

**SLEEP CENTER DEVELOPMENT AND SUPPORT AGREEMENT**

**between**

**THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, OWNER AND OPERATOR  
OF THE UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM**

**and**

**THE TRUSTEES OF THE MGM INSTITUTE OF HEALTH SCIENCES, KAMOTHE  
(OWNER AND OPERATOR)**

**Dr. Rajesh B. Goel  
Registrar**

**MGM Institute of Health Sciences  
(Deemed University u/s 3 of UGC Act, 1956)  
Navi Mumbai- 410 209**

December 12, 2013

## Table of Contents

<b><u>Section</u></b>	<b><u>Page</u></b>
1. DEFINITIONS AND INTERPRETATIONS.....	1
1.1. "Affiliate".....	1
1.2. "Agreement".....	2
1.3. "Applicable Law".....	2
1.4. "Calendar Quarter".....	2
1.5. "Calendar Year".....	2
1.6. "Commercially Reasonable Efforts".....	2
1.7. "Control".....	2
1.8. "Intellectual Property Rights".....	2
1.9. "MGMIHS Sleep Center".....	2
1.10. "Related Party".....	3
1.11. "Representative".....	3
1.12. "Territory".....	3
1.13. "Third Party".....	3
1.14. "United States" and "US".....	3
1.15. "UPHS Know-How".....	3
1.16. "UPHS Trademark".....	3
1.17. "USD" and "\$".....	3
2. GENERAL.....	5
2.1. Purposes.....	5
3. UPHS RESPONSIBILITIES.....	5
3.1. UPHS Services.....	5
3.2. Secondary Reads.....	7
3.3. Training/Education of MGMIHS Physicians.....	7
3.4. Training of MGMIHS Technologists.....	7
4. MGMIHS RESPONSIBILITIES.....	8
4.1. MGMIHS Responsibilities.....	8
4.2. MGMIHS Physicians.....	9
4.3. Medical Records.....	10
4.4. Commercially Reasonable Efforts.....	10
4.5. Policies and Procedures.....	10
4.6. Marketing.....	10
4.7. Exclusivity.....	11
5. SUCCESS METRICS.....	11
5.1. Success Metrics.....	11
6. LICENSES.....	12
6.1 License Grant to UPHS Know-How.....	12
6.2 UPHS Trademark and UPHS Copyrighted Materials.....	13
6.3 No Implied Licenses.....	13
6.4 UPHS Trademark.....	13
7. BRANDING.....	14
7.1 Use of the UPHS Trademark.....	14

7.2	Continued Use of the UPHS Trademark.....	15
7.3	UPHS Name and UPHS Trademark.....	15
7.4	UPHS Marketing.....	15
8.	JOINT COMMITTEES.....	15
8.1	Financial Oversight and Consensus Committee.....	15
8.2	Operations Committee.....	17
9.	COMPENSATION.....	17
9.1	Payment to UPHS.....	17
9.2	Annual Budget Process.....	18
9.3	Payment Exchange Rate.....	19
9.4	Charity Care.....	19
9.5	Records and Reports.....	19
9.6	Audits.....	19
10.	ACADEMIC DEVELOPMENT AND REINVESTMENT FUND.....	20
10.1	Fund.....	20
10.2	Fund Oversight.....	20
11.	RIGHT OF FIRST REFUSAL.....	20
11.1	Notice and Negotiation.....	20
12.	TERM AND TERMINATION.....	21
12.1	Term.....	21
12.2	Termination for Cause.....	21
12.3	Termination by UPHS without Cause.....	21
13.	EFFECT OF TERMINATION.....	22
13.1	Effect of Termination.....	22
14.	CONFIDENTIALITY AND NON-DISCLOSURE.....	22
14.1.	Confidential Information.....	22
14.2.	Exceptions.....	23
14.3.	Authorized Disclosure.....	23
14.4.	Advertising and Publicity.....	23
14.5.	Compliance with Privacy Laws.....	24
14.6.	Remote Access.....	24
14.7.	Data Breach Notification Requirements.....	24
15.	INTELLECTUAL PROPERTY.....	25
15.1.	UPHS Ownership.....	25
15.2	UPHS Trademark.....	25
16.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	26
16.1.	Mutual Representations and Warranties.....	26
16.2.	MGMHHS Representations.....	26
16.3.	UPHS Representations.....	27
16.4.	Disclaimer.....	27
17.	LIMITATIONS OF LIABILITY.....	27
17.1.	Limitation of Claims.....	27
18.	INDEMNIFICATION.....	27
18.1.	Indemnification by UPHS.....	28
18.2	Indemnification by MGMHHS.....	28
18.3	Indemnification Procedure.....	28

19.	INSURANCE.....	29
19.1	MGM Insurance.....	29
20.	MISCELLANEOUS.....	29
20.1	Independent Contractor Status.....	29
20.2	Waiver.....	30
20.3	Severability.....	30
20.4	Cooperation in the Event of Lawsuits, Audits and Investigations.....	30
20.5	Qualifications.....	30
20.6	Compliance with Laws.....	30
20.7	Non-Discrimination and Affirmative Action.....	30
20.8	Conflicts of Interest.....	31
20.9	Notice.....	31
20.10	Amendment.....	31
20.11	Taxes.....	32
20.12	Force Majeure .....	32
20.13	Entire Agreement.....	32
20.14	Choice of Law.....	32
20.15	Cumulative Remedies.....	32
20.16	No Third Party Beneficiary Rights.....	32
20.17	Binding Effect.....	32
20.18	Interpretation.....	33
20.19	Assignment.....	33
20.20	Extension to Affiliates.....	33
20.21	Counterparts.....	33
20.22	Expenses.....	33
20.23	Dispute Resolution.....	33
20.24	Survival.....	35

### **Attachments**

ATTACHMENT 7.3 UPHS NAME AND TRADEMARK  
ATTACHMENT 9.1 PRO FORMA PROFIT AND LOSS STATEMENT

# **SLEEP CENTER DEVELOPMENT AND SUPPORT AGREEMENT**

Between

**THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, OWNER AND OPERATOR  
OF THE UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM**

And

**THE TRUSTEES OF THE MGM INSTITUTE OF HEALTH SCIENCES, KAMOTHE  
(OWNER AND OPERATOR)**

THIS SLEEP CENTER DEVELOPMENT AND SUPPORT AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") by and between **THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, OWNER AND OPERATOR OF THE UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM**, with offices at 3600 Market Street, Suite 240, Philadelphia, PA 19104, USA ("UPHS") and **THE TRUSTEES OF THE MGM INSTITUTE OF HEALTH SCIENCES, KAMOTHE (OWNER AND OPERATOR)** ("MGMIHS"), having its principal place of business at MGM Campus, Sector 18, Kamothe, Navi Mumbai-410209, Maharashtra State, India. MGMIHS and UPHS are individually referred to in this Agreement as a "Party" and collectively as the "Parties".

## **BACKGROUND**

MGMIHS is a large, academic medical center in Mumbai, India, consisting of several hospitals and ancillary facilities. UPHS is a nationally renowned academic health system in the United States that operates several sleep centers (the "Penn Sleep Centers") which provide advanced diagnostic services and treatment for a wide range of sleep disorders. The Penn Sleep Centers, which are Accredited by the American Academy of Sleep Medicine, are the clinical arm of UPHS's Center for Sleep and Circadian Neurobiology.

MGMIHS does not own or operate a sleep center for diagnosing and treating sleep disorders. MGMIHS would like, with the assistance of UPHS, to establish, own and operate a sleep center in the Territory which would provide neuro-diagnostic and sleep disorder testing and related treatment. UPHS desires to provide such assistance subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is acknowledged by both Parties, the Parties, intending to be legally bound, agree as follows:

## **1. DEFINITIONS AND INTERPRETATIONS.**

When used in this Agreement, the following terms shall have the respective meanings set forth below:

**1.1. "Affiliate"** of a Party means all present or future entities or facilities (i) affiliated with, controlling, controlled by, or under common control with that Party, (ii) participating in any joint venture to which a Party or an entity referred to in the preceding clause (i) is a party, or (iii) for whom a Party provides clinical, administrative or information services (including,

without limitation, on a time-sharing or service bureau basis). Offices of physicians and other caregivers who have privileges at a Party or Affiliate health facility shall be deemed included within the definition of "Affiliate."

**1.2. "Agreement"** means this Sleep Center Development and Support Agreement and all accompanying attachments. If there is any inconsistency between this Sleep Center Development and Support Agreement and any attachment, this Sleep Center Development and Support Agreement shall control.

**1.3. "Applicable Law"** (unless used otherwise within the context of a provision of this Agreement) means all national, state, county and municipal laws, ordinances, regulations and orders, as they exist now and as they may be amended from time to time, pertaining to or that apply to or regulate the activities of the Parties under this Agreement.

**1.4. "Calendar Quarter"** means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.

**1.5. "Calendar Year"** means each successive period of twelve (12) months commencing on January 1 and ending on December 31.

**1.6. "Commercially Reasonable Efforts"** means, with respect to the efforts to be expended by a Party with respect to any objective, the reasonable, diligent, good faith efforts to accomplish such objective as such Party would normally use to accomplish a similar objective under similar circumstances.

**1.7. "Control"** means,

**1.7.1.** when used with respect to any Intellectual Property Rights, the legal authority or right (whether by ownership, license or otherwise but without taking into account any rights granted by one Party to the other Party under the terms of this Agreement) of a Party to grant access, a license or a sub-license of or under Intellectual Property Rights to the other Party, or to otherwise disclose proprietary or trade secret information to the other Party, without breaching the terms of any agreement with a Third Party, or misappropriating the proprietary or trade secret Information of a Third Party; and

**1.7.2.** when used not with respect to Intellectual Property Rights, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

**1.8. "Intellectual Property Rights"** means any (a) copyrights, (b) patent applications, issued patents and patentable inventions, processes, methodologies, and procedures, (c) Know-How, and (d) trademarks or service marks, and (e) applications for registration or protection of any of the foregoing.

**1.9. "MGMIHS Sleep Center"** means a diagnostic and treatment center, located in the Territory and owned by MGHIHS, which provides neuro-diagnostic and sleep disorder testing and related treatment.

**1.10. "Related Party"** means each Party's Affiliates, and their respective licensees or sub-licensees of rights granted to such Party hereunder, as applicable and necessary to effectuate this Agreement, as well as, with respect to UPHS, contractors that are retained by UPHS to assist UPHS in providing Services hereunder. In no event shall MGMIHS be a Related Party with respect to UPHS or UPHS be a Related Party with respect to MGMIHS.

**1.11. "Representative"** of a Party means any director, officer, employee, agent, consultant, or other representative of a Party, including legal counsel, accountants and financial advisors.

