

**WESTFIELD MEMORIAL HOSPITAL NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement ('Agreement') is between Westfield Memorial Hospital ("Westfield") and \_\_\_\_\_ ("\_\_\_\_\_"). Westfield and \_\_\_\_\_ are sometimes also referred to individually as the 'Company' and collectively as the "Companies." This Agreement is entered into and is effective as of the latter of the signature dates at the end of this Agreement.

1. Purpose of Agreement. Westfield and \_\_\_\_\_ are entering into this Agreement to set forth the terms under which (check one or both)

<input type="checkbox"/> Westfield will disclose Confidential Information to _____; and/or
<input type="checkbox"/> _____ will disclose Confidential Information to Westfield

in connection with a possible business transaction between the parties concerning (briefly describe business transaction) (the "Business Purpose"): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Company disclosing Confidential Information under this Agreement will be identified in this Agreement as the Discloser, and the Company receiving the Confidential Information will be identified in this Agreement as the Recipient.

2. To Whom This Agreement Applies. The parties intend that this Agreement shall apply to the Discloser and Recipient, all their subsidiaries and affiliates and all their employees, agents and contractors who come into contact with the Confidential Information. The Recipient shall be responsible for any violation of this Agreement by any of its employees, agents and contractors who come into contact with the Confidential Information. The parties warrant to each other that they have in place, or will have in place before performance of the underlying Business Purpose agreement commences, written agreements with each of their employees, agents and contractors who will come into contact with the Confidential Information confirming such employee's, agent's or contractor's agreement to be individually bound by the terms of this Westfield Memorial Hospital Non-Disclosure Agreement.

3. Definition of Confidential Information. The parties agree:

- a) "Confidential Information" means non-public information of competitive or commercial value to the Discloser including, but not limited to, the terms and conditions of this Agreement, the existence of the discussions between the parties, trade secrets of the each Company, any nonpublic information relating to each party's service and product plans, designs, ideas, concepts, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how and any other nonpublic technical or business information of each party. Confidential Information also includes personal, financial and medical information regarding Westfield's patients and medical staff and both Companies' employees.
- b) The Discloser shall use commercially reasonable efforts to designate (by legend or other reasonable means) Confidential Information as such in writing before or, if not practical, within ten (10) days after disclosure to the Recipient. The following types of information, however, constitute Confidential Information even if not designated as such: (i) strategic business plans or financial information; (ii) personal, financial and medical information regarding either Company's employees; (iii) personal, financial, and medical information regarding Westfield's patients and medical staff; and (iv) other information which a reasonable person would recognize as confidential in nature.
- c) Confidential Information does not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach by the Recipient; (ii) is rightfully in the possession of the Recipient without an obligation of confidentiality prior to disclosure under this Agreement; (iii) is independently developed by the Recipient without the use of any Confidential Information of the Discloser; or (iv) is rightfully obtained from a third party who provides it without a confidentiality obligation.

4. Protection of Confidential Information. The Recipient will hold the Confidential Information in confidence and will exercise reasonable care to protect it, using not less than the degree of care taken by the Recipient in the protection of its own confidential information. Without Discloser's written permission, Confidential Information will not be (i) disclosed to anyone other than Recipient's employees and representatives who need to know it for the Business Purpose, or (ii) used for the personal benefit of Recipient or any third party. Recipient may, however, disclose Confidential Information to the extent required by subpoena or court order. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.
5. Limited Purpose. The following limitations apply to the parties' rights and duties under this Agreement:
  - a) This Agreement does not grant to the Recipient any rights, by license or otherwise, to any of the Discloser's Confidential Information except as expressly set forth in this Agreement.
  - b) The receipt of information pursuant to this Agreement will not preclude, or in any way limit, the Recipient from: (i) providing to others products or services which may be competitive with products or services of the Discloser; (ii) providing products or services to others who compete with the Discloser; or (iii) assigning its employees in any way it may choose.
  - c) Neither this Agreement nor the disclosure or receipt of Confidential Information shall obligate either Company to enter into any subsequent agreement with the other.
6. No Warranty. Except as is specifically agreed otherwise, all Confidential information is provided "AS IS" and without any warranty of any kind, express, implied or otherwise, including but not limited to any warranties regarding its accuracy, completeness, performance or non-infringement of third party rights or its merchantability or fitness for a particular purpose.
7. Return of Documents. Within ten (10) business days of receipt of a written request by the Discloser, the Recipient will return to the Discloser all documents and copies thereof containing Confidential Information of the Discloser. "Documents" means all information fixed in any tangible medium of expression in whatever form or format.
8. Term of Confidentiality Obligations. The confidentiality obligations set forth above will remain in effect for five (5) years from the date of the last disclosure of Confidential Information under this Agreement and the date of the underlying Business Purpose agreement, and any amendments or renewals thereof, whichever is longer. The remaining provisions of this Agreement will survive termination of the confidentiality obligations.
9. Whistleblowers. With intent to be legally bound, all entities and persons to whom this Agreement applies irrevocably assign to United Way of Northern Chautauqua County all claims, causes of action, compensation, awards, rewards and remuneration of every nature to which they might otherwise be entitled arising from any type of whistleblower claim or proceeding relating to the Confidential Information.
10. Breach. Recipient acknowledges that a breach of this Agreement may cause irreparable harm to Discloser, and that Discloser may obtain equitable relief to restrain a breach, in addition to recovery of any damages caused by the breach.
11. General. The parties further agree:
  - a) This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. It may not be amended except by the written agreement signed by authorized representatives of both parties.
  - b) This Agreement may be executed in counterparts.
  - c) This Agreement will be governed by the substantive laws of the State of New York.
  - d) Neither party may assign this Agreement, directly or indirectly (through acquisition, merger or otherwise), without the prior written consent of the other party, and any attempt to do so will be null and void.

- e) The relationship of the parties is that of independent contractors, and not of agency, partners, joint ventures or the like.
- f) Neither Company shall use the name, logo, likeness or trademarks of the other for any advertising, marketing or endorsement purposes without the prior written consent of that party. Nor shall either Company make any reference to the other by name or description in any materials it develops or in any verbally communicated promotions without the prior written consent of that party. Finally, the Company other than Westfield which is a party to this Agreement shall not, without the prior written consent of Westfield, use any materials developed at Westfield, or in connection with Westfield, that would allow the reader/user to conclude that matters detailed in the material were developed or used at Westfield.

Understood and, With Intent to be Legally Bound, Agreed to by the duly authorized representatives of the Companies:

Westfield

COMPANY –

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

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

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

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

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

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

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

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