

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement, dated and effective _____, 20xx is between _____, located at _____, on behalf of itself and its affiliates and subsidiaries (collectively, “_____”), and Rutgers, The State University of New Jersey, a body corporate and politic and an instrumentality of the State of New Jersey, located at 7 College Avenue, New Brunswick, NJ 08901 for itself and on behalf of the School of Health Professions, an unincorporated entity within the Rutgers Biomedical and Health Sciences organization unit (“SHP”) (_____ and SHP shall hereinafter be referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, the Parties will be engaged in discussions and negotiations regarding possible arrangements between them (the “Discussions”); and

WHEREAS, each of the Parties has developed and possesses certain valuable confidential and proprietary information not readily available to the general public relating to its plans, services, and operations, which information may be disclosed to, or become known by, the other Party and its agents and representatives during the Discussions; and

WHEREAS, the Parties each desire to protect the confidential and proprietary nature of such information.

NOW, THEREFORE, in order to facilitate the Discussion and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. The term “Confidential Information” means all information disclosed subsequent to the Effective Date of this Agreement by either Party to the other Party or its employees, officers, directors, shareholders, attorneys, representatives or agents (collectively, “Agents”) in any manner, whether orally, visually or in tangible form (including, without limitation, documents, drafts and computer readable media), and is any information regarding the disclosing Party’s business, operations, strategic plans, budgets, financings, revenues, expenses, assets, liabilities, other financial information, medical staff, employees, contractors, faculty, students, contracts, policies, procedures, and other data, management methods, know-how, trade secrets, instruction manuals, market analyses, financial and operational controls and procedures, as well as all proposed terms, draft documents, and other material generated as part of the Discussions, and all other proprietary information developed and used by either Party in its operation (as conducted or as proposed to be conducted), which has not been publicly disclosed.
2. Confidential Information shall not include any information that the Party receiving such information can demonstrate:
 - (a) was in the receiving Party’s lawful possession prior to disclosure by the disclosing Party hereunder;

- (b) has been “Publicly Disclosed”, which for purposes of this Agreement shall mean information that was known or available to the general public at the time of disclosure to the receiving Party hereunder, or becomes known or available to the general public after disclosure to the receiving party through no act in violation of law or of this Agreement by the receiving Party or its Agents;
- (c) has come into the possession of the receiving Party from a third party who receiving Party reasonably believes, after due inquiry, is under no obligation to the disclosing Party to maintain the confidentiality of such information; or
- (d) was developed or acquired by the receiving Party independently of, and without material reference to, any Confidential Information.

If a particular portion or aspect of Confidential Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such Confidential Information shall nonetheless remain subject to all of the provisions of this Agreement.

3. Each Party shall use all Confidential Information of the other Party solely for the purpose of conducting the Discussions and developing and evaluating possible negotiated transactions/arrangements among the Parties (the “Permitted Purpose”).
4. Each Party shall disclose the other Party’s Confidential Information only to those of its Agents who need to know such Confidential Information for the Permitted Purpose. Each Party also shall require all of its Agents who have access to the other Party’s Confidential Information to comply with, and be bound by, the applicable provisions of this Agreement (including but not limited to all non-disclosure and non-use provisions). Neither Party or their Agents shall disclose the other Party’s Confidential Information to any third parties, except with the prior written consent of the other Party or as otherwise expressly permitted herein; provided, however, that either Party may make such disclosure if it has received written advice from its outside counsel that such disclosure must be made to avoid a violation of law or there is an order or judgment by a court or competent jurisdiction or with the other party’s prior written consent (in which event such written advice, order or judgment shall be made available to the other Party as much in advance of such disclosure as is feasible under the circumstances).
5. Except as expressly permitted herein, neither Party nor their Agents shall disclose or use the other Party’s Confidential Information.
6. Each Party agrees not to reproduce or copy by any means any Confidential Information of the other Party without the other Party’s prior written permission, except as reasonably required to accomplish the Permitted Purpose.
7. Neither Party shall remove any proprietary rights legend from materials disclosing or embodying Confidential Information of the other Party.

8. Each Party acknowledges that Confidential Information may still be under development, or may be incomplete or inaccurate in whole or in part, and that Confidential Information may relate to products, services, or strategic plans that are still under development. Neither Party makes any representations or warranties regarding the accuracy or completeness of any Confidential Information. Only those representations and warranties which are made in final definitive agreements between the parties, when and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.
9. Neither Party has any obligation under, or by virtue of, this Agreement to enter into any other agreement, relationship, or transaction with the other Party or with any third party.
10. Each Party agrees that, at any time upon prior written request of the other Party, it shall promptly deliver to the requesting Party all Confidential Information of the requesting Party in its possession or control (and all paper, electronic and other copies thereof), or, at its option, destroy all such Confidential Information that may be found in analyses, compilations, studies or other documents prepared by each Party and its Agents for its own use in analyzing or evaluating information furnished by the other Party may be held by receiving Party; provided it is kept subject to the terms of this Agreement.
11. The Parties acknowledge that it will be impossible to measure the damages that would be suffered if either party fails to comply with this Agreement, and that in the event of any such failure or threatened failure, the other Party will not have an adequate remedy at law. The other Party shall, therefore, be entitled (in addition to any other rights and remedies available to it under law) to obtain specific performance of the breaching Party's obligations hereunder and to obtain immediate injunctive relief. Neither Party shall urge, as a defense to any proceeding for such specific performance or injunctive relief, that the other Party has an adequate remedy at law.
12. The rights and obligations herein shall bind the Parties and their respective successors and assigns.
13. This Agreement expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, commitments and understandings, whether written or oral, with respect to such subject matter. Any modifications of, changes to, or purported waivers of any of the provisions of this Agreement shall not be effective unless set forth in writing and signed by the Parties.
14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same Agreement.
15. Any notice under this Agreement shall be in writing and sent by overnight mail or certified mail, return receipt requested to a Party at the address above. A copy of any notice to _____ shall be sent simultaneously to _____, General Counsel at _____ . A copy of any notice to SHP shall be sent simultaneously to John J. Hoffman, Esq., Senior Vice President and General Counsel,

Office of Senior Vice President and General Counsel, 7 College Avenue, New Brunswick,
New Jersey 08901-1258.

16. The failure of any Party to insist, in any one or more instances, upon performance of any terms or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition.

By:
Title:

**RUTGERS, THE STATE UNIVERSITY OF
NEW JERSEY**

By: Jeffrey J. DiGiovanni, PhD
Title: Dean
Rutgers - School of Health Profession