**1.12. "Territory"** means Maharashtra, India.

**1.13. "Third Party"** means any entity or person other than UPHS, MGMIHS or an Affiliate thereof.

**1.14. "United States"** and "US" means the United States of America and its territories and possessions.

**1.15. "UPHS Know-How"** means (a) means any information provided by UPHS or UPHS contractors under this Agreement, regarding but not limited to processes, metrics, operations, medical services, advice, plans, trade secrets, ideas, concepts, inventions, formulae, safety, quality assurance, quality control and clinical data or information, technical information, research records or information, and all other confidential or proprietary technical and business information, whether or not embodied in any documentation or other tangible materials and (b) which is not generally known. For clarity, UPHS Know-How does not include specific information regarding MGMIHS Sleep Center patients, such as sleep study reports and evaluations prepared by UPHS clinicians with respect to such patients.

**1.16. "UPHS Trademark"** means the trademark set forth on Attachment 7.3.

**1.17. "USD" and "\$"** mean United States of America dollars.

**Additional Definitions.** In addition, each of the following definitions shall have the respective meanings set forth in the Sections or Attachments as follows:

<b><u>Definition</u></b>	<b><u>Section/Attachment</u></b>
Additional MGMIHS Sleep Center	11.1
Annual Budget	9.2.1
Claims	18.1
Confidential Information	14.1
Dispute	20.23.1
EBITDA	9.1
Effective Date	Opening Paragraph
Financial Oversight and Consensus Committee	8.1.1
FOCC	8.1.1
Fund	10.1
HIPAA	14.1
ICC	20.23.2
ICC Court	20.23.2.a
Indemnified Party	18.3
Injunction Party	20.23.2.d
MGMIHS	Opening Paragraph
MGMIHS Costs	9.2.1.a
MGMIHS Indemnified Party	18.1
MGMIHS Materials	6.4.5
MGMIHS Notice	11.1
MGMIHS Physicians	3.3
MGMIHS Technologists	3.4.
Monthly P&L	9.2.1.b
Negotiation Period	11.1
Neurocare	14.1.1
Operations Committee	8.2
Party	Opening Paragraph
Parties	Opening Paragraph
Penn Sleep Centers	Background
PHI	14.1
Primary Read	3.2.
Quarterly Reconciliation	9.2.1.b
Secondary Read	3.2.
Services	3.1
Success Metrics	5.1.
Term	12.1
UPHS	Opening Paragraph
UPHS Copyrighted Materials	6.2.2
UPHS Evaluation Period	11.1
UPHS Indemnified Party	18.2
UPHS Intellectual Property and Proprietary Material	15.1



**Definition****Section/Attachment**

In this Agreement, unless the context requires otherwise:

- (a) the headings are included for convenience only and shall not affect its construction;
- (b) references to "persons" includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;
- (c) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- (d) references to the word "include" and "including" shall mean includes and including without limitation; the same principle applies to other conjugations of the verb "to include," and no implication shall be drawn from inconsistent usage as to the actual inclusion or non-inclusion in the test of this Agreement of the phrase "without limitation."
- (e) a Party includes its permitted assignees and/or the respective successors in title to substantially the whole of its undertaking;
- (f) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted;
- (g) the Attachments form part of the operative provision of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the recitals and the Attachments; and
- (h) any reference in this Agreement to an Article, Section, subsection, paragraph, clause or Attachment shall be deemed to be a reference to an Article, Section, subsection, paragraph, clause or Attachment, of or to, as the case may be, this Agreement, unless otherwise indicated. Unless the context of this Agreement otherwise requires, (a) words such as "herein", "hereof", and "hereunder" refer to this Agreement as a whole and not merely to the particular provision in which such words appear and (b) the use of "shall" and "will" have interchangeable meanings for purposes of this Agreement.

## **2. GENERAL.**

**2.1. Purposes.** The purpose of this Agreement is for UPHS to assist MGMIHS in establishing and operating the MGMIHS Sleep Center and for UPHS to be compensated for its Services.

## **3. UPHS RESPONSIBILITIES.**

**3.1. UPHS Services.** UPHS shall provide the following services (collectively, the "Services") under this Agreement:

- 3.1.1** assist MGMIHS in establishing the MGMIHS Sleep Center;

- 3.1.2 provide, to MGMIHS Physicians, Secondary Reads;
  - 3.1.3 assist in training and educating MGMIHS Physicians, as more fully set forth in **Section 3.3**;
  - 3.1.4 assist in training and educating MGMIHS Technologists, as more fully set forth in **Section 3.4**;
  - 3.1.5 assist in establishing quality assurance programs related to diagnostic services;
  - 3.1.6 assist in the conduct of outcomes follow-up analysis in accordance with protocols and other applicable tools provided by UPHS;
  - 3.1.7 provide recommendations on staffing at the MGMIHS Sleep Center;
  - 3.1.8 provide operations review and oversight, including through a “dotted-line/dual” reporting relationship between the chief MGMIHS Technologist at the MGMIHS Sleep Center and UPHS’s operational manager in the United States;
  - 3.1.9 help to develop clinical protocols and procedures;
  - 3.1.10 consult on marketing of the MGMIHS Sleep Center;
  - 3.1.11 provide secondary opinions to MGMIHS Physicians on MGMIHS patient issues;
  - 3.1.12 provide secondary opinions to MGMIHS sleep physicians on selecting and purchasing testing equipment and other equipment;
  - 3.1.13 consult on MGMIHS’s durable medical equipment program at the MGMIHS Sleep Center (i.e., oversight and consultative services regarding CPAP/APAP prescription, distribution, and compliance monitoring);
  - 3.1.14 prepare online questionnaires;
  - 3.1.15 assist MGMIHS in establishing and pursuing patient-oriented research;
- and
- 3.1.16 provide advice and guidance with respect to MGMIHS acquiring its own information technology platform for use in the MGMIHS Sleep Center that will also allow UPHS to have access to the platform to provide quality assurance and education.

It shall be MGMIHS’s ultimate authority at the MGMIHS Sleep Center to (i) make final decisions concerning the selection of personnel, (ii) discipline personnel, (iii) apply MGMIHS

standards, policies and procedures to such personnel, and (iv) make final appointments and terminations according to labour laws in India; provided, however, that MGMIHS shall at all times promptly discuss with UPHS such responsibilities and proposed actions and MGMIHS shall make decisions consistent with the business needs of the MGMIHS Sleep Center and subject to the availability of qualified personnel in the market.

**3.2. Secondary Reads.** UPHS, at MGMIHS's request, shall undertake Secondary Reads of MGMIHS Sleep Studies. A "**Secondary Read**" means an evaluation, by a UPHS physician in the United States, of a sleep study undertaken at the MGMIHS Sleep Center by an MGMIHS physician where an MGMIHS physician has initially evaluated the sleep study results and issues a written primary report (a "**Primary Read**"). The UPHS physician shall issue a report as part of his/her Secondary Read and provide such report to an MGMIHS physician at the MGMIHS Sleep Center. When requesting a Secondary Read, MGMIHS shall provide both the sleep study results and the Primary Read report to the UPHS physician.

3.2.1. MGMIHS recognizes and agrees that (a) after requesting a Secondary Read, MGMIHS shall remove the name and address of the MGMIHS Sleep Center patient from all information (including sleep study data) that is sent to UPHS and shall assign an identifier number to the patient that does not disclose to UPHS the patient's name or address, (b) any Secondary Reads by UPHS are intended and meant solely for MGMIHS physicians and not for MGMIHS patients, and (c) it is the responsibility of MGMIHS physicians to determine, based on their review of such reports, the proper diagnoses and courses of treatment for patients at the MGMIHS Sleep Center. UPHS strongly encourages MGMIHS not to provide the Secondary Read reports from UPHS to MGMIHS patients but rather to discuss, as determined and deemed appropriate by MGMIHS physicians, the content and recommendations contained in those reports, with such patients.

**3.3. Training/Education of MGMIHS Physicians.** UPHS shall oversee the training of physicians who practice sleep medicine at the MGMIHS Sleep Center (the "**MGMIHS Physicians**"). UPHS shall provide the following:

3.3.1. access for MGMIHS Physicians, via webinars (at no additional charge), to lectures and case discussions on patients with sleep disorders;

3.3.2. the opportunity for an MGMIHS Physician to visit the Penn Sleep Centers in order to participate in a mini-fellowship on sleep medicine;

3.3.3. the opportunity, using remote video technology, for faculty at UPHS to observe and comment on patient interaction between MGMIHS Physicians and patients; and

3.3.4. specific instructions to MGMIHS Physicians on interpreting sleep studies using web-based technology to review data collected during sleep studies.

**3.4. Training of MGMIHS Technologists.** UPHS, under a Penn educational program, shall train technologists who provide or who are to provide services at the MGMIHS Sleep Center (the "**MGMIHS Technologists**"). The scope of such training shall include a broad

spectrum of sleep disorders diagnostic testing, PAP therapy application, trouble shooting and compliance monitoring. The following tools shall be offered to help train MGMIHS Technologists:

3.4.1. virtual classroom didactic with take-home preparation and set-up of electrodes and other sensors on model;

3.4.2. limited on-the-ground training in Mumbai by one (1) UPHS technologist instructor (who shall provide hands-on sleep study training). UPHS shall offer the chief MGMIHS Technologist at the Sleep Center the opportunity to come to UPHS for training;

3.4.3. additional virtual classroom for lectures and instruction on recognizing recording problems and artifacts; and

3.4.4. real time remote monitoring by UPHS technologists of studies in real patients and ongoing interactive support.

All MGMIHS Technologists shall sit a didactic and practical test at the end of their training. Certificates of training in sleep medicine technology shall be issued by UPHS to successful trainees from MGMIHS with ongoing requirements to retain certification.

#### 4. MGMIHS RESPONSIBILITIES.

4.1. **MGMIHS Responsibilities.** MGMIHS shall be responsible for various aspects of and matters pertaining to the MGMIHS Sleep Center, including,

4.1.1. providing and maintaining such space and related systems, including HVAC, plumbing, common electrical systems and IT including but limited to 24 hour access by Penn Sleep Medicine for assisting in quality assurance and troubleshooting, and related fixtures, as are necessary and desirable for operating and for the effective provision of services at the MGMIHS Sleep Center. MGMIHS shall maintain such space and systems including but not limited to daily cleaning and provision of linens and toiletries;

4.1.2. fully furnishing the MGMIHS Sleep Center;

4.1.3. adequately and fully staffing the MGMIHS Sleep Center with physicians, technologists, and administrative and other support staff as appropriate and necessary and in accordance with Applicable Law or accreditation standards. In so doing, MGMIHS shall,

a. appoint an MGMIHS Physician as medical director and, with advice from UPHS, shall select a chief MGMIHS Technologist. The chief MGMIHS Technologist, in turn, shall select, with advice from UPHS, the other MGMIHS Technologists for the MGMIHS Sleep Center;

b. make staffing decisions regarding the staffing levels of physicians, technologists and other staff necessary to operate the MGMIHS Sleep Center in an efficient and

productive manner. MGMIHS shall consult closely with UPHS on such matters and shall use Commercially Reasonable Efforts to follow UPHS's recommendations; and

c. provide no less than eight (8) MGMIHS Technologists for the initial training sessions offered by UPHS.

