

**JOINT CONTRACTING AGREEMENT
BY AND BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND
CHILDREN’S HOSPITAL OF ORANGE COUNTY**

This JOINT CONTRACTING AGREEMENT (“Agreement”) is executed, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a corporation created by Article IX of the California Constitution (“The Regents”), on behalf of the UNIVERSITY OF CALIFORNIA, IRVINE MEDICAL CENTER (“UCIMC”), (collectively referred to as “University”) and CHILDREN’S HOSPITAL OF ORANGE COUNTY, a California nonprofit public benefit corporation (“CHOC”), and shall be effective on _____, 2008 (“Effective Date”).

RECITALS

A. On or about the date hereof, University and CHOC are entering into an Affiliation Agreement for the purpose of forming a strategic alliance to enable, promote and deliver the finest clinical care, pediatric research, and medical education to benefit the children served by University and CHOC.

B. The parties believe that cooperation by University and CHOC in the manner described in this Agreement in connection with contracting with Payors (as hereinafter defined) will promote the realization of the parties’ shared vision for children’s health care as referenced in Recital A above.

C. The parties desire to enter into this Agreement in order to set forth in full their respective rights and obligations with respect to joint contracting.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance, the parties hereto agree as follows:

1. CONTRACTING WITH THIRD-PARTY PAYORS

1.1 General.

- (a) Section 1 of this Agreement defines the terms and conditions by which CHOC delegates to University the authority to contract with managed care organizations, insurance companies, self-insured benefit plans, preferred provider organizations, government agencies, third-party administrators, and third-party health care

providers seeking to contract for hospital services (collectively “Payors”) on behalf of CHOC.

- (b) This Agreement does not affect the right of either party to contract — or the process by which either party contracts — with Payors or other persons to provide services other than hospital care (e.g., physician services).
- (c) This Agreement does not affect the right of either party to contract — or the process by which either party contracts — with Payors other than those for whom University has committed, pursuant to Section 1.3(a)(ii) of this Agreement, to negotiate on behalf of both University and CHOC.

1.2 Managed Care Contracting Committee.

- (a) Composition. As soon as practical after the Effective Date:
 - (i) The President and CEO of CHOC (“CHOC CEO”) shall designate two representatives to serve on the UCIMC-CHOC Managed Care Contracting Committee (“Committee”). The CHOC CEO may replace either or both of CHOC’s representatives on the Committee at any time.
 - (ii) The CEO of UCIMC (“UCIMC CEO”) shall designate two representatives to serve on the Committee. The UCIMC CEO may replace either or both of UCIMC’s representatives on the Committee at any time.
- (b) Duties.
 - (i) Maintaining Schedule of Payor Contracts. The Committee shall maintain a list of all Payor contracts for hospital services held by UCIMC and as well as a list of all such contracts held by CHOC and, for each such UCIMC or CHOC contract, indicate:
 - (A) The name of the Payor;
 - (B) The scope of services contracted for under the contract (e.g., all hospital services, pediatric services only, specific services lines only);
 - (C) Expiration date of current term;
 - (D) Details of any automatic renewal provisions;

- (E) Details of applicable termination requirements; and
 - (F) Any additional pertinent information.
- (ii) Making Payor Contract Recommendations to University. On an ongoing basis, the Committee shall make non-binding recommendations to University regarding the following:
- (A) Which Payors University should negotiate with on behalf of both UCIMC and CHOC.
 - (B) The order in which, and schedule by which, University should approach specific Payors — on behalf of both UCIMC and CHOC — for initial or renewed contract negotiations for hospital services.
 - (C) The optimal method by which to transition UCIMC's and CHOC's contracts with Payors to common contract termination dates.
 - (D) Common, standardized non-financial terms to offer to a specific Payor (e.g., common contract termination dates and common procedures for credentialing, medical review, claims submission, and claims audit).
 - (E) Common, standardized financial terms to offer to a specific Payor (e.g., common contract rates, coding guidelines, pay-for-performance terms).
- (c) Operating Practices.
- (i) Recommendations shall be deemed adopted by the Committee under Section 1.2(b)(ii) of the Agreement only if endorsed by all four Committee members.
 - (ii) Recommendations must be provided to University within any deadlines that University:
 - (A) Reasonably deems necessary to conduct effective negotiations with a given Payor; and
 - (B) Conveys in advance to the Committee.
- 1.3 University Disposition of Committee Recommendations.
- (a) Evaluation. University shall:

- (i) Evaluate any timely recommendations unanimously adopted by the Committee in accordance with Sections 1.2(c)(i) and 1.2(c)(ii) of this Agreement; and
 - (ii) Determine, in its sole discretion, whether adoption of such recommendation will further University's state-mandated teaching and clinical missions.
- (b) Effect of Adoption. If University, in its sole discretion, adopts the Committee recommendation after the evaluation process described in Section 1.3(a), the parties shall observe the following procedures:
- (i) University shall inform the Committee of such acceptance in writing.
 - (ii) University shall negotiate, within the Committee's recommended parameters, on behalf of CHOC and UCIMC with the identified Payor.
 - (iii) If University secures terms from the Payor that are within the parameters recommended by the Committee, University shall execute the agreements — on behalf of UCIMC and on behalf of CHOC — with the Payor. The Payor will maintain separate contracts with CHOC and UCIMC.
 - (iv) If University determines, in its discretion, that University cannot secure terms from the Payor within the parameters recommended by the Committee:
 - (A) University shall provide the Committee with the terms of the most recent proposal from the Payor.
 - (B) The Committee shall then have ten days to determine whether the proposal is acceptable.
 - (C) If the Committee unanimously agrees to recommend acceptance the proposal, University shall execute Agreements — on behalf of UCIMC and on behalf of CHOC — with the Payor. The Payor will maintain separate contracts with CHOC and UCIMC.
 - (D) If the Committee cannot reach consensus within the allotted ten days, each party is free to negotiate independently with the pertinent Payor to secure the best terms it can get with such Payor.

- (v) If the parties decide to pursue independent negotiations with a given Payor pursuant to Sections 1.3(b)(iv)(D) of this Agreement, they shall exchange no further information regarding their contracting efforts with the Payor unless they receive approval from their respective legal counsel.

2. CONFIDENTIALITY

- 2.1 Defining Confidential Information. In executing their respective duties under this Agreement, the parties may furnish or cause to be furnished to each other certain nonpublic, confidential or proprietary information orally and in writing. Such information and all analyses, compilations, studies or other documents prepared by any party or its respective agents and representatives (including attorneys, accountants, financial advisors, consultants or employees) and which contain or otherwise reflect such information is referred to herein as the “Confidential Information.”
- 2.2 Limiting Use of Confidential Information. Each party who receives the Confidential Information (“Receiving Party”) will maintain all Confidential Information provided by the other party (“Disclosing Party”), whether orally and/or in writing, in confidence and will not use such Confidential Information for any purpose other than in fulfilling its duties under this Agreement.
- 2.3 Limiting Dissemination of Confidential Information. The Receiving Party will limit the dissemination of and access to Confidential Information to such of its employees, agents and representatives (collectively, “Representatives”) as may reasonably be required to fulfill its duties under this Agreement. Each Representative shall be bound by obligations of non-disclosure and non-use regarding the Confidential Information at least as comprehensive as those obligations contained herein. Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives. Neither Receiving Party, nor any of its Representatives, will disclose any Confidential Information to any third party without Disclosing Party’s prior written consent, except as may be required by law.
- 2.4 Return or Destruction of Confidential Information. Except as provided below in Sections 2.5 and 2.6, Receiving Party will return or destroy all Confidential Information of Disclosing Party in its possession or under its control, or in the possession or control of any of its Representatives, at any time upon written request by Disclosing Party unless the Receiving Party determines — in its own discretion — that it must retain such Confidential Information in order to comply with federal or state law, a public records request, a judicial or administrative order, a subpoena, or a civil investigative demand. Receiving Party acknowledges that return or destruction of such Confidential Information shall not relieve Receiving

Party of its obligation of confidentiality with respect to such Confidential Information.

- 2.5 Responding To Demands For Documents. If any other person or entity not a party (or Representative of a party) to this Agreement demands — by subpoena, other court order, or administrative order — Confidential Information for which the party to this Agreement is the Receiving Party, the party receiving such demand (“Demand Recipient”) will (i) immediately notify the party who originally furnished the requested Confidential Information (“Disclosing Party”), and (ii) give the Disclosing Party reasonable time to seek a court order protecting such records. If the Disclosing Party fails to secure such an order on a timely basis, the Recipient Party may disclose those records — and only those records — that the Recipient Party reasonably concludes it is obligated by law to disclose.
- 2.6 Responding To Public Records Act Requests. Notwithstanding the preceding section or any other provision of this Agreement, CHOC recognizes that The Regents is subject to disclosure obligations under the California Public Records Act (“PRA”). The Regents shall notify CHOC promptly upon determining that Confidential Information from CHOC may be subject to a pending PRA request. Such notification shall include a reasonably specific description of the Confidential Information potentially subject to disclosure pursuant to the pending PRA request (“Potentially Relevant Records”). To the extent permitted by law, The Regents shall then give CHOC a reasonable time period to demonstrate — to the satisfaction of The Regents — that some or all of the Potentially Relevant Records are (i) not relevant to the pending PRA request and/or (ii) protected from disclosure pursuant to an exception codified in the PRA. If The Regents thereafter concludes — in its own discretion — that some or all of the Potentially Relevant Records must be disclosed, The Regents shall so notify CHOC and — to the extent permitted by law — give CHOC a reasonable opportunity to seek a court order protecting such Potentially Relevant Records. Unless such a court order is secured in a timely fashion, The Regents shall disclose those records it determines — in its own discretion — must by law be released pursuant to the pending PRA request.
- 2.7 Loss of Status as Confidential Information. Confidential Information which is generally available to the public, which becomes generally available to the public through no fault of any party or its respective Representatives, or which becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or the Disclosing Party’s Representatives, shall cease to be Confidential Information for purposes of this Agreement.

