

## CONFIDENTIALITY AGREEMENT

This Confidentiality and Non-Circumvention Agreement, ("Agreement") dated \_\_\_\_\_ is entered into by and between the Prospective Buyer (name listed below) and ~~Watson Brown Sales, Inc.~~ ("Broker").

Whereas, Prospective Buyer requests to receive confidential information from Broker regarding practices for sale or other transition opportunities listed by Broker ("Practices" or "Practice");

Whereas, Prospective Buyer recognizes that any confidential information provided to him/her by Broker or its representatives regarding Practices could, if disclosed or used for another purpose other than assessing a sale or other transition opportunity, may cause damage to the Practice, owner of the Practice, and Broker;

Therefore, the Prospective Buyer and Broker agree to the following terms.

**1. Non-Disclosure of Confidential Information.** Prospective Buyer agrees that he/she will not divulge, communicate, or otherwise disclose any confidential information provided by Broker, its representatives, or clients of Broker, to anyone, including, but not limited to: other doctors, staff of the Practice, patients of the Practice, any person or entity that has knowledge of the Practice, or individuals or entities that work within the industry, with the exception of Prospective Buyer's spouse, lender, accountant, and legal counsel. Prospective Buyer further agrees and assumes full responsibility that his/her spouse, lender, accountant, and legal counsel will maintain the confidentiality of the material as well. Any breach of this Agreement by Prospective Buyer or its agents shall result in damages as set forth in Section 7.

**2. Confidential Information Defined.** Confidential information means any nonpublic information provided to Prospective Buyer by Broker, its representatives, or clients and includes, but is not limited to, the following:

- A. Intent to sell a practice, bring on a partner, or hire an associate.
- B. Financial data which may include such items as:
  - i. value of practice under consideration,
  - ii. income statement or balance sheets,
  - iii. tax returns,
  - iv. marketing plans, and
  - v. practice reports.
- C. Personal information which may include such items as:
  - i. data regarding lawsuits,
  - ii. pending lawsuits,
  - iii. malpractice suits, or
  - iv. other items personally pertaining to the owners of the Practice.
- D. List of patients, clients, or referral sources made known to Prospective Buyer.

**3. Non-Circumvention.** Prospective Buyer agrees not to circumvent Broker in any way that may interfere, interrupt, or impact the operation of the Practice. Furthermore, Prospective Buyer agrees to the following:

- A. Not to negotiate directly with Broker's client without the written permission of the Broker.
- B. Not to negotiate, submit an offer, or attempt to enter into a contractual agreement, with the landlord, lien holder, vendor, partner, patients, or staff of the Broker's Practices without the written permission of the Broker.

**4. Duties of Prospective Buyer.** Prospective Buyer agrees to the following duties and is subject to the damages set forth in Section 7 for any breach of this Agreement:

- A. Prospective Buyer shall only request and use Confidential Information for the purpose of evaluating the Practice for an acquisition, merger, partnership, or employment opportunity and not to gain a competitive advantage against the Practice.
- B. Prospective Buyer shall not use the Confidential Information to secure or divert, directly or indirectly, the Practice's referral sources, patients, or business relationships, for themselves or any affiliated person, entity, or agent that would be to the detriment of the Practice.
- C. Prospective Buyer shall not contact any staff member of Practices disclosed by Broker without the express written permission of Broker.
- D. Prospective Buyer shall not communicate directly with Practices without the express written permission of Broker. Prospective Buyer's phone calls, visits, emails, faxes, mail, and other courier services sent to Practices may be intercepted by staff of Practices, therefore all communication by Prospective Buyer shall be sent to Broker. Any attempt by Prospective Buyer to communicate directly with Practices is a breach of this Agreement.
- E. All Confidential Information disclosed shall remain the property of the providing party or its client. Prospective Buyer agrees to return any and all information provided by Broker or Practice immediately upon Broker's request. Any information provided to Prospective Buyer digitally shall be permanently deleted upon the request of Broker.
- F. Prospective Buyer acknowledges the following:
  - i. Broker is a transactional agent, does not represent the Prospective Buyer as a client, and does not have any fiduciary duties to Prospective Buyer.
  - ii. Information provided by Broker is provided by the Practice and is not audited by Broker. Broker makes no claims as to the reliability of any such data.
  - iii. It is Prospective Buyer's sole responsibility to conduct his/her own due diligence and confirm the accuracy of all information provided to Prospective Buyer by the Broker or Practice owner prior to any purchase or transaction.
  - iv. No responsibility is taken by Broker for changes in market conditions and/or the condition of the practice(s) and no obligation is assumed by Broker to revise or update data or reports to reflect events or conditions which occur subsequent to the dates such information is prepared.
  - v. No warranty is made by Broker as to the future success of any Practice and it is understood that any changes in the operation of a Practice after a change of ownership occurs may negatively impact the successful performance and profitability of the Practice.

