

**VANDERBILT UNIVERSITY  
CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement is entered into effective this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, by and between **\*\*SUPPLIER\*\***, a [corporation, partnership, limited liability company or partnership, etc...] duly incorporated under the laws of [State and/or Country] with a principal place of business at [Address], (hereinafter referred to as "Supplier"), and **VANDERBILT UNIVERSITY**, a Tennessee not for profit corporation, located for purposes of this Agreement at 2201 West End Avenue, Nashville, TN 37235 (hereinafter "Vanderbilt") Each of Supplier and Vanderbilt are sometimes referred to herein as a "Party" and collectively as the "Parties".

**WHEREAS**, Vanderbilt desires to discuss with Supplier the possibility of entering into a business arrangement involving the procurement of products and services from Supplier (such arrangement and any discussions or negotiations in connection with such an arrangement to be referred to herein as the "Transaction"), and both parties expect to exchange certain confidential information during the course of such Transaction;

**WHEREAS**, each Party is willing to keep confidential the information received from the other Party in connection with such Transaction in accordance with the provisions of this Agreement;

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

- 1. Exchange of Information.** In connection with the Transaction, Vanderbilt and the Supplier may furnish each other with certain financial, strategic, marketing, surveys, organizational, technical, client, patient and other sensitive information (referred to herein as "Confidential Information"). Confidential Information shall include not only written information but also information transferred orally, visually, electronically or by any other means, as well as any compilations, interpretations, notes, analyses and summaries thereof prepared by or on behalf of both Parties which reflect the Confidential Information. The fact that such information has been provided, that such a Transaction is being considered by the Parties, and that discussions or negotiations have occurred or may occur will also be considered Confidential Information for purposes of this Confidentiality Agreement, as will any specific terms, conditions or results of the Transaction.
- 2. Restricted Use of Information.** Both Parties shall keep all Confidential Information secret and confidential and, without limiting the foregoing, shall not disclose such information to any person except as otherwise expressly permitted by the terms of this Confidentiality Agreement. It is understood that both Parties may disclose Confidential Information to those of its employees, officers, directors, representatives or agents (collectively "Representatives") who (i) require such information for the purpose of the Transaction (but, to the extent practicable, only such part of the Confidential

Information that is so required), and (ii) are advised of the confidential nature of the Confidential Information and the terms and restrictions provided for in this Confidentiality Agreement, and agree to abide by the same. Both Parties agree neither Party shall use any of the Confidential Information for any reason or purpose other than in regard to the Transaction or in any way detrimental to or competitive with either Party or their respective trustees, directors, officers, employees or agents (it being acknowledged that any use other than in connection with the Transaction shall be deemed detrimental). Both Parties agree to be responsible for enforcing the terms of this Confidentiality Agreement as to its Representatives and to take such action, legal or otherwise, as may be necessary to cause them to comply with the terms and conditions of this Confidentiality Agreement and thereby prevent any disclosure of the Confidential Information by any of its representatives (including all actions that either Party would take to protect its own trade secrets and confidential information). The term "person" as used in this Confidentiality Agreement shall include, without limitation, any corporation, company, partnership, individual, or other entity.