2.8 Joint Defense.

- (a) The parties anticipate that the terms and implementation of this Agreement may be reviewed by the Federal Trade Commission, the United States Department of Justice, the California State Attorney General or other federal or state agencies or persons.
- (b) The parties agree that they share certain common interests and that their interests will best be served if they and their counsel can exchange information subject to the continued protection of the attorney-client, attorney work-product and other privileges.
- (c) The parties agree that the sharing between them — and among their representatives — of the subset of Confidential Information that is protected by a legal privilege (“Privileged Confidential Information”) is not intended to and shall not constitute a waiver of any applicable privilege or protection that otherwise would apply to the Privileged Confidential Information. Each party reserves its confidential, proprietary or privilege interest in any confidential, proprietary or privileged things, documents or other information shared in accordance with this Agreement. Nothing in this Agreement shall be construed as a waiver of any right of any party to claim that any confidential, proprietary or privileged things, documents or other information shared in accordance with this Agreement is confidential, proprietary or privileged.

3. TERM AND TERMINATION

- 3.1 Term. The term of this Agreement shall become effective as of the Effective Date stated above and shall continue in effect indefinitely thereafter, unless sooner terminated as provided for herein.
- 3.2 Termination Without Cause. Notwithstanding any other provision to the contrary, this Agreement may be terminated, without cause, at any time by either party upon not less than ninety (90) days’ prior written notice to the other party. Any without cause termination of this Agreement shall be effective upon expiration of the notice period.
- 3.3 Termination For Cause. In the event of a material breach of this Agreement or the Affiliation Agreement, the aggrieved party may terminate this Agreement by giving thirty (30) days prior written notice of termination, to be effective thirty (30) days after receipt of such notice to the breaching party, provided the breach is not cured within that thirty (30) day period. Cause shall include, without limitation:
 - (a) A written assessment from a party’s outside counsel that continued implementation of the Agreement poses significant risk of violating any federal or state law;

- (b) Violation of any of the provisions in Section 2 of this Agreement;
or
- (c) Any material breach of this Agreement.

4. MISCELLANEOUS PROVISIONS

- 4.1 Cooperation in Disposition of Claims. The parties agree to cooperate with each other in the avoidance of potential liability for acts or omissions arising directly or indirectly out of this Agreement. Notwithstanding any other provision herein, nothing in this Agreement shall require either CHOC or University to disclose or release to the other party copies of any peer review documents, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege, under the Attorney Work-Product Privilege, or under any other legally recognized privilege.
- 4.2 Assignment. Neither party shall assign its rights or delegate its duties under this Agreement, either in whole or in part, without the prior written consent of the other party.
- 4.3 Waiver. Waiver by either party of any breach of any provision of this Agreement or warranty of representation herein set forth shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.
- 4.4 Modifications and Amendments. This Agreement may be amended or modified at any time by mutual written consent of the authorized representatives of both parties.
- 4.5 Survival. Sections 2 and 4 of this Agreement shall survive expiration or termination of this Agreement.
- 4.6 Governing Law. This Agreement shall be governed in all respects by the laws of the State of California. Venue shall be Orange County.
- 4.7 Notices. All notices required under this Agreement shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

TO UNIVERSITY: Vice Chancellor and Dean, School of Medicine
University of California, Irvine
Irvine, California 92697

TO CHOC: President and Chief Executive Officer

Children’s Hospital of Orange County
455 South Main Street
Orange, California 92868

- 4.8 Binding On Successors In Interest. The provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of each of the parties hereto.
- 4.9 Third party Beneficiaries. There are no intended third party beneficiaries of this Agreement.
- 4.10 Entire Agreement. This Agreement, and any Exhibits hereto, contains all the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement and supersedes all prior agreements, oral or written, and all other communications and understandings between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in multiple originals by their duly authorized officers, all as of the day and year first above written.

REGENTS:

By: _____
Name: _____
Its: _____

CHOC:

By: _____
Name: _____
Its: _____

