consistent with the needs of the Program, the hospital's medical staff, and hospital personnel.
- (h) Conducting community seminars regarding the Program services.
- (i) Acting as the chief medical liaison for the Program to the Hospital administration, medical staff and the community.
- (j) Participating in the evaluation of the performance of the Program against its goals and objectives.
- (k) Attending PPH regional/national meetings as appropriate.
- (l) Communicating input regarding the Program's services from the medical staff, administration, patients and the medical community to the Program Director of the Program.
- (m) Participating in the PPH budgeting process as requested.

In the event Medical Director seeks to provide more than sixteen hours per month in connection with this Agreement, Medical Director shall obtain advance approval from Hospital's Chief Clinical Outreach Officer.

Exhibit 1.10

CODE

1. I will perform my duties faithfully and to the best of my ability, and in the interest of Hospital.
2. I will not lie, cheat, steal, or violate any law in connection with my employment by Hospital.
3. I will not pay or arrange for Hospital to pay any person or entity for the referral of patients to Hospital, nor will I accept any payment or arrange for Hospital to accept any payment for referrals from Hospital.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts (or appears to conflict) with interest of Hospital, unless I first obtain the express written consent of the Palomar Pomerado Health Board of Directors or designee.
6. I will not use Hospital's confidential or proprietary information gathered during my employment with Hospital for my own personal benefit, either during or after my employment at Hospital.
7. I will not obtain any improper personal benefits by virtue of my employment with Hospital.
8. I will notify the compliance Director immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding Hospital.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not solicit or receive from any person or entity, nor offer to give to any person or entity, anything of value if that person or entity is in a position to refer business to Hospital or if Hospital is in a position to refer business to that person or entity.
12. I will not accept any gift of more than nominal value, (\$50), and Hospitality or entertainment which because of its source or value might influence my independent judgment in transactions involving Hospital.
13. I will not provide any gifts to any government or public agency representative.
14. I will disclose to the compliance Director any financial interest or ownership interest or any other relationship that I, or a member of my immediate family has with Hospital customers, and vendors or competitors.
15. I will not disclose confidential medical information pertaining to Hospital patients without the express written consent of the patient in accordance with HIPAA, other applicable law and Hospital applicable policies or procedures.

16. I will promptly report all violations or suspected violations of this manual by myself or other employees to the compliance Director.
17. I will not conspire with a competitor of Hospital to illegally fix prices, labor cost, allocate markets, or engage in group boycotts. Before considering any agreements or entering into discussions with a competitor concerning any of these issues, I should first obtain the advice of the compliance Director concerning antitrust issues.