

MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is by and between _____ (“Hospital”), the California Health Care Coalition (“CHCC”) and _____, (“Payor”) referred to collectively as “Parties” and singularly as “Party”. By reference, this shall include, without limitation any parent, subsidiary, or partner of, or an affiliate of Party.

WHEREAS, Hospital provides inpatient and outpatient hospital services to patients in Payor’s service area; and

WHEREAS, CHCC is a non-profit member organization of purchasers, including Payor, facilitating purchaser-provider engagements for its member organizations; and

WHEREAS, Payor is a plan sponsor of medical benefit plans offered to Payor’s members, employees and eligible dependents who reside in Hospital’s service area; and

WHEREAS, Hospital and Payor desire to consider opportunities to enter into an agreement to provide hospital services to Payor’s members facilitated by CHCC (“Direct Contract”); and

WHEREAS, the Parties desire to make available to each other certain Confidential Information and to protect their respective Confidential Information from disclosure to third parties.

IT IS THEREFORE AGREED AS FOLLOWS:

1. DEFINITIONS.

For the purposes of this Agreement “Confidential Information” of a Party shall mean any and all tangible and intangible information, whether oral or in writing or in any other medium, disclosed or made available by that Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) or otherwise obtained by the Receiving Party from the Disclosing Party or relating to the Disclosing Party.

Confidential Information will include, without limitation, information relating to the finances, management, business, operations, products, services or inventions of the Disclosing Party, including without limitation, third party information that Disclosing Party is obligated to treat as confidential. Confidential Information of the Disclosing Party shall also include, without limitation, all information that relates to the Receiving Party’s analysis of the Disclosing Party’s Confidential Information, and all derivatives of the Disclosing Party’s Confidential Information, whether developed by the Disclosing Party or the Receiving Party.

Confidential Information shall not include information that:

- a) was in the public domain at the time it was disclosed to the Receiving Party;
- b) entered into the public domain subsequently to the time it was disclosed to the Receiving Party, through no fault or act of the Receiving Party;
- c) was in the Receiving Party’s possession free of any obligation of confidence at the time it was disclosed to the Receiving Party;
- d) is rightfully communicated to the Receiving Party by a third party with the right to disclose such information, free of any obligation of confidence, subsequent to the time it was disclosed to the Receiving Party by Disclosing Party;
- e) was developed by employees or consultants of the Receiving Party independently of and without reference to or use of any Confidential Information communicated to the Receiving Party by the Disclosing Party.

2. NO OBLIGATION TO CONTRACT. The Parties agree that this Agreement is not an offer. The Parties further agree that by executing this Agreement neither Party is in any way, either at law or in equity, obligating itself to contract with the other Party on any specific Direct Contract. Neither Party shall be obligated to pay any monetary consideration to the other Party under this Agreement.

3. CONFIDENTIALITY. The Disclosing Party, in its sole discretion, will determine what Confidential Information shall be disclosed to the Receiving Party under this Agreement. Each Party, as Receiving Party, agrees that no representation or warranty has been made by the Disclosing Party or any of its directors, officers, employees, consultants or advisors as to the accuracy or completeness of the Disclosing Party's Confidential Information.

4. NONDISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION.

- a) Each Party agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other Party's Confidential Information.
- b) The Receiving Party agrees not to use, disclose, copy, utilize, exploit, disseminate, publish, or distribute the Disclosing Party's Confidential Information, or allow the Disclosing Party's Confidential Information to be exploited by or distributed to any third party, without prior written consent of the Disclosing Party, except as necessary to perform its obligations or exercise its rights pursuant to a Direct Contract.
- c) The Receiving Party will not use the Disclosing Party's Confidential Information in any way detrimental to the Disclosing Party. Each Party, as Receiving Party, agrees not to alter or remove any proprietary legend contained in or on the Disclosing Party's Confidential Information.
- d) Confidential Information of Disclosing Party shall be disclosed only to those employees, consultants and professional advisers, if any, of Receiving Party who have a need to know such Confidential Information for the purpose of a Direct Contract.
- e) Receiving Party certifies that, at the time of such disclosure by Receiving Party, each such employee, consultant or professional advisor will have agreed in writing, either as a condition to employment or engagement or in order to obtain Disclosing Party's Confidential Information, to be bound by terms and conditions substantially similar to, and at least as protective as, the terms and conditions set forth herein regarding Discloser's Confidential Information.
- f) The Receiving Party shall notify the Disclosing Party immediately if it learns of any misappropriation of Disclosing Party's Confidential Information or use of Disclosing Party's Confidential Information by anyone in any manner not expressly authorized by this Agreement, and will fully cooperate with any efforts by the Disclosing Party to prevent any misappropriate or misuse of the Disclosing Party's Confidential Information.
- g) The Receiving Party shall not incorporate any Confidential Information into any documents, without the Disclosing Party's express prior written approval.
- h) Neither Party will disclose any information to the other party in breach of any obligation of Confidentiality that the Disclosing Party has to any third party.
- i) If Receiving Party is served with a subpoena or any other request by any federal, state, or local governmental body to produce or otherwise disclose the Confidential Information of a Disclosing Party, the Receiving Party will immediately notify the Disclosing Party.

5. NO PUBLICITY. Without the express prior written permission of such other Party, the Parties shall not publish, in any medium, print or electronic, or otherwise disclose anything about the other Party, a Direct Contract, the existence or contents of this Agreement or the relationship between the Parties. Except as expressly set forth in this Agreement, neither this Agreement nor any disclosure of information hereunder grants either Party any right or license to any of the other Party's Confidential

Information or any trademark, copyright or patent or other intellectual property herein now or hereafter owned or controlled by the other Party. Neither Party shall use the other Party's name or any of the other Party's trademark, trade names or trade dress for any purpose without the express prior written permission of such other Party.

6. INDEMNITY; INJUNCTIVE RELIEF. Each Party agrees to indemnify, defend and hold harmless the other Party against any liability, loss, cost, expense, injury, damage or claim that may result from its own breach of this Agreement. Further, the Parties agree that damages alone would be inadequate to compensate in the event of a breach and that a Disclosing Party may seek equitable relief, including without limitation and injunction, from a court of competent jurisdiction.

7. NO EMPLOYEE RELATIONSHIP. The Parties hereto are independent contractors. Nothing in this Agreement shall create an employee-employer relationship, partnership, joint venture, or other agency relationship between the Parties.

8. TERM AND TERMINATION.

- a) This Agreement shall be effective from the date of the first contact between the Parties at which Confidential Information is exchanged or provided and shall continue in effect until terminated in writing by either Party.
- b) Upon termination of this Agreement, each Party shall return to the other Party or destroy all tangible embodiment's of the other Party's Confidential Information, and if destroyed, shall upon request certify in writing that such destruction has taken place.
- c) Notwithstanding termination of this Agreement, each Party's obligations under this Agreement shall continue, and shall continue with respect to each item of Confidential Information until that item becomes subject to one or more of the exceptions set forth in Section 1, b above.

9. MISCELLANEOUS PROVISIONS. This is the entire agreement between the Parties regarding its subject matter. It supersedes any previous confidentiality agreement, or provision relating to confidentiality obligations in another agreement, between the Parties. This Agreement may only be modified by a writing signed by the Parties. Notwithstanding any provision in any other contract to the contrary, the provisions of this Agreement supersede any conflicting provision in any other contract, except for such a provision in a future contract that is in writing, is signed by authorized representatives of the respective Parties. No waiver or amendment of this Agreement or any provision hereof will be binding and valid unless in writing and signed by the Parties. Neither Party shall assign, sublicense or transfer any of its rights or duties under this Agreement without the other Party's prior written consent. Such consent shall not be unreasonably withheld. This restriction on assignments, sublicenses and transfers shall apply to assignments and transfers by operation of law, as well as by contract, merger or consolidation. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the maximum extent possible. Any Confidential Information of a Disclosing Party's affiliates or subsidiaries that is provided or made available by the Disclosing Party or accessed, observed or otherwise obtained by Receiving Party shall also be protected by this Agreement as Confidential Information of the Disclosing Party.

10. GOVERNING LAW AND VENUE. The term of this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without reference to conflicts provisions. Any cause of action between the Parties, whether under this Agreement or otherwise, may be brought only in a court having jurisdiction and venue in Fresno County for state court causes of action and in the Eastern District of California for federal court causes of action. Hospital waives any objection on the basis of personal jurisdiction or venue.

11. NOTICE. All notices permitted or required under this Agreement shall be in writing and are effective when received. Notices will be delivered by certified mail, overnight or by hand. Facsimile

notices are effective when received if the original is delivered by certified mail, overnight courier or by hand within 10 days of the facsimile transmission. Addresses used shall be the ones first set forth below or such other address as a Party hereto shall notify the other of in writing. The headings are included for convenience only and do not form part of this Agreement.

AS WITNESS the signatures of the Parties by their duly authorized representatives as signed and dated below.

**FOR:
HOSPITAL**

**FOR:
PAYOR**

Name: _____
Title: _____
Date: _____
Address: _____
City, State, Zip: _____

Name: _____
Title: _____
Date: _____
Address: _____
City, State, Zip: _____

**FOR:
CALIFORNIA HEALTH CARE COALITION**

Name: _____
Title: _____
Date: _____
1300 Clay Street, Suite 600, Oakland, CA 94612