

AFFILIATION AGREEMENT
BETWEEN THE REGENTS OF THE UNIVERSITY OF COLORADO
AND
THE CHILDREN'S HOSPITAL ASSOCIATION

FEBRUARY 15, 2008

AFFILIATION AGREEMENT

This Affiliation Agreement is entered into on February 15, 2008, by the Regents of the University of Colorado, a body corporate, for and on behalf of the University of Colorado Denver (“University”), and The Children’s Hospital Association , a Colorado non-profit corporation (“TCH”) (each a “Party” and together “the Parties”).

Recitals

WHEREAS, under the Colorado Constitution and Colorado statutes, the University is granted the authority to supervise and regulate the affairs of the University of Colorado, including the authority to exercise exclusive control and direction of all funds of and appropriations to the University, and to establish policies and programs of the University.

WHEREAS, the various campuses of the University have multiple roles and missions. The health sciences schools offer specialized baccalaureate, first-professional, masters, and doctoral degree programs in health-related disciplines and professions. These programs must be affiliated with health care facilities such as those provided by TCH that offer settings for education, clinical practice, and basic and applied research.

WHEREAS, UPI is the faculty practice plan of the University of Colorado School of Medicine authorized by state statute and formed by the Board of Regents to carry out the clinical practice of the School of Medicine.

WHEREAS, the mission of TCH is to provide high quality, coordinated programs of education, research, advocacy and patient care to improve the health of children.

WHEREAS, the Parties have been informally affiliated for more than fifty years, have had joint graduate medical education programs for 40 years, and have been formally affiliated since 1996. The formal affiliation from 1996 was reaffirmed in 2001.

WHEREAS, beginning in 1997, the University initiated the acquisition of land for a new principal site for its health sciences schools and beginning in 2003, the University leased to TCH various parcels of land that together are approximately 42.35 acres for the purpose of TCH co-locating its principal site adjacent to the University’s health sciences schools.

WHEREAS, the Parties desire to continue to coordinate and develop their clinical, educational and research programs through this affiliation that has been formulated within the framework of the following key guiding principles:

- Affiliation between the University and TCH is in the best interests of the health of children in the region and also in the best interests of both institutions.

- Both the University and TCH recognize their obligation to provide service to all children, limited only by the financial constraints of both institutions.
- Both the University and TCH are mutually committed to resource support requirements for pediatric program development at TCH.
- TCH will be the principal hospital site for University pediatric programs, to include graduate and undergraduate training.
- The University recognizes the importance and will facilitate the involvement of qualified community practitioners in the clinical and teaching programs at TCH.

NOW, THEREFORE, in accordance with these recitals and guiding principles and in consideration of their respective covenants, undertakings and agreements set forth herein, and other good and valuable consideration, the Parties, intending to be legally bound, agree as follows.

1. **GOALS**

1.1 **Joint Vision.** The University and TCH share the common vision of being components of a leading academic medical center that provides excellent public service in teaching, research, clinical care and community support services, all within an academic environment. The University and TCH recognize that they are interdependent. Moreover, TCH's desire to rise still higher in both quality and recognized eminence requires a strong affiliation with the University. Likewise, the University's pediatric academic programs can better achieve their maximum potential through full utilization of the first-class facilities, staff and programs at TCH. Together, the Parties can be a regional and national leader in evidence-based pediatric care.

1.2 **Interrelated Goals.** TCH is a leader in providing the best healthcare outcomes for children. It will partner with others in providing children and their families with an integrated pediatric health care delivery system. It seeks to be a national leader in research and education as well.

The University provides superior teaching, research, clinical care and community service; it will partner with health networks and affiliates such as TCH; it will be responsive to community needs; and it will be in the top tier nationally of academic medical centers.

Among the Parties' interrelated goals are to:

- Demonstrate excellence and indispensable value to the community for the full breadth of clinical care services, and serve as a resource for developing and implementing programs that assure the health and well-being of children;

- Attract the best physician-scientist and other health provider talent, including both individual leaders and depth across specialties;
- Continue to emphasize scholarship in clinical programs, research, teaching, and education;
- Maximize resources available to the community by coordinating clinical, research, teaching, and education programs to complimentary rather than competitive;
- Minimize any negative financial impact that new or expanded programs of one Party may have on the other Party;
- Ensure the availability of adequate financial resources, driven by both sound operations and fundraising; and,
- Establish a clear, broadly-endorsed vision with strong and united leadership and effective implementation processes.