4.1.4. purchasing and maintaining in good working order all medical equipment (all such equipment which shall be new at the time it was acquired unless otherwise agreed by UPHS) necessary for operating the MGMIHS Sleep Center and providing sleep center services, including but not limited to sleep diagnostic testing equipment and clinical CPAP and BiPAP units and all other equipment used in the provision of medical services. To this end, MGMIHS shall (a) use Commercially Reasonable Efforts to promptly acquire equipment as recommended and approved by UPHS, and (b) maintain configurations and quality of equipment in a manner consistent with the American Academy of Sleep Medicine (AASM) standards and recommendations;

4.1.5. maintaining an adequate inventory of durable medical equipment (e.g., CPAP, APAP devices) for patients of the MGMIHS Sleep Center;

4.1.6. obtaining and maintaining adequate insurance at the MGMIHS Sleep Center;

4.1.7. providing and maintaining high quality health care services at the MGMIHS Sleep Center;

4.1.8. providing financial management of the MGMIHS Sleep Center, including management of receivables and collections and working with various payors to ensure prompt payment. MGMIHS shall be responsible for (a) billing and collecting from various Third Party payors for services provided at or through the MGMIHS Sleep Center, and (b) establishing billing policies and managing its billing system, including selection, installation and monitoring of billing system software consistent with the overall needs of the MGMIHS Sleep Center;

4.1.9. complying with all regulatory, accreditation and legal requirements;

4.1.10. obtaining and maintaining (e.g., bearing the costs for) information technology systems to compliment both clinical/patient care and business operations. To this end, MGMIHS shall seek UPHS advice on information technology to be employed at the MGMIHS Sleep Center, and

4.1.11. providing security to ensure the safety of patients, visitors, staff and contractors.

4.2. MGMIHS Physicians. The Parties understand and agree that the reputation, qualifications and quality of the MGMIHS Physicians are of paramount importance in the success of the MGMIHS Sleep Center. To this end, each MGMIHS Physician,

4.2.1. shall have passed board examinations in sleep medicine or be board eligible and successfully complete the boards within two (2) years of the commencement of operations of the MGMIHS Sleep Center and shall comply with all applicable regulations and applicable accreditation requirements;

4.2.2. may not be excluded from any government sponsored or funded health care program and qualify for or remain an MGMIHS Physician; and

4.2.3. may not have been and/or are not subject to any disciplinary proceeding before the national or state licensing or review board with jurisdiction over such matters.

4.3. **Medical Records.** MGMIHS shall oversee the preparation and maintenance of patient records at the MGMIHS Sleep Center as such records relate to information obtained during the provision of medical services, in such form and manner as will accommodate patient billing and quality assurance. Such medical records shall be stored and maintained by MGMIHS. UPHS shall have access at all reasonable times to such medical records, as well as billing records generated in connection with the provision of medical services, and may make copies of such records both during the Term of this Agreement and upon its expiration or termination, insofar as the same is permitted by Applicable Law. All patients' medical records shall be treated as confidential so as to comply with all applicable national and state laws, and shall be maintained for such periods of time as may be specified therein.

4.4. **Commercially Reasonable Efforts.** MGMIHS shall use Commercially Reasonable Efforts to (a) obtain and maintain the right, in the Territory, to open and operate the MGMIHS Sleep Center, including obtaining and maintaining regulatory approvals and licenses, and (b) timely open and operate, in accordance with the terms of the Agreement, the MGMIHS Sleep Center, and (c) meet the Success Metrics.

4.5. **Policies and Procedures.** MGMIHS shall promptly provide UPHS with copies of all policies and procedures for the MGMIHS Sleep Center, and shall provide copies of all revisions thereto as they are made effective from time to time during the Term.

4.6. **Marketing.** Except as set forth in **Section 7.4**, MGMIHS shall be solely responsible for all matters related to marketing and advertising and educating consumers about the MGMIHS Sleep Center in the Territory. MGMIHS may only use the UPHS Trademark or UPHS's name for marketing or any other purpose with the express, written permission of UPHS or as otherwise expressly set forth under this Agreement.

4.6.1. The first use of the UPHS Trademark or UPHS's name shall be predicated on the Parties' mutual agreement that MGMIHS Technologists have been successfully trained and that safety and study protocols have been fully implemented at the MGMIHS Sleep Center (pre-go live date). MGMIHS's continued use of the UPHS Trademark or UPHS's name thereafter shall be based on the MGMIHS Sleep Center meeting quality assurance standards as established by UPHS. For clarity, this **Section 4.6.1** does not supersede the requirement that, with respect to specific advertisements and marketing uses of the UPHS Trademark and UPHS name, that MGMIHS seek and obtain UPHS's approval before such use.

4.6.2. MGMIHS shall use Commercially Reasonable Efforts to market the MGMIHS Sleep Center within the Territory.

4.7. **Exclusivity.** From the Effective Date until termination of this Agreement, MGMIHS and its Affiliates shall not work with or grant any license, access or other rights to any Third Party with respect to the MGMIHS Sleep Center where such work, grant or access (a) would be, (b) is otherwise required to be or (c) subject to be, in UPHS's discretion, provided by UPHS under this Agreement.

## 5. SUCCESS METRICS.

5.1. **Success Metrics.** The Parties have established the following metrics (the "Success Metrics") against which to evaluate whether the MGMIHS Sleep Center is successful and meeting expectations:

### 5.1.1. Physicians.

a. At least one (1) MGMIHS Physician has been trained to UPHS standards. Such physician is carrying out sleep-related duties in a manner consistent with UPHS/AASM standards in place as of June 1, 2013 or as updated by or via notice from UPHS.

b. All other MGMIHS Physicians who have reading privileges have been certified by UPHS.

### 5.1.1 Technologists.

a. Train and retain at least eight (8) MGMIHS Technologists to Penn certificate standards and complete CME target of 50 hours over five (5) years required by BRPT, pro-rated annually. MGMIHS Technologists should be able to perform all aspects of sleep studies to AASM and BRPT standards in place as of June 1, 2013 (or as updated by or via notice from UPHS) and maintain acceptable performance levels as determined by Annual Reviews.

b. Train and retain at least one (1) chief MGMIHS Technologist and one (1) lead MGMIHS Technologist, both maintaining acceptable performance levels as determined in by Annual Reviews.

### 5.1.2 Financial.

a. Minimum operating profit of at least 80% of aggregate 6 month Agreement pro forma P&L.

b. Provide services that do not involve any form of remuneration for referrals to/from any entity (i.e., physicians, vendors, MGM, UPHS or any other source).

### 5.1.3 General and Operating.

- a. Maintain minimum 85% patient to staffed bed efficiency level.
- b. Develop and effectively deliver a high quality patient and physician awareness/educational/marketing program to enable integrated care to be delivered, as medically necessary, to at least 281 patients (total lab capacity calculated as  $4 \times 4 \times 24 = 384$ ; plus HST) defined as physician clinic care, sleep diagnostic studies, and/or sleep-related PAP therapy in a six (6) month period date from first patient.
- c. Achieve mutually agreed upon patient satisfaction levels as determined by post-services questionnaire.
- d. Conduct all sleep center clinical and administrative operations to AASM standards in effect as of June 1, 2013 or as updated by or via notice from UPHS.

**5.1.4** Achievement of quality metrics (clinic and diagnostic). The quality metrics would be included in the Agreement.

**5.1.5** Ability to efficiently and effectively train technologists.

**5.1.6** Provision of staff (including physicians and technologists) who have the capabilities and abilities to learn and fully perform their jobs.

**5.1.7** Achievement of patient volume targets.

**5.1.8** The operation of the MGMIHS Sleep Center consistent with applicable regulatory and legal requirements.

**5.1.9** Ability to educate potential physician referral sources and to market and educate Indian healthcare consumers with such efforts leading to pursuit of diagnosis and treatment of sleep disorders at the MGMIHS Sleep Center.

**5.1.10** Ability to effectively provide PAP therapy or alternatives such as oral devices directly to patients.

**5.1.11** The achievement by operations of projected financial viability metrics.

All of the preceding metrics, except in **Subsection 5.1.1** and **Subsection 5.1.2(b)**, are the sole responsibility of MGMIHS.

## **6. LICENSES.**

**6.1** **License Grant to UPHS Know-How.** UPHS hereby grants to MGMIHS and MGMIHS hereby accepts a fully paid, non-exclusive, sublicensable (solely to MGMIHS Affiliates), non-assignable license to use the UPHS Know-How to operate and provide patient services at the MGMIHS Sleep Center.



## **6.2 UPHS Trademark and UPHS Copyrighted Materials**

**6.2.1 License Grant to UPHS Trademark.** Subject to Article 7 (e.g., MGMIHS achieving and then continuing to meet Success Metrics) and Section 6.4, UPHS hereby grants to MGMIHS a fully paid-up, non-exclusive, royalty-free, non-sublicensable, non-assignable license to use the UPHS Trademark in the Territory.

**6.2.2 License Grant to UPHS Copyrighted Materials.** UPHS may provide copyrighted materials (collectively, the "UPHS Copyrighted Materials") to MGMIHS during the Term. In such event, UPHS hereby grants to MGMIHS a fully paid-up, non-exclusive, royalty-free, non-sublicensable, non-assignable license to use the UPHS Copyrighted Materials in the Territory at the MGMIHS Sleep Center. In doing so, MGMIHS shall not remove any copyright symbols, copyright signs or other designators that indicate that the UPHS Copyright Materials copyright status.

**6.3 No Implied Licenses.** Except as specifically set forth in this Agreement, MGMIHS shall not acquire, by virtue of this Agreement, any license or other intellectual property interest, by implication or otherwise, in any Intellectual Property Rights Controlled by UPHS or its Affiliates.

## **6.4 UPHS Trademark.**

**6.4.1 Trademark License.** UPHS shall be solely responsible for filing for and maintaining, protecting and defending, at its sole cost and expense, the UPHS Trademark in the Territory. UPHS shall be responsible for selecting and filing any domain names in the Territory using the UPHS Trademark and shall own such domain names and control any webpages under such domain names that use the UPHS Trademark. The Parties agree, if requested by UPHS, to promptly execute a trademark license agreement for the use by MGMIHS and its Affiliates of the UPHS Trademark and/or trade names in furtherance of and conformity with Section 6.4. Notwithstanding the foregoing, MGMIHS, its Affiliates and their respective sub-licensees shall have no obligation to use the UPHS Trademark.

