



HIPAA BUSINESS ASSOCIATE AGREEMENT
BUSINESS ASSOCIATES AND SUBCONTRACTORS

This HIPAA Business Associate Agreement (“BAA”) is entered into on this ____ day of ____, 20____ (“Effective Date”), by and between Allscripts Healthcare, LLC, a wholly-owned subsidiary of Allscripts Healthcare Solutions, Inc. d/b/a Allscripts (“Allscripts”) and ____, a ____ (“Business Associate”).

WITNESSETH

WHEREAS, Business Associate is currently providing services to Allscripts under existing contracts or agreements, whether written or oral, and may enter into future contracts or agreements, whether written or oral, with Allscripts (the “Underlying Contracts”);

WHEREAS, Business Associate may have access to, create, receive, maintain or transmit Protected Health Information from Allscripts as necessary for Business Associate to perform its obligations under the Underlying Contracts;

WHEREAS, the parties wish to enter into this BAA to govern Business Associate’s use and disclosure of the Protected Health Information and implement appropriate safeguards for the security of Electronic Protected Health Information under all of the Underlying Contracts;

WHEREAS, Allscripts and Business Associate wish to enter into this BAA in order for Allscripts to establish compliance with the requirements of the HIPAA (as defined below).

NOW, THEREFORE, in consideration of the recitals above and the mutual promises and covenants set forth below, Allscripts and Business Associate agree as follows:

- 1. Definitions.** Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms as set forth in HIPAA. For purposes of this Agreement:
 - 1.1** Breach shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.
 - 1.2** HIPAA collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under HITECH and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.
 - 1.3** Protected Health Information or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 and shall include Electronic Protected Health Information (“EPHI”).
 - 1.4** Security Incident shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System.

1.5 Unsecured Protected Health Information shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.

2. Permitted Uses and Disclosures by Business Associate.

2.1 Performance of Services. Business Associate may only use or disclose PHI as necessary to perform services as set forth in the Underlying Contract if (a) such use or disclosure of PHI would not violate HIPAA if done by Allscripts or (b) such use or disclosure is (i) expressly permitted under this Section 2 or (ii) required by law.

2.2 Minimum Necessary. Business Associate will limit all requests for, use and disclosure of PHI and Electronic PHI to the minimum necessary to accomplish the intended request, use, or disclosure. With respect to permitted disclosures set forth herein, unless otherwise specifically agreed to by the parties, Business Associate will not permit the disclosure of PHI to any person or entity other than such of its employees, agents or subcontractors who must have access to the PHI in order for Business Associate to perform its obligations under an Underlying Contract and who agree to keep such PHI confidential as required by this BAA.

2.3 Disclosures Required by Law. If Business Associate believes it has a legal obligation to disclose any PHI, it will notify Allscripts as soon as reasonably practical after it learns of such obligation, and in any event at least ten (10) business days prior to the proposed release, as to the legal requirement pursuant to which it believes the PHI must be released. If Allscripts objects to the release of such PHI, Business Associate will allow Allscripts to exercise any legal rights or remedies Allscripts might have to object to the release of the PHI, and Business Associate agrees to provide such assistance to Allscripts, at Allscripts expense, as Allscripts may reasonably request in connection therewith.

2.4 Proper Management and Administration. Business Associate may use or disclose PHI for the proper management and administration of Business Associate in connection with the performance of services under the Underlying Contracts and as permitted by this BAA; provided, however, that for any disclosure pursuant to this paragraph Business Associate obtains reasonable written assurances from the person or entity to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person or entity notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.5 Prohibited Uses and Disclosures.

a. Data Aggregation. If Business Associate is required to provide data aggregation services for Allscripts under the Underlying Contract, Business Associate may only use and aggregate the PHI for purposes of providing the data aggregation services to Allscripts. Use or disclosure of PHI for any other data aggregation is not permitted.

b. De-identification. As between Allscripts and Business Associate, Allscripts holds all right, title and interest in and to the PHI, and Business Associate does not hold, and will not acquire by virtue of this BAA or by virtue of providing any services or goods to Allscripts, any right, title or interest in or to the PHI or any portion thereof. Business Associate will have no right to de-identify PHI for its own use or compile and/or distribute statistical

analyses and reports utilizing aggregated data derived from the PHI or any other health and medical data obtained from Allscripts.

