

Allscripts Early Adopter Program Agreement

IF YOU DOWNLOAD THE BETA SOFTWARE YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD THE BETA SOFTWARE.

This Allscripts Early Adopter Program Agreement (“**Agreement**”) is by and between you (“**Client**”) and Allscripts Healthcare, LLC (“**Allscripts**”). This Agreement shall be effective on the day you download the Beta Software (the “**Effective Date**”). Nothing herein terminates or modifies any existing written agreement(s) between the parties (“**Existing Agreement**”) and any Existing Agreement is separate from and is not part of this Agreement. In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. License to Beta Software; Implementation:

1.1. License. During the Term (defined in Section 7) of this Agreement only, Allscripts grants to Client, and Client accepts from Allscripts, a limited, personal, AS-IS, as available, non-exclusive, non-sublicensable, non-transferable license to use, and permit Authorized Users to use, the pre-release, non-generally available beta version of Allscripts software (the “**Beta Software**”) identified in the download page to which this Agreement is attached (the “**Download Page**”), in accordance with this Agreement and Allscripts’ designated documentation. Client’s license to use of the Beta Software is limited to conducting internal evaluation (and not for any other purposes). Client shall ensure that each Authorized User fully complies with this Agreement to the fullest extent it applies to Client and/or Authorized Users. “**Authorized Users**” means Client employees involved in supporting or facilitating Client’s business of providing medical care. Except as otherwise expressly permitted herein, Client shall not (i) use, authorize, distribute, or permit any third party to use, the Beta Software, (ii) use the Beta Software for the benefit of any third party; or (iii) attempt to reverse engineer or decompile any portion of the Beta Software.

1.2. Implementation. Allscripts provides no implementation services under this Agreement. If Client desires implementation services for the Beta Software from Allscripts, then Client must enter into a statement of work (including pricing) that is mutually agreed upon by the parties (the “**SOW**”) pursuant to an Existing Agreement. Client must implement the certain infrastructure, service, and third party software (identified by Allscripts on the Download Page) (the “**Required Infrastructure**”) and the Beta Software in one or more environments, along with a copy of Client’s production databases. Client shall not go live with the Beta Software in a production environment unless and until both the Client and Allscripts have mutually agreed in writing to such activation, the testing, validation and quality control phases of the implementation in the test environment are completed, and a risk mitigation plan is put in place. Client understands and accepts the risks involved in the activation of the Beta Software in a production environment and that going live with the Beta Software that may contain significant errors, omissions, or problems and poses risks to Client.

1.3. Client Environment and Metrics. Client is solely responsible for procuring, implementing, and maintaining all hardware, software, services (including all Internet access services and other telecommunication services), equipment, technology, data, operating platforms, facilities, systems and tools required or used in connection with Client’s set-up, integration, interfacing to and from, use and support of the environment to be used by Client (collectively, “**Third Party Products**”).

2. Testing and Feedback; Confidentiality; Support

2.1. Unauthorized Access. Client shall immediately notify Allscripts of any unauthorized access or use of any portion of the Beta Software or any confidential information of Allscripts (“**CI**”, as defined in Section 2.4). Client shall not provide any data or content that is tortious or unlawful or violates any third party rights or interest or includes any disabling devices, viruses, or other malicious code.

2.2. Testing and Feedback. Client shall provide Feedback to Allscripts (and only to Allscripts), including reporting any problems with the Beta Software and offer only any suggestions on improvements to Allscripts. Client agrees that any Feedback provided to Allscripts hereunder is not confidential information of Client or any third party and that Client has the unqualified rights to disclose such Feedback to Allscripts only. Client and its Authorized Users will not disclose Feedback or any other CI on Allscripts Client Connect forum or other customer forums. “**Feedback**” means any recommendations, ideas, suggestions, comments, know-how, concerns, and other feedback in any form related to the actual or any proposed design, functionalities, content, use, implementation, and/or any other elements of the Beta Software provided to Allscripts hereunder by Client or any of its personnel. Allscripts may contact Authorized Users directly for the purpose of collecting Feedback.

2.3. Ownership Rights. As between the parties, Allscripts shall exclusively own all right, title and interest in and to the Beta Software and any derivatives thereof, and all Feedback and all copies, portions, improvements, and derivative works of any of the foregoing and all intellectual property rights anywhere in the world related to any of the foregoing. Without Allscripts owing any compensation to Client, Client hereby automatically and irrevocably assigns to Allscripts (and shall ensure that all Authorized Users automatically and irrevocably assign to Allscripts) all right, title and interest in and to all Feedback, including all intellectual property rights therein.

2.4. Confidential Information. The Beta Software, the existence and terms of this Agreement, and any Feedback (including the results of testing and Client’s or Authorized Users’ opinions about the Beta Software tested by Client) are Allscripts’ confidential information (collectively, “**CI**”). Client will maintain the CI in the strictest confidence. Client may disclose CI only to its Authorized Users and Allscripts. Client may not disclose any CI to any other person or entity nor use CI for any purpose except as permitted herein.