**6.4.2** MGMIHS acknowledges and agrees that it does not acquire any ownership or proprietary rights of any nature in the UPHS Trademark as a result of this Agreement (except the rights to use the UPHS Trademark as expressly granted herein). MGMIHS recognizes UPHS's ownership in and title to the UPHS Trademark in the Territory.

**6.4.3** MGMIHS shall not use the UPHS Trademark, in whole or in part, as a corporate name, trade name or otherwise without the prior written approval of UPHS. MGMIHS shall not join any name(s) with the UPHS Trademark so as to form a new mark.

**6.4.4** UPHS is responsible for registering and maintaining, in the Territory, the UPHS Trademark. UPHS shall be solely responsible (and at its sole cost) for defending and enforcing the UPHS Trademark in the Territory. In the event that UPHS decides not to defend or

enforce a UPHS Trademark in the Territory and MGMIHS desires that UPHS so defend the UPHS Trademark in the Territory, then UPHS will do so at MGMIHS's sole expense.

**6.4.5** With respect to the use of any UPHS Trademark, UPHS has the right to approve the packaging, branding and promotional format bearing the UPHS Trademark to be used by MGMIHS in connection with the MGMIHS Sleep Center. MGMIHS shall submit to UPHS, at UPHS's reasonable written request, representative samples of MGMIHS's proposed advertising and branding and other materials on which the UPHS Trademark appears (collectively, "**MGMIHS Materials**"), and MGMIHS specifically undertakes to make any changes in such MGMIHS Materials that are reasonably requested by UPHS for the purpose of preventing material harm to the goodwill associated with the UPHS Trademark. MGMIHS shall not take any actions tending to lower the quality or prestige of the UPHS Trademark or tending to cause confusion between the Services and any other products or services that are marked under or associated with the UPHS Trademark.

**6.4.6** MGMIHS shall comply with all notice and marking requirements of applicable intellectual property law for the protection and enforcement of the UPHS Trademark unless such notice and marking requirements are not commercially reasonable under the circumstances.

**6.4.7** MGMIHS shall cooperate with UPHS in protecting, defending and enforcing the UPHS Trademark in the Territory, including protection against counterfeiting and other acts of infringement by Third Parties. In the event that MGMIHS becomes aware of any claim or dispute involving the UPHS Trademark, or of any counterfeiting or other acts of trademark infringement in the Territory, MGMIHS shall promptly give UPHS notice of the nature and extent of same.

**6.4.8** Unless otherwise expressly provided for in this Agreement, all rights to the UPHS Trademark, other than those specifically granted to MGMIHS herein, are expressly reserved to UPHS for its own use and benefit. All use and attendant goodwill of the UPHS Trademark pursuant to this Agreement shall inure to the benefit of UPHS.

**6.4.9** The license grant in the UPHS Trademark hereunder shall continue in force for a period of 20 years from the Effective Date unless this Agreement terminates sooner or unless MGMIHS materially breaches this Agreement or the trademark license agreement, as the case may be. In the event the Term of this Agreement continues beyond such 20 year period, the term of the license grant shall automatically renew for successive 20 year periods each.

## **7. BRANDING.**

**7.1 Use of the UPHS Trademark.** Subject to (a) MGMIHS achieving the Success Metrics set forth in **Article 5** and (b) MGMIHS's compliance with the other terms of this Agreement, UPHS grants MGMIHS the right to use the UPHS name and the UPHS Trademark on the facility housing the MGMIHS Sleep Center and in marketing materials within the Territory as follows:

7.1.1 Subject to UPHS's specific review and written approval of signage location and placement on and within the MGMIHS Sleep Center, MGMIHS may include signs (again, on a case-by-case basis) on and within the MGMIHS Sleep Center that include the UPHS branding set forth in Attachment 7.3 (i.e., the UPHS name and the UPHS Trademark); and

7.1.2 Subject to UPHS specific review and written approval of each advertisement or similar use, MGMIHS may use the UPHS Trademark in Attachment 7.3 to advertise and market the MGMIHS Sleep Center in the Territory.

For clarity, and notwithstanding anything in this Agreement to the contrary, (a) a specific advertisement that contains UPHS's Trademark or name that has been expressly approved in writing by UPHS may be used by MGMIHS during the Term in journals, newspapers and other publications provided such advertisement is not otherwise revised or changed as approved by UPHS (and provided that nothing has otherwise changed so as to call into question the accuracy of such advertisement), and (b) MGMIHS shall not otherwise use the UPHS name or UPHS Trademark without UPHS's express written approval for each such use.

7.2 **Continued Use of the UPHS Trademark.** In the event that MGMIHS achieves the requirements set forth in **Section 7.1**, then MGMIHS's continued use of the UPHS name and the UPHS Trademark is contingent upon (a) MGMIHS continuing to meet the Success Metrics and (b) MGMIHS's material compliance with the terms of this Agreement. UPHS may give written notice to MGMIHS if UPHS believes that MGMIHS is not meeting its obligations under this **Section 7.2**. In such event, and within five (5) days of MGMIHS's receipt of such notice, the Parties shall discuss UPHS's concerns and ways that MGMIHS may be able to address UPHS's concerns. If, within ten (10) days of such discussion, UPHS is not reasonably satisfied that MGMIHS has addressed UPHS's concerns, UPHS may provide written notice to MGMIHS directing MGMIHS to discontinue using the UPHS name and UPHS Trademark. In such event, MGMIHS shall discontinue such use of the UPHS name and UPHS Trademark within five (5) days of receipt of such notice.

7.3 **UPHS Name and UPHS Trademark.** The UPHS name and the UPHS Trademark are set forth on Attachment 7.3.

7.4 **UPHS Marketing.** The Parties recognize that UPHS may be interested in marketing the MGMIHS Sleep Center in the Territory. In the event that UPHS provides written notice to MGMIHS of UPHS's interest in so marketing the MGMIHS Sleep Center, the Parties shall discuss such matter and determine, subject to MGMIHS's approval (such approval not to be unreasonable denied or delayed), the level and extent of such marketing efforts by UPHS. To that end, MGMIHS may impose reasonable limitations and controls on UPHS on the use of MGMIHS's name and trademark in marketing MGMIHS Sleep Center in the Territory.

## 8. JOINT COMMITTEES.

### 8.1 **Financial Oversight and Consensus Committee.**

**8.1.1 Establishment.** Within forty-five (45) days of the Effective Date, a committee shall be established to provide general financial oversight and to oversee the Fund, and to act as a dispute resolution and consensus building committee (the “**Financial Oversight and Consensus Committee**” or “**FOCC**”).

**8.1.2 Responsibilities.** The FOCC will serve the following role:

- a. periodically review the financial performance of the MGMIHS Sleep Center and related budgets;
- b. review and approve annual budgets and profit and loss statements, as well as determine reinvestment of the Fund in accordance with **Article 10**;
- c. provide a forum for the discussion of, and the exchange of information and provide feedback with respect to the conduct of activities under the Agreement; and
- d. serve as a forum for resolving Disputes.

**8.1.3 Membership.** UPHS and MGMIHS will each designate an equal number of representatives to serve on the FOCC by written notice to the other Party. Initially, each Party shall designate two (2) such representatives. The FOCC shall be jointly chaired by UPHS and MGMIHS. The FOCC may elect to vary the number of representatives from time to time during the Term. Either Party may designate substitutes for its FOCC representatives if one (1) or more of such Party’s designated representatives is unable to be present at or participate in a meeting. From time to time each Party may replace its FOCC representatives by written notice to the other Party specifying the prior representative(s) and their replacement(s). The chairpersons shall be responsible for (i) calling meetings, (ii) preparing and circulating an agenda for the upcoming meeting and (iii) running the meeting, but shall have no special authority over the other members of the FOCC, and shall have no additional voting rights. The chairpersons or their designees shall be responsible for preparing and issuing minutes of each such meeting within thirty (30) days thereafter.

**8.1.4 Meetings.** The FOCC shall hold at least two (2) meetings per Calendar Year at such times as its members elect to do so. Meetings of the FOCC shall be effective only if at least one (1) representative of each Party is present or participating. The FOCC may meet either (a) in person at each Party’s offices or at such locations as the Parties may otherwise agree; or (b) by web-based video teleconference. With the prior consent of the other Party’s representatives (such consent not to be unreasonably withheld or delayed), each Party may invite non-members to participate in the discussions and meetings of the FOCC; provided that such participants shall be subject to the confidentiality and non-use provisions set forth in **Article 14**. Additional meetings of the FOCC may also be held with the consent of each Party, as required under this Agreement, or to resolve any dispute referred to it, and neither Party will unreasonably withhold or delay its consent to hold such an additional meeting.

**8.1.5 FOCC Decisions and Actions.** Actions to be taken by the FOCC shall be taken only following unanimous vote, with each Party having one (1) vote. Such actions shall be set forth in meeting minutes.

**8.1.6 Authority.** The FOCC shall have only the powers assigned expressly to it in this Article 8, and shall not have any power to amend, modify or waive compliance with this Agreement.

**8.1.7 Dispute Escalation.** Any Dispute before the FOCC that cannot be resolved within sixty (60) days after such Dispute is first brought to the FOCC may be submitted, by either Party, to binding arbitration as set forth in **Section 20.23.2** or other express remedy as expressly set forth herein.

**8.2 Operations Committee.** Except for the activities ascribed to the FOCC in **Section 8.1**, a committee consisting of MGMIHS and UPHS employees (and, if determined by UPHS, UPHS contractor employees) shall be established within forty-five (45) days of the Effective Date to oversee and evaluate the implementation of the Agreement and operation of the MGMHIS Sleep Center (including marketing activities) (the "**Operations Committee**").

**8.2.1 Responsibilities.** The Operations Committee will serve the following role:

- a. periodically review the goals and strategic direction of the Parties under this Agreement, including (a) consideration of key Success Metrics and MGMIHS's ability to meet and to exceed such metrics; (b) progress of the MGMIHS Sleep Center and opportunities for growing and improving the MGMIHS Sleep Center; (c) operational issues and impediments to success;
- b. periodically review the financial performance of the MGMIHS Sleep Center and related budgets;
- c. review and approve annual budgets and profit and loss statements, as well as determining reinvestment of the Fund in accordance with **Article 10**; and
- d. provide a forum for the discussion of, and the exchange of information and provide feedback with respect to the conduct of activities under the Agreement.