**5. Indemnification of Broker.** Prospective Buyer indemnifies and holds Broker and Practice harmless for any claim, loss or damages including expense of defense arising from any transaction entered into by Prospective Buyer, including but not limited to court costs, reasonable attorneys' fees, and investigation expenses which, in any manner, arise out of or result from any practice

purchase, employment, affiliation, or arising from a breach by Prospective Buyer of Sections 1 or 4 of this Agreement.

**6. Notices to Prospective Buyer.** Prospective Buyer is advised to the following:

- A. Prior to any purchase, Prospective Buyer is advised to review all financial and tax records of any Practice, as well as personally perform a patient chart audit (subject to HIPAA regulations), determine active patient count, and review insurance plans, HMO contracts, and any other information needed by Prospective Buyer.
- B. Prospective Buyer acknowledges that Broker is not an accounting firm.
- C. Prospective Buyer has been advised by Broker to retain the services of competent and experienced legal counsel to review all agreements and other documents to be executed in connection with the sale/affiliation, including this Agreement. Advice or opinion on the advisability of entering into a transaction shall be provided by Prospective Buyer's legal counsel and advisors.
- D. Prospective Buyer has been advised to retain the services of an accountant to evaluate the data and the terms of the affiliation or sale including any tax consequences resulting from such sale/affiliation.
- E. All information provided by Prospective Buyer to Broker is true and correct to the best of Prospective Buyer knowledge, and may be presented to the owner of any Practice under consideration for employment or acquisition by Prospective Buyer.
- F. Upon completion of a transaction with Prospective Buyer, Broker shall be permitted to print and publish its usual and customary professional announcement of the transaction.

**7. Damages.** Prospective Buyer hereby acknowledges and agrees that any breach of this Agreement may cause permanent, irreparable damage for which no adequate remedy exists, and in the event of any such breach, the affected party shall have the right to petition any court of competent jurisdiction for injunctive or any other equitable relief and/or specific performance hereof. Prospective Buyer hereby waives, and covenants not to assert, any defenses against an action for any such relief with respect to such breach based on a claim that such relief is inappropriate.

The amount of damages, with respect to the breach of this Agreement by Prospective Buyer, may be difficult to ascertain, therefore the Prospective Buyer agrees to the assessment of liquidated damages. Prospective Buyer agrees that liquidated damages may be assessed and recovered by the Broker or an affected Practice against Prospective Buyer and its Surety, in the event of violating this Agreement, **without Broker being required to present any evidence of the amount of actual damages sustained by reason thereof. Prospective Buyer shall be liable to Broker for a minimum payment of liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00) for breach of this Agreement.** The Broker may, upon its sole discretion, pursue in excess of liquidated damages for breach of this Agreement. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement. In breach of Section 3 of this Agreement, Prospective Buyer agrees and guarantees to pay an amount equal to the commission or fee Broker should have realized in such transactions, by the person(s) or entity(ies) engaged in the circumvention for each occurrence.

**8. Lenders.** Prospective Buyer may use the lender of their choice to fund the acquisition of the Practice. Prior to submitting an offer to purchase a Practice, Prospective Buyer shall provide Broker with either a pre-approval letter from a reputable lender or proof of financing showing Prospective Buyer has available funds to purchase the Practice for the full asking price. If Prospective Buyer submits loan applications to finance the acquisition of a Practice, Prospective Buyer agrees to communicate regularly with Broker and disclose which lenders they have submitted applications with and the status of the loan during the underwriting process. Prospective Buyer authorizes their lender to communicate directly with Broker and provide updates on Prospective Buyer's underwriting process to Broker, including all loan conditions. By signing this Agreement, Prospective Buyer authorizes Broker to provide Prospective Buyer's contact information to Broker's preferred lenders. Broker's preferred lenders may provide marketing funds to Broker and ADS Transitions for referrals.

**9. Assignment of Agreement.** All of the terms of this Agreement may be assigned by Broker but not the Prospective Buyer. The Prospective Buyer agrees that the Broker may assign this Agreement to the Practice and/or the owner of the Practice whose confidential information was used or disclosed in breach of this Agreement. The assignment of this Agreement by Broker shall not in any way relieve Prospective Buyer of its obligations and liabilities under the terms of this Agreement. All terms of this Agreement shall be binding upon any and all successors and/or parties to whom this Agreement has been assigned. The Practices are an intended third-party beneficiary of this Agreement and may enforce the provisions of this Agreement that relate to the Practices as if they were a Party to this Agreement.

**10. Entire Agreement & Modifications.** This Agreement shall constitute the only agreement between Prospective Buyer and Broker with respect to the subject matter, and shall supersede all prior agreements or understandings. This Agreement may only be modified or amended in writing and signed by both parties.

**11. Governing Law.** This Agreement shall be enforced in accordance with the laws of the state of Texas.

In Witness Whereof, the parties have caused this Agreement to be executed the day and year first above written.

**Prospective Buyer:**

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

Signature: \_\_\_\_\_

Mobile Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Broker:**

Watson Brown Sales, Inc.

Signature: \_\_\_\_\_

Telephone: 469-222-3200

Fax: 800-549-5170