

Non-Disclosure Agreement

This Non-Disclosure Agreement ("Agreement") is entered into effective as of _____, 2020 (the "Effective Date"), by and between Winchester Physician Hospital Organization, Inc. ("WinPHO"), with a principal address at 41 Highland Ave, Winchester, MA 01890, and _____ with a principal address at _____ .WinPHO and _____ are hereinafter sometimes collectively referred to as the "Parties" and individually referred to as a "Party." In this Agreement, with regard to each instance of disclosure of Confidential Information (as hereinafter defined), the Party which discloses the Confidential Information will be referred to as the "Disclosing Party", and the Party to which the Confidential Information is disclosed will be referred to as the "Receiving Party".

WHEREAS, The Parties have entered into discussions concerning bylaws, and other policies and guidelines for the purpose of joining the Winchester PHO as participants of the managed care contracts (the "Discussions"); and

WHEREAS, The Parties are willing to exchange Confidential Information on the terms and conditions set forth herein in connection with the Discussions:

NOW THEREFORE, in consideration of the mutual premises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. As used herein, "Confidential Information" means all information provided since the Effective Date by a Disclosing Party or its Representatives (as hereinafter defined) to the Receiving Party, in any form now known or later invented, including oral, written and machine readable form, in connection with the Discussions.
2. In consideration of the Disclosing Party providing the Receiving Party with Confidential Information, the Receiving Party agrees as follows:
 - a. all Confidential Information will be held and treated by the Receiving Party, its affiliates, associates, directors, officers, employees, advisors, independent contractors, agents and representatives (collectively, its "Representatives") as confidential and will not be disclosed to any third parties without the prior written consent of the Disclosing Party;
 - b. the Receiving Party shall use at least the same degree of care to maintain the confidentiality of the Confidential Information as it uses in maintaining the confidentiality of information which it owns and considers to be confidential, but in any event shall use at least a reasonable degree of care;
 - c. Confidential Information shall be used only in furtherance of the Discussions between the Parties and shall not at any time be utilized in any way directly or indirectly detrimental to the Disclosing Party;

- d. the Receiving Party shall restrict disclosure of the Confidential Information solely to those Representatives having a need to know such Confidential Information in connection with the Discussions;
 - e. the Receiving Party shall advise each such Representative, before such Representative receives access to Confidential Information, of the obligations of the Receiving Party under this Agreement and require such Representative to execute an agreement substantially in the form of this Agreement to maintain those obligations. In any event, the Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives, and the Receiving Party agrees, at its sole expense, to take all reasonable measures, including, but not limited to, court proceedings, to restrain its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information; and
 - f. upon fifteen (15) days following a written request from the Disclosing Party, the Receiving Party shall return to the Disclosing Party all originals and copies of the Confidential Information or confirm to the Disclosing Party, in writing, that it has caused the destruction of all such materials; provided that the Receiving Party (and its Representatives) may retain their work product as long as they maintain its confidentiality in accordance with this Agreement.
3. This Agreement shall not apply to information that:
- a. Was lawfully known to the Receiving Party prior to the Effective Date and was not acquired or obtained from the Disclosing Party;
 - b. Is lawfully obtained by the Receiving Party from a third party which, as known to the Receiving Party after reasonable inquiry, is not prohibited from transmitting the information to the Receiving Party by a contractual, legal or fiduciary obligation to or on behalf of the Disclosing Party;
 - c. Is or becomes generally known or available other than by unauthorized disclosure;
 - d. Is independently developed by the Receiving Party; or
 - e. Is generally disclosed by the Disclosing Party to third parties without any obligation of confidentiality on the part of such third parties.
4. As between a Disclosing Party and the Receiving Party, all Confidential Information disclosed by a Disclosing Party shall remain the sole property of the Disclosing Party.
5. Nothing herein shall be construed as an obligation to enter into a subcontract or contract or to result in a claim by either Party for reimbursement of any costs from the other Party.

6. THE RECEIVING PARTY ACKNOWLEDGES AND AGREES THAT THE CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS. THE DISCLOSING PARTY DOES NOT MAKE ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY CONFIDENTIAL INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE DISCLOSING PARTY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO ANY CONFIDENTIAL INFORMATION PROVIDED HEREUNDER. THE DISCLOSING PARTY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF SUCH INFORMATION.

7. In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any Confidential Information, the Receiving Party will immediately provide the Disclosing Party with verbal and written notice of any such request or requirement so that the Disclosing Party may seek an appropriate protective order, seek with the Receiving Party's cooperation to narrow the request or demand, or waive the Receiving Party's compliance with the provisions of this Agreement. Failing the entry of a protective order or the receipt of a waiver, the Receiving Party may disclose only that portion of the Confidential Information which the Receiving Party's counsel advises the Receiving Party in writing that the Receiving Party is compelled to disclose, and the Receiving Party will exercise its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. In any event, the Receiving Party will not oppose any attempt by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

8. In the event of an actual or threatened breach of this Agreement, the Parties agree that money damages would not be a sufficient remedy and that the Disclosing Party shall be entitled to specific performance or other equitable relief, including preliminary and final injunctions, enjoining and restraining such actual or threatened breach, in addition to any other rights and remedies available to the Disclosing Party at law or in equity.

9. The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without resort to its conflict of laws principles.

10. This Agreement is binding upon the Parties and their respective Representatives. This Agreement will continue indefinitely unless terminated on fifteen (15) days written notice by either Party. Notwithstanding the foregoing, the obligations relating to confidentiality and the restrictions on the use of the Confidential Information shall survive termination of this Agreement for any reason.

11. Any notice required hereunder shall be deemed given: (a) three (3) days after being deposited in the United States Mail, postage prepaid, certified mail return receipt requested; (b) on the day of its delivery by hand; or (c) on the next day after being deposited with a reputable national overnight delivery service that provides written confirmation of receipt, in

each case to the Party at the address set forth above or to such other address as said Party shall have indicated by prior written notice in accordance herewith.

12. At all times during the term of this Agreement, the Parties shall act as independent contractors. Neither party shall be authorized to act on behalf of or represent the interests of the other Party.

13. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter thereof. Any amendments to this Agreement shall be in writing and signed by both Parties. This Agreement shall not be assignable by either Party and neither Party may delegate its duties under this Agreement, without the prior written consent of the other Party. If any provision of this Agreement shall to any extent be found to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and any such invalid or unenforceable provision shall be reformed as to be valid and enforceable to the fullest extent permitted by law consistent with the intent of this Agreement. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The executed counterparts of this Agreement may be delivered by facsimile or other electronic means by any Party to another Party, and the receiving Party may rely on receipt of such document so delivered as if the original had been received.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

Winchester Physician Hospital Organization, Inc.

By: _____ Date: _____

Name:

Its:

By: _____ Date: _____

Name:

Its: