



# Confidentiality and Non-Disclosure Agreement

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement") is made as of the date signed on page two by and between PRINCETON HEALTHCARE SYSTEM, a New Jersey nonprofit corporation ("PHCS") and the "Recipient" as identified on page two.

WHEREAS, in connection with the business relationship between the parties, PHCS will disclose confidential information to the Recipient; and

WHEREAS, the Recipient has been advised of and acknowledges the competitive value and proprietary nature of the confidential information of PHCS and the damage that could result to PHCS if its confidential information is not treated in accordance with the terms and conditions of set forth in this Agreement;

NOW THEREFORE, in consideration the mutual premises and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

- 1. Definition of Confidential Information.** As used in this Agreement, the term "Confidential Information" means all oral and written information furnished by, or on behalf of, PHCS to the Recipient or its Representatives (as defined below), which is not generally known to the public, including, without limitation, all trade secrets, products, procedures, manuals, guidelines, reports, communications, information regarding names and requirements of current and prospective suppliers, vendors and customers, technical information regarding current and prospective products and programs and the development and/or acquisition of future products, programs and enhancements, discoveries, concepts and ideas, nature and results of research and development activities, technical information on product or program performance and reliability, processes, formulae, techniques, "know-how," specifications, any "protected health information" as defined in HIPAA regulations, 45 C.F.R. Parts 160 and 164, as amended from time to time, and any other material or information related to the business or activities of PHCS, whether or not protectible by patent, copyright or other laws, whether furnished before or after the date of this Agreement, together with any additional information derived from such information and contained in all analyses, compilations, studies or other documents or records prepared by the Recipient or its Representatives, as well as all copies and other reproductions thereof, whether in writing or stored or maintained in or by electronic, magnetic or other means, media or devices. As used in this Agreement, the term "Representatives" means, with respect to PHCS or the Recipient, their directors, officers, shareholders, members, managers, partners, employees, affiliates and controlling persons, and their agents, advisors and representatives (including without limitation attorneys, accountants and financial advisors).
- 2. Exclusions from Confidential Information.** Notwithstanding anything to the contrary contained in Paragraph 1, Confidential Information does not include information which (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient or its Representatives; or (ii) was or becomes available to the Recipient on a non-confidential basis from a source other than PHCS, provided that such source is not bound by a confidentiality agreement with PHCS or otherwise prohibited from transmitting the information to the Recipient; or (iii) was within the Recipient's possession prior to its being furnished by or on behalf of PHCS, provided that the source of such information was not bound by a confidentiality agreement with PHCS in respect thereof or otherwise prohibited from transmitting the information to the Recipient.
- 3. Use of Confidential Information.** As a condition to the disclosure of the Confidential Information, the Recipient agrees to keep the Confidential Information confidential and not to disclose or otherwise use the Confidential Information for any purpose, other than for its business relationship with PHCS, without the prior written consent of PHCS. Accordingly, the Recipient agrees to treat the Confidential Information which it receives as it would its own confidential information and to take all reasonable precautions to prevent the unauthorized disclosure to any third party of any Confidential Information. The Recipient further agrees to disclose the Confidential Information only to those Representatives who need to know such information for the purpose of its business relationship with PHCS and who shall (i) be advised by the Recipient of this Agreement and the confidential and non-public nature of the Confidential Information, and (ii) agree with the Recipient to be bound by the provisions hereof. The Recipient shall be responsible for any improper use of the Confidential Information by its Representatives and agrees, at its own expense, to take all reasonable measures, including but not limited to court proceedings, to restrain its Representatives from unauthorized disclosure or use of the Confidential Information.
- 4.** In addition, without the prior written consent of PHCS, except to the extent Confidential Information may be disclosed to Representatives of the Recipient or pursuant to the exception identified in Paragraph 7, neither the Recipient nor its Representatives will disclose to any person (which shall be broadly interpreted to include, without limitation, any corporation company, group, partnership, trust, association or individual) (i) that the Confidential Information has been made available to them, (ii) that they have inspected any portion thereof, (iii) the existence of, or any of the terms, conditions or other facts with respect to, this Agreement or its business relationship with PHCS.
- 5. No Warranty.** Neither PHCS nor its Representatives make any representations or warranties as to the accuracy or completeness of the Confidential Information. Each Recipient agrees that neither PHCS nor any of its Representatives shall have any liability to the Recipient or its Representatives resulting from the use of the Confidential Information supplied by PHCS or any of its Representatives.
- 6. No License or Transfer.** The Confidential Information disclosed shall at all times remain the property of PHCS. No license of any trade secrets, copyrights, patents or other rights is granted by this Agreement or by any disclosure of Confidential Information.
- 7. Destruction/Return of Confidential Information.** Upon PHCS' request, all Confidential Information (and all copies, extracts or other reproductions in whole or in part thereof), whether in writing or stored or maintained in or by electronic, magnetic or other means, media or devices, shall be returned or destroyed (such destruction to be certified in writing) by an authorized officer and not retained in any form or for any reason.

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8. Compelled Disclosure. Notwithstanding anything to the contrary set forth herein, in the event that the Recipient or its Representatives are requested or become legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information or take any other action prohibited hereby, the Recipient shall provide PHCS with prompt written notice so that PHCS may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not sought or obtained or that the compliance with the provisions of this Agreement is waived, the Recipient agrees that it will furnish only that portion of the Confidential Information which, in the reasonable opinion of its counsel, the Recipient is compelled to disclose without standing liable for contempt or suffering other censure or penalty. The Recipient further agrees that it will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information which subject to the compelled disclosure.
9. Indemnification. The Recipient agrees to indemnify and hold harmless PHCS, and its affiliates, and its and their shareholders, directors, officers, members, managers, partners, employees and agents (collectively, the "Indemnified Parties") from and against any and all costs and expenses (including without limitation reasonable attorneys' fees) incurred by or on behalf of any Indemnified Party arising out of any breach of any provision of this Agreement by the Recipient or its Representatives.
10. Injunctive Relief. The parties acknowledge and agree that, in the event of any breach of this Agreement, PHCS might be irreparably harmed and unable to be made whole by monetary damages. It is accordingly agreed that PHCS, in addition to any other remedy to which it may be entitled in law or equity, will be entitled to seek an injunction to remedy breaches of this Agreement and/or to compel specific performance of this Agreement.
11. Term. The Recipient's obligations of confidentiality and nondisclosure shall survive termination of PHCS' business dealings with the Recipient.
12. Miscellaneous. It is understood and agreed that no failure or delay by PHCS in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder. This Agreement (i) shall not be assigned by any party without the prior written consent of the other party; (ii) cannot be amended, nor can any of its provisions be waived, except by a writing signed by the parties; and (iii) shall be binding on and inure to the benefit of the parties and their respective successors and assigns. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey without giving effect to the conflict of laws provisions thereof. This Agreement represents the entire agreement among the parties relating to the treatment of Confidential Information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under their respective hands as of the day and year first above written.

## RECIPIENT

Signature: \_\_\_\_\_

By Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## PRINCETON HEALTHCARE SYSTEM

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