2.6 All other uses or disclosures of PHI not expressly authorized by this BAA or required by law are strictly prohibited.

3. Duties and Responsibilities of Business Associate.

3.1 Safeguards. Business Associate agrees to use appropriate Administrative, Physical, and Technical Safeguards and comply with the Security Rule to (a) maintain the confidentiality, integrity, availability, privacy, and security of the PHI and (b) prevent the use and disclosure of PHI other than as provided for by this BAA. Such safeguards include, but are not limited to: (i) strong authentication and encryption to protect the PHI when PHI must travel across lines of communication where both ends are not under the control of Allscripts, and (ii) encryption at all times of all storage devices, laptops or other portable devices or systems of any kind or nature.

3.2 Reporting. Business Associate agrees to report to Allscripts immediately, but in no event more than two (2) business days, (a) any use or disclosure of, or improper or unauthorized access to, PHI not provided for under this BAA of which Business Associate becomes aware; or (b) any Security Incident of which Business Associate becomes aware.

3.3 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or applicable law.

3.4 Agents and Subcontractors. Business Associate agrees to ensure that any agents or subcontractors that access, create, receive, maintain, or transmit Protected Health Information for or on behalf of Allscripts, agrees to the same safeguards, restrictions and conditions that apply throughout this BAA to Business Associate with respect to such information.

3.5 Performance of Obligations. To the extent Business Associate is to carry out an Allscripts obligation under HIPAA, Business Associate shall comply with those HIPAA requirements that apply to Allscripts in the performance of such obligation.

3.6 Right of Access. Business Associate agrees to provide access, at the request of Allscripts, to Protected Health Information in a Designated Record Set, to Allscripts or, as directed by Allscripts, to an Individual in order to meet the requirements under 45 CFR §164.524.

3.7 Availability of Protected Health Information for Amendment. Business Associate agrees to, at the request of Allscripts, make available and incorporate for amendment Protected Health Information in a Designated Record Set in order to meet the requirements under 45 C.F.R. § 164.526.

3.8 Audit and Inspection.

- a. For purposes of the Secretary determining Allscripts or Business Associate's compliance with applicable law, including without limitation, HIPAA, Business Associate agrees, upon written request, to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Allscripts available to Allscripts or to the Secretary in a time and manner designated by Allscripts or the Secretary.

- b. Upon Allscripts advance written request, no more than once annually (except for a Breach of Unsecured PHI, privacy or security incident or any unauthorized use or disclosure of PHI, in which case Allscripts shall not be limited by such annual limitation), Business Associate agrees to make its PHI and internal practices, books and records relating to the use and disclosure of PHI available to Allscripts during normal business hours for purposes of determining Business Associate's compliance with HIPAA and this BAA.

3.9 HIPAA Assessment. Business Associate shall complete the written assessment ("Assessment") that is attached hereto as Exhibit A and incorporated herein. Such Assessment must be submitted to and approved by Allscripts Chief Security Officer and Chief Privacy Counsel prior to Business Associate performing any function, activity or service that involves the access to, creation, receipt, maintenance or transmission of PHI.

3.10 Accounting of Disclosures. Business Associate agrees to document any disclosures of PHI by Business Associate or its agents or authorized subcontractors, and information related to such disclosures, as would be required for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate agrees to provide to Allscripts information collected in accordance with this Section within ten (10) days of a request by Allscripts.

3.11 HIPAA Standards. Business Associate acknowledges that HIPAA applies directly to Business Associate and the Secretary will impose fines and penalties upon Business Associate if Business Associate has violated this BAA or HIPAA. Business Associate agrees to fully comply with HIPAA.

3.12 Breach Notification.

- a. Business Associate will give Allscripts notice of any Breach of Unsecured Protected Health Information without unreasonable delay, but in no case later than five (5) days after the first day on which the Breach is known, or by the exercise of reasonable diligence would have been known, to the Business Associate.
- b. The notice required by Section 3.12.a. above will be written in plain language and will include, to the extent possible or available, the following:
 - (1) The identification of the individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the Breach;
 - (2) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
 - (3) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (4) Any steps individuals who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
 - (5) A brief description of what the Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
 - (6) Contact procedures for individuals to ask questions or learn additional information, including a toll free telephone number, an email address, Web site, or postal address.