2.5. Client Review. As between the parties, Client is responsible for all decisions, acts, and omissions of any persons in connection with the delivery of medical care or other services to any patients. Client shall ensure that all Authorized Users are appropriately trained in use of the Beta Software prior to their use of the Beta Software. Any Beta Software designed for clinical use (as set forth in the documentation) (“**Clinical Materials**”) are tools to assist Authorized Users in the delivery of medical care, but should not be viewed as prescriptive or authoritative. Clinical Materials are not a substitute for, and Client shall ensure that each Authorized User applies, in conjunction with the use thereof, independent professional medical judgment. Clinical Materials are not designed for use, and Client shall not use them, in any system that provides medical care without the participation of properly trained personnel.

3. **Support**. Allscripts will provide limited call support for problems/errors with the Beta Software and may provide fixes or updates from time to time at Allscripts’ sole discretion. Allscripts has no obligation to provide fixes or updates to the Beta Software and the content and timing of such fixes or updates will be in Allscripts’ sole discretion. In addition, there are no service level agreements with regard to support response time.

4. Pricing:

4.1. Fees. There will be no fees for the license and support services for Beta Software under this Agreement.

4.2. GA Release. If and when Allscripts releases a generally available (“GA”) version of the Beta Software, Client may purchase the license for such software, support, and implementation for the GA version under a separate agreement with Allscripts at then current prices. Allscripts and Client intend to have any discounted or free product provided in this Agreement meet the requirements of 42 CFR 1001.952(h), the Discount Safe Harbor of the Anti-Kickback statute. Client may have an obligation to report this concession in accordance with the Discount Safe Harbor and shall accurately reflect the concession on any claims submitted.

5. Disclaimer of All Warranties; Notices and Warnings. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL INFORMATION AND MATERIALS PROVIDED OR MADE AVAILABLE HEREUNDER (INCLUDING WITHOUT LIMITATION THE BETA SOFTWARE) ARE EXPERIMENTAL IN NATURE, ARE BEING PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS AND MAY CONTAIN SIGNIFICANT ERRORS, OMISSIONS, AND OTHER PROBLEMS. ALLSCRIPTS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE FOREGOING, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. Allscripts does not warrant or make any representation that it will complete development, release, or otherwise make available to Client any GA version of any Beta Software or incorporate any Feedback therein. Client understands that any Beta Software may perform differently and/or have different functionalities from any software that Allscripts may release in the future, and may include beta and/or GA versions of software modules that Client is not licensed to use outside of the limited use authorized hereunder. Client should not rely on the performance or functionality characteristics of any Beta Software. Allscripts makes no commitment to release a GA version of the Beta Software.

6. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW ALLSCRIPTS WILL NOT BE LIABLE (UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY) FOR: (I) ANY LOST OR CORRUPTED DATA OR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE BETA SOFTWARE, USE THEREOF, OR THIS AGREEMENT, EVEN IF ALLSCRIPTS HAS BEEN ADVISED OF SUCH DAMAGES OR THE POSSIBILITY OF SUCH DAMAGES; OR (II) ANY AMOUNTS, IN THE AGGREGATE FOR ALL CLAIMS, IN EXCESS OF \$100.

7. Term and Termination. This Agreement commences on the Effective Date and will continue until the earlier of (i) the date that the parties mutually agree in writing to terminate the Agreement, (ii) the effective date of an executed agreement between the parties for the GA version of the Beta Software, (iii) the date that Allscripts releases a GA version of the Beta Software, or (iv) the effective date of termination in a written notice of termination that Allscripts provides to Client which may be provided at Allscripts’ convenience (the “Term”). Immediately upon termination of this Agreement, Client will stop all access to and use of the Beta Software and all CI and either return to Allscripts or destroy all such materials, and any and all copies of the foregoing. Sections 2.2-2.5, 5, 6, and 8 shall survive termination of this Agreement.

8. General Provisions.

8.1. Government Contracts. Client represents that neither Client nor any Authorized User is (a) an agency, agent, or other instrumentality of the U.S. Government, (b) employed using any U.S. Government funds, or (c) entering into or performing under this Agreement (including providing any Feedback) pursuant to a U.S. Government contract or with the use of U.S. Government funds. The Beta Software is “Commercial Computer Software” within the meaning of FAR 2.101 (November 2007), FAR Part 12.212 (October 1995), FAR 27.405-3 (November 2007), DFARS Part 227.7202 (June 1995) and DFARS 252.227-7014 (a) (June 1995). Use and disclosure are strictly governed by this Agreement.

8.2. Miscellaneous. Client will not assign or transfer this Agreement to any person or entity without Allscripts’ prior written consent and any attempted assignment by Client without Allscripts’ consent will be void. Each party is acting as an independent contractor. This Agreement is to be interpreted under Delaware law without regard to the conflicts of law provisions. In the event that any of the provisions of this Agreement are held to be unenforceable, such provisions shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement constitutes the complete and entire agreement of the parties with respect to its subject matter and supersedes any and all previous communications with respect to this subject matter. No waiver or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of each party. Nothing in this Agreement shall restrict the right of Allscripts to engage in any business or provide any software, services, or other products to any clients on any terms. This Agreement and any amendment hereto may be executed in counterparts, and electronically scanned or facsimile signatures will be deemed originals.

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