This Agreement should provide processes and principles for the Parties to collaborate in achieving these goals.

2. **RETENTION OF CUSTOMARY INSTITUTIONAL AUTHORITY**

TCH will retain responsibility and authority for clinical activities at TCH through its governance mechanisms, which include the Board of Directors, management and medical staff organization. The University will retain responsibility and authority for academic matters at TCH through its governance and administrative mechanisms. The Parties agree that they will need to collaborate on decisions because academic and clinical activities are intertwined. Accordingly, the two Parties will openly communicate with one another regarding these matters and, without abrogating their ultimate legal responsibility, will undertake to make mutually acceptable decisions, as appropriate.

2.1 **Academic Authority.** This Agreement does not alter the existing sole University authority and responsibility for matters that traditionally are part of academic governance, such as student selection; curriculum; faculty appointments, promotion and tenure; the conduct, commercialization and licensing of research; publications; scholarly affiliations with other institutions; and similar matters.

2.2 **Clinical Authority.** This Agreement does not alter the existing role of TCH's Medical Staff Bylaws to University faculty practicing at TCH. The Medical Staff of TCH is responsible for the quality of medical care in the hospital and the medical decision making with regard to clinical care. The TCH Medical Staff member accepts and discharges his/her responsibility subject to the ultimate authority of the TCH Board of Directors and works in collaboration with TCH administration in fulfilling the Hospital's obligation to its patients.

2.3 **Institutional Authority.** Subject to any specific consultative or joint approval commitments specified herein, each party shall retain ultimate control over its own management, assets, employees, finances, operations, programs and affairs, including administrative and personnel policies, procedures and standards of performance.

2.4 **Cross Representation on Boards.** Official representation from the University on the TCH Board of Directors will be three voting members with no substitution. The Chancellor of the University of Colorado Denver, the Vice Chancellor for Health Affairs and a representative of University Physicians, Incorporated shall be members of the TCH Board of Directors. The process for the election and nomination of the University representatives will be in accordance with the bylaws of TCH. TCH shall make amendments to its bylaws to accommodate this provision. TCH will not be represented on the Board of Regents of the University of Colorado because it is a constitutionally established and elected body. TCH shall have a representative on the School of Medicine Dean's Council of Advisors. When the University representation on the TCH Board is effective TCH shall designate two individuals to serve on the University Physicians, Incorporated Board in accordance with the Bylaws of UPI. UPI shall make amendments to its bylaws to accommodate this provision..

2.5 **Periodic Reporting to Boards.** The Party institutions will be able to sustain support and resources for their joint vision described here only if their Boards well understand their missions and goals as well as the metrics for measuring achievements. Therefore, the Parties will cooperate in periodically providing reports to their respective Boards on measurable outcomes in clinical care delivery, teaching, research and community service.

3. **AVAILABILITY OF HIGH QUALITY FACILITIES**

3.1 The University and TCH shall coordinate the provision and location of space to maximize these joint goals and missions in fulfillment of this Affiliation Agreement.

3.2 **Clinical Facilities.** TCH will make its facilities available to the University's undergraduate and graduate students, and to residents (house staff), for clinical and educational functions. TCH will ensure that its facilities comply with legal, regulatory and accreditation requirements, including being fully accredited by JCAHO (without significant conditions); and being acceptable to various educational accrediting bodies such as the Liaison Committee on Medical Education ("LCME") and the Accreditation Council for Graduate Medical Education ("ACGME") and other health profession educational agencies as the site of accredited training programs. In addition, TCH will ensure that throughout the duration of this Affiliation, its facilities maintain a level of equipment, technologies, sophistication of services, staffing and quality characteristic of (a) an academic medical center and (b) a top-ranked children's hospital. To that end, it will consult in the selection of major technologies and systems with the appropriate clinical service leaders. TCH also will provide specialized space and

facilities (such as call rooms, lounge areas, and IT resources) which are customary to such programs.

