

**CONFIDENTIALITY AGREEMENT**  
**(including exclusivity)**

THIS AGREEMENT, dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ non-profit public benefit corporation (“System”), and \_\_\_\_\_, a \_\_\_\_\_ nonprofit public benefit corporation (“Hospital”).

WHEREAS, System and Hospital desire to explore the possibilities for potential contractual and organizational relationships and to engage in a dialogue and strategic plan process regarding potential collaborative relationships between them.

WHEREAS, in connection with exploring possible arrangements, each party will share with the other certain confidential information relating to its existing operations; and

WHEREAS, each party desires to protect the confidentiality of these discussions and of the proprietary non-public information disclosed by each party to the other.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained herein, and as a material inducement to each party to engage in these discussions and to deliver requested confidential information, the parties agree as follows:

**1. Period of Discussions.** In consideration of the time, effort and expense to be incurred by System in the course of these discussions, Hospital agrees to work exclusively with System for a period of \_\_\_\_\_(\_\_\_\_) days commencing on the day after the date of this Agreement regarding potential arrangements between System and Hospital. Accordingly, during this \_\_\_\_-day period of exclusive discussions, Hospital will not offer, solicit offers, or enter into discussions or negotiations with any party other than System regarding ownership, management, leasing and/or operation of Hospital or substantial assets or business of Hospital. The parties each authorize their respective representatives to participate in these discussions and in the exchange of information pursuant to this Agreement. Each party will require its representatives to observe and comply with the terms, covenants and conditions of this Agreement.

**2. Exchange of Information; Use.** To the extent permitted under the applicable federal and state anti-trust laws, each party (a “Disclosing Party”) shall furnish to the other (a “Receiving Party”) certain organizational, operational, financial, utilization, legal, real estate, relationship and other information which the parties mutually determine is relevant to these discussions. At the conclusion of the examination of the furnished information, or sooner if the Disclosing Party so requests, all Disclosing Party information and all copies thereof shall be promptly returned or destroyed by the Receiving Party. Disclosures to legal counsel, accountants and/or consultants retained by a Receiving Party to evaluate: (a) the merits of the Receiving Party’s participation in relationships under discussion with the Disclosing Party; or (b) information received from the Disclosing Party or its representatives, will not be considered a breach of any

provision of this Agreement, so long as the legal counsel, accountants and/or consultants agree to comply with the confidentiality restrictions set forth herein. The Receiving Party agrees to use the information provided by the Disclosing Party solely in connection with evaluation of the relationships under discussion and to engage in a joint planning process toward determining whether to proceed with any relationship with the Disclosing Party.

**3. Confidentiality.** The Receiving Party agrees to not disclose in any manner, except as required by law, to any outside party (other than its attorneys, accountants and/or consultants) any information provided by the Disclosing Party or its representatives either orally or in writing (the "Information"). This duty of confidentiality shall not apply to Information which is ascertainable from public or published sources or which was known prior to disclosure or which is obtained from other persons not known to the Receiving Party to be bound by an obligation of confidentiality. The Information will be utilized solely for the purposes set forth in this Agreement. This duty of confidentiality shall survive expiration of the period of discussions established hereunder and continue for a period of five (5) years thereafter. In the event a Receiving Party is required by deposition, subpoena, or similar legal process to disclose any Information exchanged pursuant to this Agreement, it shall immediately notify the Disclosing Party so that appropriate action may be taken to attempt to prevent disclosure of the Information. In the event that a protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Agreement, the Receiving Party may furnish that portion of the Information which it is advised by counsel is legally required.

**4. Ownership.** Each party hereby acknowledges that all of the Information disclosed to the other party or learned from either party is and shall continue to be the exclusive proprietary property of the Disclosing Party, whether or not such Information was intentionally disclosed to or entrusted to the custody of the Receiving Party. Each Receiving Party further hereby acknowledges that all Disclosing Party Information to which it shall hereafter have access or which it shall hereafter learn, shall have been disclosed to it solely by virtue of the discussions contemplated by this Agreement.

**5. Disclosure.** It is agreed that confidentiality is both appropriate and necessary to achieve the intent of the parties. If it is determined that the existence of this Agreement, its contents, and/or the content of the discussions need to be made public, a short statement or outline will be agreed upon by the parties. All inquiries regarding this Agreement and the discussions will be referred to \_\_\_\_\_ on behalf of Hospital and to \_\_\_\_\_ on behalf of System.

**6. No Waiver; Injunctive Relief; Governing Law.** It is understood and agreed that no failure or delay 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 thereof or the exercise of any right, power and privilege hereunder. It is further understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by a party or by its representatives or employees and that each party shall be entitled to specific performance and injunctive relief as remedies for any breach by the other party. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in

addition to all other remedies available at law or equity. This Agreement shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_ applicable to agreements entered into and to be performed within such state.

7. **Costs and Expenses.** Each of the parties will be responsible for and bear all of its own costs and expenses (including any broker's or finder's fees and the expenses of its representatives) incurred at any time in connection with this Agreement or pursuing or consummating any relationship or transaction arising from the discussions engaged in pursuant to this Agreement.

8. **No Further Obligation.** This Agreement does not obligate any of the parties to enter into any further agreement or to enter into or consummate any transaction or relationship.

9. **Entire Agreement; Amendment; Assignment.** This Agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements, and understandings relating to the subject matter hereof. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by the party against whom enforcement of such modification, amendment, or waiver is sought. This Agreement may not be assigned by any party without the prior written consent of the other party.

10. **Authority.** Each party warrants that it has the authority to enter into this Agreement for itself and its corporate affiliates and subsidiaries.

11. **Severability.** In the event any provision or portion of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

**[The rest of this page has been intentionally left blank. Signature page follows]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

“Hospital”:  
[NAME OF HOSPITAL]

“System”:  
[NAME OF SYSTEM]

By: \_\_\_\_\_  
\_\_\_\_\_, President and CEO

By: \_\_\_\_\_  
\_\_\_\_\_, President and CEO