3. **Exceptions.** None of the foregoing obligations and restrictions shall apply to that part of the Confidential Information that either Party can demonstrate by written documentation (a) was or is generally available to the public other than as a result of a disclosure by either Party or (b) was or is available to either Party on a non-confidential basis prior to its disclosure.
4. **Reliance.** The Parties make no representation or warranty as to the accuracy or completeness of the Confidential Information, and the Parties shall have no liability to each other resulting from any use of the Confidential Information. Only those representations and warranties made in any final definitive agreement between the Parties, when, as and if executed, and subject to such qualifications, limitations, exceptions and restrictions as may be specified therein, shall have any legal effect as between the Parties hereto.
5. **Compelled Disclosure.** Either Party may disclose Confidential Information to the extent such disclosure is required by law. In the event either Party becomes legally compelled to disclose any Confidential Information, the disclosing Party shall provide the other Party with prompt notice in advance of any such disclosure so that the non-disclosing Party may seek a protective order or other appropriate remedy.
6. **Return of Information.** All information furnished under this Agreement shall remain the property of the disclosing Party and shall be returned to it or destroyed or purged promptly upon request. All documents, memoranda, notes and other tangible embodiments whatsoever prepared by the receiving Party based on or which includes Confidential Information shall be destroyed to the extent necessary to remove all such Confidential Information upon the disclosing Party's request. All destruction under this Paragraph 6 shall be certified in writing to the disclosing Party by an authorized officer of the receiving Party.
7. **No Obligation to Consummate A Transaction or Negotiate or Enter Into a Definitive Agreement.** Each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party with regard to the Transaction and to terminate discussions and negotiations at any time. Without limiting the preceding sentence, the Parties recognize and understand that nothing in this Confidentiality

Agreement shall require either Party to enter into any transaction or to execute any definitive agreement with respect to a transaction.

8. **Remedies.** Each Party acknowledges that its breach of this Agreement may result in immediate and irreparable harm to the disclosing Party, for which there will be no adequate remedy at law, and the disclosing Party shall be entitled to equitable relief to compel the receiving Party to cease and desist all unauthorized use and disclosure of the disclosing Party's Confidential Information.

9. **Miscellaneous.**

- a. **Modification.** The agreements set forth in this Confidentiality Agreement may be modified or waived only by a separate writing signed by the Parties expressly modifying or waiving such agreements.
- b. **Waiver.** The rights and remedies of the Parties to this Confidentiality Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Confidentiality Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Confidentiality Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing and signed by the other Party; (ii) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Confidentiality Agreement.
- c. **Severability.** The invalidity or unenforceability of any provision of this Confidentiality Agreement shall not affect the validity or enforceability of any other provisions of this Confidentiality Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Confidentiality Agreement are determined to be unenforceable by reason of their extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Confidentiality Agreement.
- d. **Costs.** If either Party is held by any court of competent jurisdiction in any action or suit to be in violation, breach, or nonperformance of any of the terms of this Confidentiality Agreement, then it shall pay all costs of such action or suit, including reasonable attorneys' fees.
- e. **Section Headings.** The headings of sections in this Confidentiality Agreement are provided for convenience only and shall not affect its construction or interpretation.
- f. **Governing Law.** This Confidentiality Agreement shall be governed by the laws of the State of Tennessee without regard to conflicts of laws principles. The Parties agree and consent to venue in any court of competent jurisdiction sitting in Davidson County, Tennessee.

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

h. **Notices.** All notices or other communication provided for in this Confidentiality Agreement shall be given to the Parties addressed as follows, or to such other addresses as the Parties may from time to time notify each other of in writing:

**Supplier:**           Supplier Name  
                          Address 1  
                          Address 2  
                          City State Zip  
                          Attn.

**Vanderbilt:**       Vanderbilt University  
                          Procurement & Disbursement Services  
                          110 21<sup>st</sup> Avenue South,  
                          Baker Building, Suite 1110  
                          Nashville, TN 37203-2406  
                          Attn: Charles D. Nicholas

**With a copy to:**   Vanderbilt University  
                          Office of the General Counsel  
                          Loews Vanderbilt Plaza  
                          2100 West End Avenue, Suite 750  
                          Nashville, Tennessee 37203  
                          Attn: Julia S. Faber, Esq.

i. **Entire Agreement.** This Confidentiality Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter herein and supersedes any other agreements, restrictions, representations, or warranties, if any, between the Parties hereto with regard to the subject matter herein.

IN WITNESS WHEREOF, the Parties have caused their duly authorized officials to execute this Confidentiality Agreement, effective as of the date first above written.

**Vanderbilt University**

**\*\*\*Supplier\*\*\***

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

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

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

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

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

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

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