3.3 **Participation In Teaching Service.** All patients of TCH will be available for instructional purposes, unless otherwise requested by a particular patient, parent or provider on the medical staff. All providers who are involved in the teaching functions (including those having access to residents for call, etc.) must hold University faculty appointments.

3.4 **Research Facilities.** The University will provide research facilities for faculty, undergraduate and graduate students for research and educational functions. TCH shall not construct non-clinical research facilities without the consent of the University, which consent shall not be unreasonably withheld. It shall be reasonable grounds to withhold consent if the proposed facilities conflict with the goals set forth in section 1 of this Agreement. As described further in section 8, below, the parties will develop a Strategic Research Plan which shall include provisions to address the use of research facilities.

3.5 **Academic Administration.** The University will maintain its necessary licenses, accreditations and approvals for its academic programs such as accreditation by the Liaison Committee for Medical Education (“LCME”) with respect to undergraduate education and the Accreditation Council for Graduate Medical Education (“ACGME”) for graduate programs.

4. **SERVICE DELIVERABLES AND PROGRAM LEADERSHIP**

4.1 **Implementing Agreements.** As components of an academic medical center, it is necessary and appropriate for the University and TCH to utilize various legal entities to provide support to ensure the missions of the academic medical center are fulfilled.¹ From time to time, TCH and University may enter into one or more agreements intended to implement specific aspects of this Affiliation Agreement. These may include, but are not limited to, agreements relating to the various health sciences schools and/or specific topics or special relationships between the Parties. For example, the Parties envision additional agreements relating to the School of Medicine, Graduate Medical Education and the conduct of research involving both Parties. The Parties intend that these implementing agreements will not require specific approval of the Parties’ governing boards, but that such implementing agreements may be entered into on behalf of the Parties by the Chancellor of the University of Colorado Denver and the President and Chief Executive Officer of TCH respectively.

¹ By way of example, and not by limitation, pursuant to §23-20-114(2) CRS, the University formed University Physicians, Incorporated as its School of Medicine faculty practice plan. UPI will be a necessary party to agreements envisioned by this Affiliation related to physician practice.

5. **AFFILIATION OVERSIGHT**

Oversight for this Affiliation shall be provided by the Chair of the TCH Board of Directors and the Chancellor of the University of Colorado Denver.

6. **COORDINATED STRATEGIC PLANNING**

The University and TCH shall meet periodically to develop and implement a collaborative strategic plan to capitalize on the unique strengths they offer as a top children's hospital, in affiliation with a leading academic institution. The Joint Strategic Plan shall be one of the Implementing Agreements associated with this Affiliation.

7. **GRADUATE MEDICAL EDUCATION PROGRAMS**

7.1 **Program Approval.** The Parties shall cooperate fully with one another to maintain an appropriate range of graduate medical education programs for residents and fellows in pediatrics, and pediatric subspecialties, as approved by the University's Graduate Medical Education Committee and ACGME as well as other appropriate health professional programs. If any Party learns of any circumstance that reasonably may lead to jeopardizing such approvals, it will promptly notify the other Party, and each will promptly take action within its authority and in consultation with the other Party to resolve the problem.

7.2 **Resident/Fellow Support.** The University will employ residents and fellows. TCH will reimburse the University for support (salary, benefits, liability insurance, parking, meals, license fees, and an appropriate portion of the required administrative infrastructure to support the program) to a numerical complement of residents and fellows that is established in consultation with the University and that is sufficient to meet TCH's needs.

7.3 **GME Agreement.** In all respects not otherwise addressed herein, the GME programs will be operated cooperatively by the Parties as is more specifically described in the "Graduate Medical Education Master Affiliation Agreement," a current form of which is attached.

8. **SCHOLARSHIP, RESEARCH AND DISCOVERIES**

8.1 **Scholarship.** The Parties recognize that the integration of research, scholarship, teaching, patient care, public service and health advocacy is necessary to achieve sustainable preeminence among both top children's hospitals and nationally-renowned medical schools.

The University's policies regarding faculty promotion and tenure will seek to ascribe appropriate value to all types of faculty contributions to their institutions, including teaching excellence, basic research, integrative research across disciplines, and translational research, in addition to clinical program development.

8.2. **Strategic Focus on Research.** Currently, there is no central coordinating mechanism to establish and reinforce research priorities across the institutions. To rectify this, the Parties will develop a coordinated Strategic Research Plan which shall be updated periodically. This Strategic Research Plan shall be one of the Implementing Agreements associated with this Affiliation. Among its goals are to:

- (a) Target areas where the University and TCH can be substantial contributors to knowledge;
- (b) Linking basic, integrative, translational and clinical research efforts;
- (c) Create collaborations and synergies between the University research interests and the needs of patients and areas of clinical importance to University faculty and TCH;
- (d) Prepare to develop and support young researchers;
- (e) Ensure a robust and compliant research administrative infrastructure;
- (f) Reduce to the degree feasible any redundancy in research administration, so that the process is rapid and effective for principal investigators and other researchers.

8.3 **Operating Principles for Research.** The Parties will jointly develop a Research Agreement to address issues such as:

- (a) Processing of research applications
- (b) IRB and IACUC review
- (c) Optimization of lawful facilities and administration cost recovery
- (d) Reporting results, publications, etc.
- (e) Mutual commitment to abiding by all relevant regulatory and compliance requirements.

The current form of the Research Agreement is attached as Exhibit _____.

8.4 **Institutional Grantee.**

(a) The University (or its institutes or other entities) will be the institutional grantee of all research for which the principal investigator is a person who holds a faculty appointment at the University, and for which the funding source is NIH, NSF, PHS, DOD, other federal or state agencies or non-profit foundations.

(b) TCH and the University will develop a mutually acceptable framework for administration of grants for which the principal investigators are non-faculty medical staff at TCH.

(c) TCH may serve as the institutional grantee of industry sponsored research. In those instances where the principal investigator of an industry sponsored project is a faculty member (full-time or part-time), the Vice Chancellor for Research and the Director of the TCH Research Institute will consider the appropriateness of having TCH be the institutional grantee. The criteria to be used in determining the appropriate grantee shall be the site where the majority of the work will be performed. The grantee shall nevertheless ensure any such research is approved by the "Colorado Multiple Institutional Review Board", that it complies with all appropriate research standards, and that it does not adversely affect the reputation of the Parties.

(d) The grantee will receive and administer all direct costs and facilities and administration cost recoveries under grants. If it is anticipated that research under a grant will involve the use of substantial institutional resources of other Parties hereto, the grantee will seek to include such facilities and administration costs in the grant budget and, if they are awarded, will pay for such resources in accordance with the project budget (i.e., "research rates") and applicable cost allocation rules.

(e) If the University is to subcontract with TCH for use of TCH facilities or resources, then the TCH "consortium/contractual" costs will be reimbursed as provided in the Research Agreement and under TCH's indirect cost rate.

8.5 The Children's Hospital Research Institute. The Children's Hospital Research Institute will continue to operate as an administrative unit within TCH that coordinates the administration of research grants from the Children's Hospital Foundation, and that seeks to coalesce the research efforts of various TCH physicians who may work in related areas. Consistent with Section 8.4, the Institute will not be separate applicant/recipient of sponsored research grants; and it will coordinate as appropriate with UCD.

8.6 Research Space. The Parties shall agree on principles and metrics for allocation of research space, including space allocation for researchers who are between grants or contracts, and for development of priority projects. Research space allocation will be reviewed at least every two years by the AMT, or a special committee appointed by it.

8.7 **Intellectual Property and Commercialization of Research.**

(a) Ownership of, sharing of revenue arising from, and decisions on commercialization of research arising in connection with this Agreement shall be governed by the Parties' existing Cooperative Intellectual Property and Licensing Services Agreement, (as it may be amended from time to time). This shall be one of the Implementing Agreements associated with this Affiliation.

(b) TCH and the University shall each maintain effective policies (a) requiring invention disclosure by employees, and (b) ensuring compliance with Bayh-Dole and all other applicable laws.

9. **PHILANTHROPY AND DEVELOPMENT**

9.1 **Coordinated Process.** The Parties will develop a coordinated process for seeking philanthropic support for their pediatric programs through the related foundations. Their goal will be to expand the overall yield on development efforts and to avoid duplication in solicitation of donors. However, they may continue their separate efforts to raise funds in support of their other missions.

9.2 **Coordinated Development Plan.** In addition, in order to coordinate effectively the use of philanthropic funds, the Parties, in conjunction with their related foundations, will seek to develop a Coordinated Development Plan which will (a) specify (subject to the desires of particular donors) the top priorities or needs for support each year (or 2 or 3-year period), and (b) equitably allocate donor funds (to the extent consented to by donors) in support of the Plan and the needs identified as priorities by each Party. This shall be one of the Implementing Agreements associated with this Affiliation.

This process is intended to improve coordination and effectiveness, and will not be interpreted so as to delay or impede either Party from effectively seeking funds or implementing donors' directions.

9.3 **The Children's Hospital Foundation.** TCH will seek the cooperation of The Children's Hospital Foundation in a manner consistent with this Agreement.

9.4 **CU Foundation.** The University will seek the cooperation of the CU Foundation in a manner consistent with this Agreement.

10. **DISPUTE RESOLUTION**

10.1 **Process for Dispute Resolution.** In the event that a disagreement arises between the University and TCH with respect to any aspect of this Agreement that is not able to be informally resolved between the Parties, the Parties agree not to initiate any litigation, administrative action or other legal proceedings against the other party unless the dispute resolution process set forth in this section or any other process agreed to by the Parties has been exhausted.

10.2 **Informal Resolution.** The disagreement shall first be referred for discussion between an individual designated by the Vice Chancellor for Health Affairs (the "Vice Chancellor's Designee") and an individual designated by the President of TCH (the "President's Designee"). If a mutually satisfactory resolution is not achieved by these designees within fifteen (15) working days, either the Vice Chancellor's Designee or the President's Designee may request, in writing, that the matter be referred to the Vice Chancellor for Health Affairs and the TCH President. If a mutually satisfactory resolution is not achieved by the UCD Vice Chancellor and the TCH President within fifteen (15) working days, either the Vice Chancellor or the President may request, in writing, that the matter be referred to the Chair of the Board of TCH and the Chancellor of the UCD

10.3 **Mediation:** At any point in the informal resolution process described in paragraph 10.2, if the informal resolution process has been unsuccessful in resolving the dispute, the parties may agree to mediation by a third-party mediator.

11. **TERM AND TERMINATION**

11.1 **Termination.** In the event the informal dispute resolution process described in paragraph 10.2 is unsuccessful, a Party may terminate this agreement only upon a 3/4 majority vote by its governing board.

11.2 **Transition Plan.** If this Agreement is terminated for any reason, all Parties will cooperate in a Transition Plan that (a) ends the undergraduate and graduate instructional programs and GME programs that the University conducts at TCH in a responsible manner consistent with accrediting agency requirements; (b) protects the interests of then-current students and residents (through completion of programs at other affiliated hospitals, transfer to the University, transfer to other institutions or other steps); (c) resolves faculty appointments and assignments at TCH in accordance with University policies; (d) resolves outstanding financial and other issues among the parties, and, (e) recognizes potentially necessary changes in clinical practice sites.

12. **ADDITIONAL LEGAL PROVISIONS**

12.1 **Priority.** If there should arise any actual or asserted inconsistency between this Agreement and any other Agreement referred to herein (including without limitation those Agreements/current forms of which are attached as Exhibits), then the principles described in this Agreement shall be referred to in helping to construe and resolve actual or perceived inconsistencies.

12.2 **Confidential Information**. In negotiating and performing this Agreement, each Party may become privy to Confidential Information of the other Party. The Parties agree that all Confidential Information and all copies and modifications thereof are the property of the originating Party; that Confidential Information constitutes valuable assets and trade secrets of such Party; and that during and after the Term, each recipient Party shall, except as required by law or by order of court (in which case a Party shall provide prompt prior notice to the other Party) or as necessary to perform its obligations or exercise its rights under this Agreement:

(a) hold such Confidential Information of an originating Party in strict confidence with at least the same degree of care as the recipient Party uses for its own Confidential Information;

(b) refrain from using such originating Party's Confidential Information except in advancement of the Parties' joint efforts and cooperation hereunder;

(c) limit access to such originating Party's Confidential Information to only those of its employees and agents who need access to such Confidential Information, and, if reasonably requested by the originating Party, require its employees, and agents to execute nondisclosure agreements; and

(d) refrain from, and instruct its employees and agents to refrain from, directly or indirectly, voluntarily or involuntarily, using, selling leasing, assigning, transferring, disclosing or otherwise making available any part of such originating Party's Confidential Information to others, except with the written consent of the originating Party.