## **9. COMPENSATION.**

**9.1 Payment to UPHS.** MGMIHS shall pay UPHS forty percent (40%) of Earnings Before Interest, Taxes, Depreciation and Amortization ("**EBITDA**"), not to be less than 0, concerning the MGMIHS Sleep Center, as that term (that is, EBITDA) is generally understood and used in the United States. For clarity, (a) the EBITDA of the MGMIHS Sleep Center shall be determined, on a monthly basis, by considering the earnings of the MGMIHS Sleep Center before interest payments, tax, depreciation, and amortization are subtracted, and (b) even if EBITDA, when calculated, is less than 0, UPHS shall not be responsible for any losses incurred

by the MGMIHS Sleep Center. The Parties have prepared a pro forma profit and loss statement (one in US Dollars and the other in Indian Rupees), attached as Attachment 9.1, which establishes the precise method of calculating EBITDA for the MGMIHS Sleep Center. For clarity, revenue includes all sleep study fees, all sales and rentals of durable medical equipment and all fees paid by or on behalf of patients.

**9.1.1** Within 30 days of the end of each Calendar Quarter, MGMIHS shall pay UPHS all sums due under this **Article 9**.

**9.2 Annual Budget Process.**

**9.2.1 Annual Pro Forma update.** The Parties shall prepare and finalize, no later than sixty (60) days prior to the first day of the anniversary of the Agreement, a pro forma update for the following twelve (12) months (the "**Annual Budget**").

a. On a Calendar Quarter basis, but no later than thirty (30) days after the first of a calendar month, MGMIHS shall detail the reasonable and necessary costs actually incurred by MGMIHS (the "**MGMIHS Costs**") in the operation of the MGMIHS Sleep Center during the previous month. Such costs may include (i) direct salary and benefit costs of clinical and administrative personnel employed or contracted by MGMIHS to the extent working at the MGMIHS Sleep Center, (ii) overhead costs associated with the charge entry and management of the MGMIHS Sleep Center receivables, (iii) direct costs of providing and maintaining sufficient equipment and supplies. Except as specifically provided herein, such costs shall not include any allocation of corporate home office or other extra-facility overhead incurred by MGMIHS, but shall be limited to costs associated directly with its operations at the MGMIHS Sleep Centers. MGMIHS Costs shall constitute only those categories of costs identified on Attachment 9.1, plus any other costs subsequently falling into such category or new category by operation of this Agreement or mutual consent of the Parties.

i. During the first 12 months under this Agreement, MGMIHS shall provide to UPHS, in addition to the Calendar Quarter reports, monthly reports in the format of Attachment 9.1, containing operational information and a profit and loss statement.

b. MGMIHS shall provide to UPHS the following reports (i) on a Calendar Quarter basis, a profit and loss statement in the same or materially similar format and content as set forth on Attachment 9.1 ("**Monthly P&L**"), and operations covered hereunder, during the prior month, and (ii) on a quarterly basis a "**Quarterly Reconciliation**" in the same or materially similar format and content as set forth on Attachment 9.1. UPHS shall cooperate in the preparation of such reports. Any revenues collected and adjustments therein shall be recorded in a special account in such manner as to facilitate the generation of the Monthly P&L and the Quarterly Financial Reports, which shall include without limitation the provision by MGMIHS to UPHS of a report of revenues received during each month no later than ten (10) days following the end of such month. MGMIHS shall provide UPHS with reasonable access to its billing and receivables systems.

c. MGMIHS will pay UPHS within 60 days of its receipt of each Calendar Quarter statement by check made payable to "The Trustees of the University of Pennsylvania, Division of Sleep Medicine". Upon 60 days prior written notice, UPHS may require wire transfers of payments, change the payee and/or change the preceding address.

**9.3 Payment Exchange Rate.** All payments to be made by MGMIHS to UPHS under this Agreement shall be made in United States dollars and may be paid by check made to the order of UPHS or bank wire transfer in immediately available funds to such bank account in the United States as may be designated in writing by UPHS from time to time. In the case of sales outside the United States, the rate of exchange to be used in computing the amount of currency equivalent in United States dollars due UPHS shall be made at the rate of exchange utilized by MGMIHS in its worldwide accounting system (it being understood that the rate of exchange currently used by MGMIHS is Reuters) based on the average exchange rate for the preceding month, prevailing on the third to the last business day of the month prior to the month in which such sales are recorded by MGMIHS.

**9.4 Charity Care.** MGMIHS is a not-for-profit organization that has certain obligations to provide charity care. MGMIHS may provide services on a charity care basis at the MGMIHS Sleep Center in the normal course of business. However, in the event such charity care is greater in any given month than three percent (3%) of patient volume, an amount equivalent to the then-prevailing rate for any excess over three percent (3%) shall be imputed as revenue for the sole purpose of calculating net profit. In such event, MGMIHS shall create a separate line item in the applicable monthly P&L (and corresponding Quarterly Financial Report) identifying the imputed revenue.

**9.5 Records and Reports.**

**9.5.1 Records.** MGMIHS shall maintain records necessary for an independent certified public accounting firm to verify the accuracy and completeness of financial information provided/required to be provided to UPHS under this Agreement.

**9.6 Audits.**

**9.6.1** Upon the written request of UPHS, MGMIHS shall permit an independent certified public accounting firm of nationally recognized standing in the United States or India, at UPHS's expense, to have access during normal business hours to such of the records of MGMIHS as may be reasonably necessary to verify the accuracy of the financial information provided by MGMIHS and payments made by MGMIHS to UPHS hereunder for any fiscal year (MGMIHS's fiscal year being from April 1<sup>st</sup> to March 31<sup>st</sup>) ending not more than twenty-four (24) months prior to the date of such request. The accounting firm shall disclose to UPHS only whether the financial information and payments are correct or incorrect and the amount of any discrepancy. No other information shall be provided to UPHS.

**9.6.2** If the accounting firm identifies a discrepancy made during such period, MGMIHS shall pay UPHS the amount of the discrepancy within thirty (30) days of the date that MGMIHS receives the accounting firm's written report, or as otherwise agreed upon by the

Parties. The fees charged by such accounting firm shall be paid by UPHS, provided, however, that if such audit uncovers an underpayment by the Audited Party that exceeds \$US 5,000, then the fees of such accounting firm shall be paid by MGMIHS.

**9.6.3** Upon the expiration of twenty-four (24) months following the end of any fiscal year, the financial information with respect to such fiscal year and the calculation of payments made to UPHS with respect to such fiscal shall be binding and conclusive upon UPHS, and MGMIHS and its Related Parties shall be released from any liability or accountability with respect to the financial information and calculation of payments with respect to such fiscal year.

**9.6.4** UPHS shall treat all financial information subject to review under this **Section 9.6** in accordance with the confidentiality and non-use provisions of this Agreement, and shall cause its accounting firm to enter into an acceptable confidentiality agreement with MGMIHS obligating it to retain all such information in confidence pursuant to such confidentiality agreement.

## **10. ACADEMIC DEVELOPMENT AND REINVESTMENT FUND.**

**10.1 Fund.** Twenty percent (20%) of the EBITDA of the MGMIHS Sleep Center shall be promptly contributed by MGMIHS to an academic development and reinvestment fund (the “**Fund**”) within 30 days of the close of the quarter. Reports of the holdings in the Fund will be part of the end of the quarter reports. The Fund shall be used to develop academic programs concerning sleep in the Territory which are of interest to both Parties, such programs which may include joint research activities and research by post-doctorate MGMIHS personnel at UPHS. The Fund may also be used to support the start-up of additional joint sleep centers in the MGMIHS market. The Fund’s spending shall be limited to the preceding unless the Financial Oversight and Consensus Committee unanimously agrees otherwise.

**10.2 Fund Oversight.** The Fund shall be controlled by the FOCC as set forth under **Section 8.1**.

## **11. RIGHT OF FIRST REFUSAL.**

**11.1 Notice and Negotiation.** MGMIHS shall give UPHS prompt written notice (the “**MGMIHS Notice**”) if MGMIHS is interested – whether directly or through one or more Related Party or Third Party – during the Term in opening and operating one or more additional sleep centers in the Territory (each an “**Additional MGMIHS Sleep Center**”). Within 60 days of receipt of the MGMIHS Notice (such 60 day period constituting the “**UPHS Evaluation Period**”), UPHS shall provide written notice to MGMIHS if UPHS is interested in providing all or a portion of the UPHS Services to MGMIHS at the Additional MGMIHS Sleep Centers. If MGMIHS receives such notice from UPHS within the UPHS Evaluation Period, then the Parties, for a period of no less than 180 days (the “**Negotiation Period**”), shall negotiate in good faith to enter into an agreement or amending this Agreement with respect to UPHS providing (as needed or desired by MGMIHS) some or all of the UPHS Services to MGMIHS for the Additional Sleep Centers. If the Parties, notwithstanding good faith efforts to enter in such agreement or amendment during the Negotiation Period, are unable to do so, then MGMIHS shall be free to



enter into negotiations with one or more Third Parties to provide all or some of the services at the Additional MGMIHS Sleep Centers.

**11.1.1** For clarity, (a) MGMIHS shall reasonably cooperate with UPHS so that UPHS, during the UPHS Evaluation Period, is able to gain a reasonable understanding of MGMIHS's needs with respect to the Additional MGMIHS Sleep Centers, and (b) during the UPHS Evaluation Period and the Negotiation Period, MGMIHS shall not (y) initiate or enter into discussions with one or more Third Parties for such Third Parties to provide any of the UPHS Services at the Additional MGMIHS Sleep Centers or (z) provide any of the UPHS Services itself at the Additional MGMIHS Sleep Centers.

## **12. TERM AND TERMINATION.**

**12.1 Term.** The term of the Agreement shall begin on the Effective Date and continue for a period of five (5) years (the "**Term**"). Thereafter the Term shall annually renew for subsequent 24 month periods, unless UPHS gives notice to MGMIHS, at least 180 days before the end of the then current Term, that UPHS desires that the Agreement terminate.

**12.2 Termination for Cause.** This Agreement may be terminated at any time during the Term for the following reasons.

**12.2.1 Material Breach.** If either Party is in material breach of this Agreement, the non-breaching Party may give written notice to the breaching Party specifying the claimed particulars of such breach, and in such event, if the breach is not cured within ninety (90) days after such notice, the non-breaching Party shall have the rights thereafter to terminate this Agreement immediately by giving written notice to the breaching Party to such effect provided, however, that if such breach is capable of being cured but cannot be cured within such ninety (90) day period and the breaching Party initiates actions to cure such breach within such period and thereafter diligently pursues such actions, the breaching Party shall have such additional period as is reasonable in the circumstances to cure such breach not to exceed an additional ninety (90) day period, provided, however, that in the event of a good faith dispute with respect to the existence of a material breach, the cure period shall be tolled until such time as the dispute is resolved pursuant to **Section 20.23**; or

**12.2.2 Bankruptcy.** Either Party may terminate this Agreement upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings of the other Party, or upon an assignment of a substantial portion of the assets for the benefit of creditors by the other Party; provided, however, that in the case of any involuntary bankruptcy proceeding such right to terminate shall only become effective if the Party consents to the involuntary bankruptcy or such proceeding is not dismissed within ninety (90) days after the filing thereof.

**12.3 Termination by UPHS without Cause.** Notwithstanding anything contained in this Agreement to the contrary, UPHS shall have the right to terminate this Agreement at any time, in its sole discretion by giving one-hundred and twenty (120) days' advance written notice to MGMIHS.

### 13. EFFECT OF TERMINATION.

#### 13.1 Effect of Termination. Upon termination of this Agreement,

13.1.1 MGMIHS shall pay UPHS, within thirty (30) days of termination, one-half (1/2) of any monies in the Fund as of the date of termination;

13.1.2 MGMIHS shall pay UPHS, in accordance with the payment provisions under this Agreement, all payments due and owing to UPHS that have accrued up to the date of termination;

13.1.3 MGMIHS shall promptly (but no later than seven (7) days after such termination) discontinue using the UPHS name and UPHS Trademark under this Agreement; and

13.1.4 Within thirty (30) days after the effective date of such termination, each Party shall return or destroy all information and documents in tangible form delivered or provided by the other Party (or the other Party's Related Parties), regardless of the medium. Notwithstanding the preceding, (a) MGMIHS shall not be obligated to return any information concerning MGMIHS patients; (b) neither Party shall be obligated to return any information concerning joint research activities; (c) each Party may keep one (1) copy of such information and documents in its confidential files for record purposes, and (d) UPHS may keep any documents concerning Services it provided under the Agreement (including sleep study reports) and activities concerning the Fund.

### 14. CONFIDENTIALITY AND NON-DISCLOSURE.

14.1 Confidential Information. Except as expressly set forth otherwise in this Agreement, MGMIHS and UPHS each acknowledge the need for confidentiality of the information furnished to it by the other Party and agree that confidential and proprietary information hereunder shall include, without limitation, the terms of this Agreement, including all Attachments, information regarding marketing and business strategies, and all other information generally treated by businesses in a confidential and proprietary manner, in whatever form or medium maintained (collectively, the "**Confidential Information**"). Each Party shall hold the Confidential Information of the other Party as confidential, and agrees not to use or disclose such information except as provided herein. Each Party agrees further to limit access to the other Party's Confidential Information to those of its Representatives who have a need to know such information to perform his or her function. Each Party's obligations under this Section 14.1 will continue during the Term and will survive any termination or cancellation of this Agreement for a period of two (2) years or as long as otherwise legally required under Applicable Law. The Parties shall treat all Protected Health Information ("**PHI**") of patients (as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") (45 C.F.R. parts 142 and 160-164, as may be amended)), as Confidential Information and, to the extent that HIPAA or any other applicable laws and regulations governing the security and privacy of individual health care and financial information apply, to comply with such Applicable Laws and shall enter into a business associate agreement if necessary to comply with such Applicable Law.

**14.1.1** Notwithstanding anything in this Agreement to the contrary, if the Confidential Information was provided directly or indirectly by Neurocare, Inc., d/b/a Neurocare, Inc. Center for Sleep ("Neurocare"), a subcontractor of UPHS that will assist UPHS in providing services under this Agreement, then (a) UPHS may request in writing, at any time, that MGMIHS return to UPHS or destroy such Neurocare provided Confidential Information, and (b) MGMIHS may not keep a copy of such Neurocare provided Confidential Information for any purposes. Similarly, when this Agreement terminates, MGMIHS shall return to UPHS or destroy any Neurocare provided Confidential Information, and MGMIHS may not keep a copy of such Neurocare provided Confidential Information for any purposes.

**14.2 Exceptions.** The provisions of Section 14.1 do not apply to any Confidential Information which (a) becomes publicly available through no fault of the non-disclosing Party, (b) is disclosed to a Party by a Third Party that is legally entitled to disclose such information, (c) was known by the Party prior to its receipt from the disclosing Party hereunder, (d) is developed by a Party independently of any disclosures made by the other Party hereunder, (e) has been published by a Third Party or is otherwise in the public domain other than as a result of actions of the receiving Party or (f) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process, or by law, rule or regulation, provided that prior to such disclosure, the Party whose Confidential Information is to be disclosed is given reasonable advance notice of such order and an opportunity to object to or limit such disclosure. UPHS may also use all patient related information under this Agreement for research purposes provided such use is consistent with Applicable Law.

**14.3 Authorized Disclosure.** A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in any of the following instances:

**14.3.1** Prosecuting or defending litigation;

**14.3.2** Complying with applicable governmental regulations or orders; and

**14.3.3** Disclosure, in connection with the performance of this Agreement, to Related Parties, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 14 and elsewhere in this Agreement.

**14.4 Advertising and Publicity.** Notwithstanding anything in this Agreement to the contrary, MGMIHS shall not use the name, logo or trademark of UPHS (or of any of UPHS's Affiliates) in any form of publicity or promotional or advertising material, or in any communications with the media without UPHS's prior written consent to the specific contemplated use. No such use by MGMIHS shall state or imply that UPHS endorses MGMIHS or the MGMIHS Sleep Center (without UPHS's express written permission and approval), and all such use shall comply with applicable University of Pennsylvania and UPHS policies with respect to MGMIHS endorsements. UPHS may terminate this Agreement and seek injunctive relief immediately if MGMIHS violates this provision.

**14.4.1 Press Releases.** Neither Party may issue a press release or other public statement, whether oral or written, disclosing the existence of this Agreement, the terms hereof or any information relating to this Agreement without the prior written consent of the other Party (and, in the case of UPHS, such consent must be received from the Senior Vice President for Public Affairs), provided however, that neither Party will be prevented from complying with any duty of disclosure it may have pursuant to Applicable Law or pursuant to the rules of any recognized stock exchange or quotation system provided such Party shall promptly inform the other Party of the disclosure that is being sought in order to provide the other Party an opportunity to challenge or limit the disclosure obligations. Each Party will use reasonable efforts to allow the other Party sufficient time to review a proposed press release before the date that such Party would like to release the press release; the other Party will use reasonable efforts to timely review and comment upon the proposed press release.

**14.5 Compliance with Privacy Laws.** Each Party shall also be responsible for ensuring that performance of its obligations and exercise of its rights under this Agreement comply with all applicable privacy laws. If this Agreement or any practices which could be, or are, employed in performance of this Agreement are inconsistent with or do not satisfy the requirements of any privacy laws, the Parties shall agree in good faith upon an appropriate amendment to this Agreement to comply with such laws and regulations.

**14.6 Remote Access.** If remote access to UPHS systems, hardware or software is required by MGMIHS, MGMIHS agrees that it will use such access only as authorized in performance of this Agreement and for no other purposes and will comply with all of UPHS's security controls, policies and standards as part of the log-on and access procedures. MGMIHS further agrees it will not: (i) knowingly introduce any virus or disabling code into UPHS; (ii) allow Third Parties to have access to UPHS's systems, hardware or software; (iii) attempt to access any portion of UPHS's systems, hardware, or software that are not required for performance under this Agreement. UPHS may immediately terminate MGMIHS's remote access use in the event that MGMIHS: (i) uses or accesses any UPHS information or communication systems, hardware, or software without authorization or its access exceeds the level of authorized access, (ii) is no longer using remote access, or (iii) violates UPHS's corporate remote access policies and procedures.

**14.7 Data Breach Notification Requirements.**

**14.7.1** If either Party discovers or is notified of a breach or potential breach of security relating to Confidential Information disclosed under this Agreement, such Party shall promptly (a) notify the other Party of such breach or potential breach, (b) in consultation with the other Party, investigate and remediate such breach or potential breach, and (c) if the breach or potential breach resulted from a failure or weakness in systems or procedures that were the notifying Party's responsibility, provide the other Party with satisfactory assurances that the breach or potential breach will not recur.

**14.7.2** Either Party shall, following the discovery of a privacy incident or security incident that might have resulted in a breach of Confidential Information acquired, accessed, used, or disclosed by such Party, notify the other Party of such potential breach. Such

notification shall be made without unreasonable delay and in no case later than ten calendar days after discovery of the potential breach.

**14.7.3** The notifying Party shall cooperate fully to assist the other Party in: identifying individuals potentially affected by the breach; conducting any risk assessment required by Applicable Law; and providing any notifications required by Applicable Law. If the other Party determines that establishment of a toll-free telephone contact number is necessary to handle patient inquiries relating to the breach, and requests the notifying Party to provide staffing to respond to calls to the toll-free number, the notifying Party shall provide the requested staffing at its cost.

**14.7.4** To the extent that a breach of a Party's Confidential Information resulted from acts or omissions of the other Party or its contractors, the breaching Party shall be responsible for all costs reasonably incurred by the other Party in connection with the foregoing activities.

**14.7.5 Injunctive Relief.** Each Party agrees that in the event of a breach or threatened breach of this **Article 14**, the other Party may suffer irreparable harm for which it may have no adequate monetary remedy, and may be entitled to injunctive and other equitable relief for such breach, in addition to and not in limitation of any other legal or equitable remedies to which it would otherwise be entitled. In the case of a breach or threatened breach relating to improper disclosure of PHI, the Parties agree that irreparable harm would occur and that injunctive relief would be appropriate.

## **15. INTELLECTUAL PROPERTY.**

**15.1 UPHS Ownership.** UPHS shall retain and hereby retains all right, title and interest in (a) the UPHS Trademark, and (b) the UPHS name, service marks, designs, and logos, and all legally protectable elements or derivative works thereto (collectively under (b), the "UPHS Intellectual Property and Proprietary Material").

### **15.2 UPHS Trademark.**

**15.2.1 UPHS Trademark.** UPHS has the sole right, at its sole cost and expense, to search, clear, file, register, prosecute, defend, maintain and enforce the UPHS Trademark. UPHS has the sole right and option, at its sole cost and expense, to respond to any infringement with respect to the UPHS Trademark by appropriate steps, including by filing an infringement suit or taking other similar action. UPHS also has the sole right and option not to prosecute, defend, maintain or enforce the UPHS Trademark or take action to respond to any such infringement. UPHS will provide MGMIHS with written notice at least ninety (90) days prior to abandoning any UPHS Trademark.

