

Exhibit 3- Nondisclosure Agreement (NDA)
RFQ: Surgical Center of Excellence (COE)

THIS CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT ("Agreement") is effective as of the date executed by the Bidder identified below and is by and between the State of New Jersey, Department of the Treasury, Division of Pensions and Benefits ("Disclosing Party" or "Division" or "State"), as the administrator for the Surgical COE for the State Health Benefits Program ("SHBP"), whose offices are located at 50 West State Street, Trenton, New Jersey 08625, and the Bidder, its employees, agents, contractors, and legal representatives (hereinafter referred to as the "Receiving Party" or "Bidder");

WHEREAS, the Bidder intends to submit a Quote to the Division of Pensions and Benefits in response to the above referenced RFQ: Surgical Center of Excellence (COE) ("RFQ"); and

WHEREAS, the Bidder requires access to certain information as described in the *Addendum 1- Technical Questionnaire and Non-Discrimination Agreement* (hereinafter referred to as "Confidential Information") related to the administration of the SHBP; and

WHEREAS, The Division of Pensions and Benefits wishes to provide the Bidder with access to the information and documents referenced in *Addendum 1- Technical Questionnaire and Non-Discrimination Agreement*; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Bidder and the Division do hereby agree as follows:

1. "Confidential Information" means Non-Public Data, Personal Data, Personally Identifiable Information, and/or State Confidential Information as those terms are defined in the Bid Solicitation. Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information or data is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
2. The Confidential Information, is the property of the Division of Pensions and Benefits. The Receiving Party shall:
 - A. Only use the Confidential Information as provided by this Agreement;
 - B. Hold in trust any and all Confidential Information and only disclose the Confidential Information to such of its employees, officers, and/or directors who need to know it for the purpose of the business relationship discussions recited above and who have been advised of the terms of Agreement;
 - C. Protect and store the Confidential Information in a manner consistent with its own Confidential Information, but in no event with less than a reasonable standard of care;
 - D. Not reproduce the Confidential Information in any form except as required to accomplish the purpose of the business relationship discussions recited above;
 - E. Not use the Confidential Information for any purpose or in any manner that would constitute a violation of any laws or regulations, including without limitation, the export control laws of the United States;
 - F. Notify the Disclosing Party within twenty-four (24) hours after its discovery of any loss or unauthorized disclosure or use of the Confidential Information;
 - G. Have no right, title or interest to the Confidential Information except as expressly provided by this Agreement;
 - H. If applicable, not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Confidential Information;
 - I. If applicable, not remove, modify or obliterate any copyright, confidentiality, privilege, trademark or other proprietary rights notice provide with or on the Confidential Information; and
 - J. Subject to the provisions of Section 3 below, upon the written request by the Disclosing Party or upon termination of this Agreement, promptly return to the Disclosing Party all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies and reproductions of all or any part of the Confidential Information.

3. Disclosure to Third Parties.

The Receiving Party shall not disclose the Confidential Information to any third party (including the Receiving Party's agents, representatives, independent consultants/contractors and subcontractors) unless, prior to any disclosure, the Receiving Party has obtained the Disclosing Party's written permission, and the third party has executed a nondisclosure agreement provided by the Disclosing Party which requires the third-party recipient to consent to abide by the terms of this Agreement. The Receiving Party shall not allow the Confidential Information to be accessed through any other means, including but not limited to through the internet or other "shareware" distribution process.

4. Remedy.

- A. The Receiving Party acknowledges that these covenants are reasonable and necessary for the protection of the proprietary interests of the Disclosing Party. The Receiving Party also acknowledges that disclosure of Confidential Information in violation of this Agreement may cause irreparable harm to the Disclosing Party, the amount of which is difficult to estimate, making any remedy at law or in damage inadequate. The Receiving Party agrees that if there should be any breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to an ex parte injunction prohibiting such conduct on a temporary or permanent basis, specific performance or other appropriate remedy for any such breach. This right is in addition to any other remedies available to the Disclosing Party in law or equity. Notwithstanding the foregoing, all claims asserted against the State of New Jersey shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Bidder agrees to hold the State and their representatives, and agents harmless from any and all claims, including claims for attorneys' fees and costs, charges, actions, causes of action, demands, settlements, judgments, costs, penalties, expenses, damages, and liabilities of any kind or character, in law or equity, suspected or unsuspected, past or present, arising from or in connection with Bidder's breach of any provision of this Agreement.
- C. This Agreement and any litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to its conflict of laws principles. Any litigation arising out of or in connection with this Agreement shall take place in a state or federal court of competent jurisdiction in New Jersey.
- D. Disclaimer. THE DISCLOSING PARTY PROVIDES THE CONFIDENTIAL INFORMATION SOLEY ON AN "AS IS" BASIS. The Disclosing Party will not be liable for any damages arising out of the use of the Confidential Information disclosed pursuant to this Agreement. Neither this Agreement nor the disclosure of any Confidential Information pursuant thereto grants the Receiving Party any right nor license pursuant to any trademark, copyright or patent now or hereafter owned or controlled by the Disclosing Party.

5. Ownership of Confidential Information.

All rights in and title to the Confidential Information supplied remain with the Disclosing Party. Neither this Agreement nor the furnishing of any Confidential Information will be construed as granting to the Receiving Party (either expressly, by implication or estoppel, or otherwise) any license or immunity under any copyright, patent, trade secret, trademark, or other intellectual property right now or hereafter owned or controlled by the Disclosing Party, except solely to effectuate the purpose described in this Agreement.

6. Entire Agreement.

This Agreement is the complete agreement of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements relating to its subject matter. The provisions of this Agreement may not be modified, amended or waived except in by a written instrument signed by both Parties.

7. Assignment.

This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, except to any of its affiliates. No permitted assignment shall relieve a Party of any of its responsibilities under this Agreement. Any assignment in violation of this Section shall be void. This Agreement shall be binding upon the Parties and their respective successors and assigns.

8. Unenforceability and Severability.

If any provision of this Agreement is found to be unenforceable, that provision will be severed and the remainder of this Agreement will continue in full force and effect.

9. Notices.

Any notices required or permitted hereunder will be given in writing to the addresses specified in the introductory paragraph. Such notice will be deemed given from the date sent by hand delivery, registered or certified mail, postage prepaid, confirmed facsimile, or by commercial overnight courier with verification of receipt.

IN WITNESSETH WHEREOF, the State and Bidder have executed this Agreement, effective as of the date signed below by the Bidder.

FOR THE STATE OF NEW JERSEY - Department of the Treasury, Division of Pensions and Benefits

John D. Megariotis, Acting Director
Department of the Treasury - Division of Pensions and Benefits

FOR THE BIDDER

Signature of Bidder's Authorized Representative

Date

Print Name and Title of Bidder's Authorized Representative

Bidder's Name

Bidder's Address (Street Address)

Bidder's Address (City/State/Zip Code)