In any instance in which a Party is requested or required to disclose any Confidential Information originally obtained from another Party hereto, it shall so advise the originating Party by the most expeditious reasonable means, and shall afford the originating Party a reasonable opportunity to convey its objections or concerns in advance of such disclosure.

Without limiting the foregoing, the Parties shall keep confidential and not use or disclose to others, except as required by law or specifically authorized in writing by the originating Party, any proprietary information, trade secrets, work product, curriculum materials, teaching materials, accreditation materials or other such information. Upon expiration or termination of this Agreement, no party shall retain, use, copy or disclose books, records, computer files or any other media from which information can be obtained, or information therein, that constitutes or contains such proprietary information of an originating Party concerning the matters herein, except to the extent reasonably approved as part of a Transition Plan pursuant to Section 11.2, or otherwise required by law or by order of court (in which case, a Party shall provide prompt notice to the Party that owns the Confidential Information).

12.3 **Access to Books and Records.** Because this Agreement has a value or cost to the Parties of \$10,000 or more over any twelve-month (12-month) period, the Parties hereby agree to perform the obligations as may be specified from time to time for subcontractors under Section 1861(v)(1)(I) of the Social Security Act and related regulations (currently codified at 42 C.F.R. Part 420), including, but not limited to, retention and delivery of records related to this Agreement. In the event any request for this Agreement or books, documents, and records of the Parties is made pursuant to Social Security Action Section 1861(v)(1)(I) and related regulations, the party receiving the request shall promptly give notice of such request to the other party and provide it with a copy of such request and, thereafter, consult and cooperate with it concerning the proper response to such request. Additionally, the party receiving such a request shall provide the other with a copy of each book, document, and record made available to one or more persons and agencies pursuant to Section 1861(v)(1)(I) of the Social Security Act, or shall identify each such book, document or record to the other party and shall grant it access thereto for review and copying.

12.4 **Liability.** Pursuant to the Colorado Governmental Immunity Act, the University agrees to be responsible for injuries or damages sustained from any act or omission of its respective public employees or agents arising from the performance of their duties and obligations under this Agreement, unless the act is willful and wanton or where sovereign immunity bars the action against the Parties. Nothing in this Agreement is intended to waive the provisions of the Colorado Governmental Immunity Act as it applies to the University and its public employees. TCH agrees to be responsible for injuries or damages sustained from any act or omission of its employees or agents arising from the performance of their duties and obligations under this Agreement, unless the act is willful and wanton.

12.5 **Applicable Law.** This Agreement is expressly made subject to all laws and regulations of the United States and the State of Colorado. Contractual provisions required by such laws and regulations but not having been set out herein are hereby incorporated by this reference as though expressly set out in full. The Parties to this Agreement are hereby put on notice, and charged with the responsibility of compliance with, such contract provisions as required by laws, regulations and policies.

12.6 **Non-Discrimination.** The Parties do not discriminate unlawfully on the basis of race, color, national origin, sex, age, disability, creed, religion, sexual orientation or veteran status in admission and access to, and treatment and employment, in the programs and activities under this Agreement.

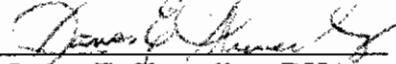
12.7 **Compliance With Law.** Each Party shall comply with all laws and regulations applicable to its roles with respect to, or performance of, or access to information or records pursuant to, this Agreement.

So Agreed:

Regents of the University of Colorado

The Children's Hospital Association

By: 

By: 

Name: M. Roy Wilson, MD

Name: James E. Shmerling, DHA

Title: Chancellor,
University of Colorado Denver

Title: President and CEO,
The Children's Hospital Association

Date: 2/1/08

Date: 02/15/2008