### **15.2.2 Infringement and Defense.**

**a. UPHS Trademark.** If MGMIHS has knowledge that a Third Party is or may be engaging in commercially significant infringement of the UPHS Trademark in the Territory, MGMIHS shall notify UPHS in writing and provide it with any evidence of such

infringement that is reasonably available. UPHS has the first right and option to respond to any infringement with respect to the UPHS Trademark by appropriate steps, including filing an infringement suit or taking other similar action, and shall notify MGMIHS of any such suit or other action. If UPHS elects at its sole discretion not to take action to respond to any such Infringement of the UPHS Trademark within thirty (30) days after becoming aware of such Infringement, then MGMIHS shall have the right and option to respond to such infringement by appropriate steps, including filing an infringement suit or taking other similar action, and shall notify UPHS of, and consult with UPHS from time to time regarding, any such suit or other action. The Party not taking action to respond to the infringement or potential infringement shall provide reasonable assistance to the Party taking such action, including providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and joining the action to the extent necessary to allow the Party taking such action to maintain the action.

b. **UPHS Intellectual Property Rights.** UPHS has the sole right, at its sole cost and expense, to defend, maintain and enforce the UPHS Intellectual Property and Proprietary Material. UPHS will notify MGMIHS if it undertakes legal action to defend or enforce the UPHS Intellectual Property and Proprietary Material in the Territory and keep MGMIHS informed of all significant actions related thereto. If MGMIHS has knowledge that a Third Party is or may be engaging in commercially significant infringement or misappropriation of the UPHS Intellectual Property and Proprietary Material in the Territory, MGMIHS shall notify UPHS in writing and provide it with any evidence of such infringement or misappropriation that is reasonably available.

## 16. REPRESENTATIONS, WARRANTIES AND COVENANTS.

### 16.1 **Mutual Representations and Warranties.**

**16.1.1 Corporate Power.** Each Party represents and warrants to the other that it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation, and has full corporate or other power and authority to enter into this Agreement and to carry out the provisions hereof.

**16.1.2 Due Authorization.** Each Party represents and warrants to the other that it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate or partnership action.

**16.1.3 Binding Agreement.** Each Party represents and warrants to the other that (i) this Agreement is legally binding upon it and enforceable in accordance with its terms, and (ii) the execution, delivery and performance of this Agreement by it does not conflict with any agreement, instrument or understanding, oral or written, to which it is a Party or by which it may be bound, or violate any material law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

**16.2 MGMIHS Representations.** MGMIHS represents as follows:

**16.2.1 No Debarment.** Neither MGMIHS nor any MGMIHS personnel, nor any officer, director, employee, subcontractor or agent of MGMIHS providing or directing the provision of services under this Agreement has been: (i) convicted of any offense related to the delivery of an item or service under any government program; (ii) convicted of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service; (iii) convicted of fraud, theft, embezzlement or other financial misconduct in connection with the delivery of a health care item or service; (iv) obstructing an investigation of any crime referred to in this Section 16.2.1 (i) through (iii) above; (v) required to pay any civil monetary penalty regarding false, fraudulent, or impermissible claims under any state or national health care program; and/or (vi) debarred, penalized by, convicted, sanctioned, suspended, excluded or otherwise ineligible to participate in any state or federal healthcare or reimbursement program.

**16.2.2 Non-referral.** No part of the compensation paid hereunder is in exchange for the referral or arrangement for referral of any patient to UPHS.

**16.3 UPHS Representations.** UPHS represents and warrants to MGMIHS that (a) UPHS has the power and authority to enter into and perform its obligations under this Agreement and (b) the Services to be performed by UPHS shall be performed in a competent, professional, and workmanlike manner, and be of good workmanlike and professional quality. All personnel assigned by UPHS to perform Services shall have the proper skill, training and background, and, if applicable, licensure and/or certification in the United States so as to be able to perform in a competent and professional manner.

**16.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER MGMIHS NOR UPHS MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 17. LIMITATIONS OF LIABILITY.

**17.1 Limitation of Claims.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDED, HOWEVER, THAT THE LIMITATIONS SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 18 OR BREACH OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 18. INDEMNIFICATION.

**18.1 Indemnification by UPHS.** Subject to the final sentence of **Section 18.2**, PHS shall indemnify, hold harmless and defend MGMIHS and its Representatives (the “**MGMIHS Indemnified Party**”) from and against any actions, claims, or demands (collectively, the “**Claims**”) of Third Parties, including, without limitation, damages, losses, costs of litigation, and related expenses (including reasonable attorney's fees), arising from or relating to (a) UPHS's material breach of any provision of this Agreement; and (b) the negligence, willful misconduct, or misrepresentation of UPHS or its Representatives. The limitations in **Article 17** shall not limit UPHS's indemnification of the MGMIHS's Indemnified Party.

**18.2 Indemnification by MGMIHS.** MGMIHS shall indemnify, hold harmless and defend UPHS and its Representatives (the “**UPHS Indemnified Party**”) from and against any Claims of Third Parties, including, without limitation, damages, losses, costs of litigation, and related expenses (including reasonable attorney's fees), arising from or relating to (a) MGMIHS's material breach of any provision of this Agreement; (b) the negligence, willful misconduct, or misrepresentation of MGMIHS or its Representatives; and (c) medical practice, delivery of healthcare or other services at or associated with (including by physicians and technologists) the MGMIHS Sleep Center and Additional MGMIHS Sleep Centers (including medical care provided to patients at such sleep centers). For clarity, (a) the limitations in **Article 17** shall not limit MGMIHS's indemnification of the UPHS Indemnified Party, and (b) **Section 18.1** shall not otherwise limit MGMIHS's indemnification obligations under subsection 18.2(c).

**18.3 Indemnification Procedure.** Any UPHS Indemnified Party or MGMIHS Indemnified Party (each, an “**Indemnified Party**”) seeking indemnification hereunder shall notify the indemnifying Party in writing reasonably promptly after the assertion against the Indemnified Party of any Claim in respect of which the Indemnified Party intends to base a claim for indemnification hereunder, but the failure or delay so to notify the indemnifying Party shall not relieve the indemnifying Party of any obligation or liability that it may have to the Indemnified Party except to the extent that the indemnifying Party demonstrates that its ability to defend or resolve such Claim is adversely affected thereby.

**18.3.1** Subject to the provisions of **Section 18.3.3** and **Section 18.3.4**, the indemnifying Party shall have the right, upon providing written notice to the Indemnified Party of its intent to do so within thirty (30) days after receipt of the notice from the Indemnified Party of any Claim, to assume the defense and handling of such Claim, at the indemnifying Party's sole expense.

**18.3.2** The indemnifying Party shall select counsel reasonably acceptable to the Indemnified Party in connection with conducting the defense and handling of such Claim, and the indemnifying Party shall defend or handle the same in consultation with the Indemnified Party, and shall keep the Indemnified Party timely apprised of the status of such Claim. The indemnifying Party shall not, without the prior written consent of the Indemnified Party, agree to a settlement of any Claim which could lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder, or would involve any admission of wrongdoing on the part of the Indemnified Party. The Indemnified Party shall cooperate with the indemnifying Party, at the request and expense of the indemnifying Party, and shall be entitled to participate in the defense



and handling of such Claim with its own counsel and at its own expense. Notwithstanding the foregoing, in the event the indemnifying Party fails to conduct the defense and handling of any Claim in good faith after having assumed such, then the provisions of **Section 18.3.4** shall govern.

**18.3.3** If the indemnifying Party does not give written notice to the Indemnified Party, within thirty (30) days after receipt of the notice from the Indemnified Party of any Claim with respect to which it has indemnification obligation under this **Article 18**, of the indemnifying Party's election to assume the defense and handling of such Third Party Claim, or otherwise elects not to assume the defense and handling of such Claim, the provisions of **Section 18.3.4** shall govern.

**18.3.4** In the event that the indemnifying Party fails to conduct the defense and handling of a Claim in good faith as set forth in **Section 18.3.2** or elects not to assume the defense and handling of such Claim as set forth in **Section 18.3.3**, the Indemnified Party may, at the indemnifying Party's expense, select counsel reasonably acceptable to the Indemnified Party in connection with conducting the defense and handling of such Claim and defend or handle such Claim in such manner as it may deem appropriate, provided, however, that the Indemnified Party shall keep the indemnifying Party timely apprised of the status of such Claim and shall not settle such Claim without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld. If the Indemnified Party defends or handles such Claim, the indemnifying Party shall cooperate with the Indemnified Party, at the Indemnified Party's request but at no expense to the Indemnified Party, and shall be entitled to participate in the defense and handling of such Claim with its own counsel and at its own expense.

## 19. INSURANCE.

**19.1 MGM Insurance.** MGMIHS, during the Term, shall obtain and maintain sufficient insurance with respect to the MGMIHS Sleep Center and Additional MGM Sleep Centers, as well as the activities of MGMIHS employees and contractors at such sleep centers, according to the prevalent laws in India regarding insurance.

## 20. MISCELLANEOUS.

**20.1 Independent Contractor Status.** Each Party is undertaking activities under this Agreement as an independent contractor and not as an employee, agent, partner or joint venturer of or with the other Party. Neither Party shall not have authority to bind or obligate the other Party in any manner. MGMIHS shall neither have nor exercise any control over the methods by which UPHS performs the Services. Each Party shall be solely responsible for the payment or withholding of all national, state, or local income taxes, Social Security taxes, unemployment taxes, workers' compensation and other insurance required by law arising from compensation of that Party's employees hereunder. Neither Party hereto has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party.

**20.2 Waiver.** No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. No delay in exercising, or partial exercise of, any right or remedy hereunder shall constitute a waiver of any such right or remedy, or any other right or remedy, or future exercise thereof.

**20.3 Severability.** Should one or more of the provisions of this Agreement become void or unenforceable as a matter of law, then this Agreement shall be construed as if such provision were not contained herein and the remainder of this Agreement shall be in full force and effect, and the Parties will use their best efforts to substitute for the invalid or unenforceable provision a valid and enforceable provision which conforms as nearly as possible with the original intent of the Parties. Notwithstanding the preceding, if the invalidity of the provision(s) has or will have a material impact on the valuation of the Agreement, then the Parties will make a good faith adjustment of the payments required forth under **Article 9** to take into account the change of such valuation.

**20.4 Cooperation in the Event of Lawsuits, Audits and Investigations.** In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person or entity against either Party, or in the event that an audit or investigation of a Party is initiated, the other Party will provide reasonable information and assistance in the defense or other disposition.

**20.5 Qualifications.** MGMIHS will maintain during the Term all licenses, permits, certifications, registrations, accreditations and approvals required by law for MGMIHS to establish and operate the MGMIHS Sleep Center, and shall ensure that all of its employees and agents have and maintain during the Term of this Agreement all licenses, permits, certifications, registrations, accreditations and approvals required by law for such employees and agents to provide services and otherwise act in connection with MGMIHS's performance under this Agreement.

**20.6 Compliance with Laws.**

**20.6.1 MGMIHS.** MGMIHS will comply, and shall cause its personnel to comply, at its own cost and expense, with the provisions of all Applicable Law in India.

**20.6.2 UPHS.** UPHS will comply, and shall cause its personnel to comply, at its own cost and expense, with the provisions of all Applicable Law in the United States.

**20.6.3 Foreign Corrupt Practices Act.** Each Party shall comply, at all times, with the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. with respect to activities at or related to the MGMIHS Sleep Center, as well as each Party's activities under this Agreement.

**20.7 Non-Discrimination and Affirmative Action.** Neither Party shall unlawfully discriminate against employees or applicants on the basis of race, national origin, gender, age,

creed, ancestry, religion, marital status, sexual orientation, gender identity, veteran status, or disability.

**20.8 Conflicts of Interest.** MGMIHS affirms that, to the best of its knowledge, this transaction does not involve any actual or potential conflicts of interest (such as undisclosed financial interests in MGMIHS or in the transaction held by UPHS personnel or their family members). MGMIHS will notify UPHS in writing of any change occurring with respect to any interest of MGMIHS that is likely to lead to (or has resulted in) an actual or potential conflict of interest.

**20.9 Notice.** Except as expressly set forth otherwise herein, all notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by fax (with written confirmation of receipt), provided that a copy is sent by an internationally recognized overnight delivery service (receipt requested), or (c) when received by the addressee, if sent by an internationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a Party may designate by notice):

If to MGMIHS:

Director  
MGM Institute of Health Sciences  
MGM Campus  
Sector 18, Kamothe  
Navi Mumbai-410209  
Maharashtra State, India  
Telefax: 022-27431094

If to UPHS:

University of Pennsylvania Health System  
3400 Spruce Street  
Philadelphia, PA 19104  
Attention: Chief Executive Officer

With a copy to:

Office of the General Counsel  
University of Pennsylvania/UPHS  
133 S. 36<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19104  
Attention: Senior Counsel, Health System Division

**20.10 Amendment.** No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by both Parties.

**20.11 Taxes.** UPHS asserts it is exempt from all federal, state and local taxes and shall provide, upon request, a certificate documenting tax-exempt status. In the event it is determined that UPHS is not exempt from any such taxes by Federal or State agencies, any sales or use taxes, or other tax imposed on UPHS, shall be the sole liability of, and shall be paid solely by UPHS.

**20.12 Force Majeure.** If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, war, riot, fire, judicial or governmental action, labor disputes, act of God, illness of key personnel who may not be to be promptly replaced or other causes beyond the control of either Party, that Party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes; provided, in each such case, such delay or nonperformance was reasonably unavoidable or beyond the control of any Party hereto. In such event, the Party affected will use Commercially Reasonable Efforts to resume performance of its obligations and to keep the other Party informed of such efforts. If any force majeure condition causes a Party not to perform in accordance with this Agreement for a period of five (5) consecutive days, the other Party, upon written notice, may immediately refer the matter to the Oversight Committee for resolution. If the Oversight Committee is unable to resolve the matter to the reasonable satisfaction of the other Party within ten (10) days after such referral, such Party, upon five (5) days written notice to the Party undergoing the force majeure condition, may terminate this Agreement.

**20.13 Entire Agreement.** This Agreement and the Attachments attached hereto constitute the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous proposals, communications and understandings, oral or written. The Parties acknowledge and agree that, as of the Effective Date, all confidential information disclosed by one Party to the other Party prior to the Effective Date (a) related to the subject matter of this Agreement or (b) disclosed during or as the result of the provision of environmental services shall be considered Confidential Information of the disclosing Party under this Agreement.

**20.14 Choice of Law.** Subject to **Section 20.23.2**, this Agreement will be governed by the laws of the State of New York in the United States, without regard to its conflict of laws provisions.

**20.15 Cumulative Remedies.** No remedy referred to in this Agreement is intended to be exclusive unless explicitly stated to be so, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.

**20.16 No Third Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

**20.17 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

**20.18 Interpretation.** The Parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement; and (c) the terms and provisions of this Agreement shall be construed fairly as to all Parties hereto and not in a favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement. The headings of each Article and Section in this Agreement have been inserted for the convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

**20.19 Assignment.** Neither Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that either Party may assign this Agreement in whole or in part to an Affiliate or to a successor by purchase, merger, consolidation or transfer of substantially all of its assets. Any assignment in contravention of this Section 20.19 shall be void.

**20.20 Extension to Affiliates.** Notwithstanding anything in this Agreement to the contrary, each Party shall have the right to extend the rights and immunities granted in this Agreement to one or more of its Affiliates. All applicable terms and provisions of this Agreement, except this right to extend, shall apply to any such Affiliate to which this Agreement has been extended to the same extent as such terms and provisions apply to the Party extending such rights and immunities. The Party extending the rights and immunities granted hereunder shall remain liable for any acts or omissions of its Affiliates unless this Agreement is assigned to a permitted Affiliate and such Affiliate to which this Agreement is assigned has sufficient assets and resources to carry out its obligations and responsibilities hereunder. Notwithstanding any provision in this Agreement to the contrary, neither Party shall extend any rights or immunities granted in this Agreement to any Affiliate unless such Affiliate is bound to all of the obligations and restrictions to which that Party itself is bound to under this Agreement.

**20.21 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**20.22 Expenses.** Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.

**20.23 Dispute Resolution.**

**20.23.1 Dispute Resolution Procedure.** If any dispute, claim or controversy of any nature arising out of or relating to this Agreement, including, without limitation, any action or claim based on tort, contract or statute, or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement (each, a “Dispute”), arises between the Parties (and with respect to Disputes that are considered by the FOCC, the FOCC cannot resolve such Dispute as set forth in Section 8.1), either Party may refer the Dispute to binding arbitration in accordance with Section 20.23.2.

a. Subject to **Section 20.23.2.d**, no Dispute shall be the subject of private litigation between the Parties.

**20.23.2 Arbitration.** In the event that the FOCC is unable to resolve any Dispute, controversy or claim between the Parties referred to them within the sixty (60) day period set forth in **Section 8.1.7**, the Dispute shall, at the request of either Party, be finally settled by binding arbitration in accordance with the then current Rules of Arbitration of the International Chamber of Commerce ("ICC"). Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

a. The arbitration panel shall consist of three (3) arbitrators, at least one of which shall have legal or business experience in health institution matters. The arbitrators are to be selected as follows: each Party shall nominate one (1) such qualified arbitrator and the two arbitrators so nominated shall nominate a third such qualified arbitrator, who shall be the presiding arbitrator, in each case subject to confirmation by the International Court of Arbitration of the International Chamber of Commerce (the "**ICC Court**"). In the event either Party fails to nominate a qualified arbitrator as provided above within fifteen (15) Business Days after the other Party shall have nominated its arbitrator, or the two arbitrators so nominated shall fail to agree on a third arbitrator as provided above within thirty (30) days, such arbitrator(s) shall be appointed by the ICC Court.

b. The place of arbitration shall be London, England, and the language of the arbitration shall be English. The arbitrators shall apply the laws of the State of New York (as set forth in **Section 20.14**) except as follows: to the extent that the issue at hand concerns the confidentiality of patient information, the arbitrators shall apply the law of the situs where the patient information is located. If the patient information is at UPHS, then the arbitrators shall apply the law of the United States and the law of the Commonwealth of Pennsylvania (unless either such laws do not apply to such patient information, in which case the arbitrators shall apply the law of India) and if the patient information is in India, then the arbitrators shall apply the law of India with respect to patient confidentiality and the obligations of the Parties to maintain the confidentiality of such patient information.

c. Except as otherwise provided in this Agreement, the arbitration procedure set forth in this **Section 20.23.2** shall be the sole and exclusive means of settling or resolving any Dispute referred to in this **Section 20.23.2**.

d. Prior to the arbitration panel being in place, either Party (the "**Injunction Party**"), without waiving any remedy under this Agreement, may notify the other Party if such it believes that that Party has materially breached or is likely to materially breach this Agreement where such breach would afford the Injunction Party the right to seek an injunction. Upon receipt of such notice, the Parties shall immediately discuss such concern. If the concern of the Injunction Party is not resolved to the Injunction Party's satisfaction within two (2) business days, then the Injunction Party may seek from any court having jurisdiction any temporary injunctive or provisional relief necessary to protect the rights or property of the Injunction Party until final resolution of the issue by the arbitration panel or other resolution of the controversy between the Parties. Once the arbitration panel is in place, either Party may

apply to the arbitrators for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved, and either Party may apply to a court of competent jurisdiction to enforce interim injunctive relief granted by the arbitration panel. Any final award by the arbitration panel shall be binding on the Parties and may be entered by either Party in any court having appropriate jurisdiction for a judicial recognition of the decision and applicable orders of enforcement. The arbitrators shall have no authority to award punitive or any other type of damages not measured by a Party's compensatory damages.

e. Within sixty (60) days after the third and presiding arbitrator has been confirmed by the ICC Court, the Parties shall exchange all documents in their respective possession that are relevant to the issues in dispute and not protected from disclosure by attorney-client privilege or other immunity. Each Party shall also be permitted to take sworn oral deposition of individuals, such depositions to be scheduled by mutual agreement and concluded within forty-five (45) days after the exchange of documents described above. At least fifteen (15) Business Days prior to the first scheduled hearing date, the Parties shall identify the witnesses that they intend to present at the arbitration hearing and the documentation on which they intend to rely. The Parties shall use Commercially Reasonable Efforts to conclude the arbitration hearings within six (6) months following the confirmation of the third and presiding arbitrator. The arbitrators shall issue their decision (including grounds and reasoning) in writing no later than sixty (60) days following the conclusion of the last arbitration hearing.

f. The fees of the arbitrators and the other costs of such arbitration, excluding attorneys' fees for which each Party shall bear its own costs, shall be borne equally (50%/50%) by the Parties.

g. Provided the Agreement has not terminated in accordance with its terms, the Parties covenant to continue the performance under the Agreement in accordance with the terms thereof, pending the final resolution of the Dispute. The preceding shall not adversely affect UPHS's right to terminate this Agreement under **Section 12.3**.


h. Except to the extent necessary to confirm an award or as may be required by law or necessary to protect a Party's rights under **Section 20.23.2.d**, neither a Party nor an arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of both Parties. In no event shall an arbitration be initiated after the date when commencement of a legal or equitable proceeding based on the Dispute would be barred by the applicable statute of limitations of the State of New York.

**20.24 Survival.** The following Articles and Sections shall survive termination of this Agreement: **Article 1, Article 9, Article 13, Article 14** (but only for a period of two (2) years after termination of this Agreement or as otherwise required under Applicable Law, whichever is longer), **Article 17, Article 18, Article 20 and Section 15.1**,

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IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

THE TRUSTEES OF THE UNIVERSITY OF  
PENNSYLVANIA, OWNER AND OPERATOR  
OF THE UNIVERSITY OF PENNSYLVANIA  
HEALTH SYSTEM

 12/12/13  
Authorized Signature

Sr VP Business Dev  
Printed Name

Philby OKaly  
Title

THE TRUSTEES OF THE MCGILL  
INSTITUTE OF HEALTH SCIENCES,  
KAMOTHE (OWNER AND OPERATOR)

  
Authorized Signature

Printed Name Dr. S. H. Aslam

Vice Chancellor  
Title McGill Institute of Health Sciences  
Kamothé