4 Term and Termination

4.1 Term. The Term of this BAA shall commence as of the Effective Date and shall terminate either (a) as provided by Section 4.2 below or (b) when all of the PHI or Electronic PHI provided by Allscripts to Business Associate, or created or received by Business Associate on behalf of Allscripts, or otherwise in Business Associate's possession, is destroyed or returned to Allscripts, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section.

4.2 Termination for Cause. Upon Allscripts' knowledge of a material breach by Business Associate, Allscripts (a) may provide a reasonable time for Business Associate to cure the breach provided that Allscripts may immediately terminate this BAA and any Underlying Contracts if Business Associate does not cure the breach or end the violation within the time frame specified by Allscripts; or (ii) immediately terminate this BAA and any Underlying Contracts if Business Associate has breached a material term of this Agreement and Allscripts determines in its sole discretion that a cure is not possible.

4.3 Effect of Termination

- a. Except as provided in paragraph (b) of this Section, upon termination of this BAA, for any reason, Business Associate shall return or, if agreed to by Allscripts, destroy all PHI received from Allscripts, or accessed, created, maintained, or received by Business Associate for or on behalf of Allscripts, or otherwise in Business Associate's possession that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI or Electronic PHI in any form. If Allscripts agrees that Business Associate may destroy PHI, Business Associate shall certify that the PHI has been destroyed in compliance with HIPAA.
- b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Allscripts notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit any further uses and disclosures of such Protected Health Information to only those purposes that make the return or destruction infeasible.

5 INDEMNIFICATION AND REIMBURSEMENT OF COSTS.

5.1 Indemnification. Business Associate agrees to indemnify, defend and hold harmless Allscripts and its employees and agents, against any third party loss, claim, damage or liability ("Claim") if and to the extent proximately caused by (i) a breach of this BAA by Business Associate or (ii) the negligence or willful misconduct of Business Associate. If seeking indemnification, Allscripts shall furnish to Business Associate prompt written notice of any such Claim of which Allscripts has actual knowledge, provided, however, that the failure to deliver such prompt notice shall not release Business Associate from any of its indemnity obligations hereunder except to the extent such obligations have increased as a result of such failure, and then only to the extent of such increase. Allscripts shall use good faith efforts to furnish Business Associate with reasonable and sufficient authority, information and assistance necessary to defend the Claim. Business Associate shall not, without the prior written consent of Allscripts, settle, compromise or consent to the entry of any judgment that imposes any material obligation on Allscripts that Business Associate does not discharge.

5.2 Reimbursement of Costs. Business Associate shall reimburse Allscripts for all actual costs and expenses associated with a Breach of Unsecured PHI attributable to Business Associate, including, without limitation, costs of notifying affected Individuals, credit monitoring, costs of investigation, reasonable attorneys' fees and other efforts to mitigate harm to the affected Individuals.

6 Miscellaneous

6.1 Regulatory References. A reference in this BAA to a section in HIPAA means the section as in effect or as amended.

6.2 Amendment. This BAA may only be modified, or any rights under it waived, by a written agreement executed by both parties. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for the parties to comply with the requirements of HIPAA and any current or future regulations promulgated thereunder.

6.3 Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Allscripts to comply with HIPAA and any current or future regulations promulgated thereunder.

6.4 Survival. The respective rights and obligations of Business Associate in this BAA will survive the termination of this BAA.

6.5 Other Confidentiality Obligations. The parties acknowledge that this BAA is intended to supplement any and all other confidentiality obligations that either party may have under this or any other agreement or applicable law.

6.6 Underlying Contracts. The terms of this BAA will govern the use and disclosure of PHI under any Underlying Contract. Except as specified herein, all other terms of an Underlying Contract will continue in full force and effect. In the event of any conflict among the provisions of this BAA and the Underlying Contract, the provisions of this BAA will control.

6.7 Waiver. Any failure of a party to exercise or enforce any of its rights under this BAA will not act as a waiver of such rights.

6.8 Notice. Any notice or requests for information to Allscripts or Business Associate under this BAA shall be sent to:

If to Allscripts:
222 Merchandise Mart, Suite 2024
Chicago, IL 60654
Attn: General Counsel

If to Business Associate:

Attn: _____
Phone: _____
Fax: _____

6.9 Binding Effect. This BAA shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

6.10 No Third Party Beneficiaries. Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Business Associate and Allscripts, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

6.11 Severability. If any provision of this BAA is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this BAA, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

6.12 Counterparts. This BAA may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.13 Entire Agreement. This BAA sets forth the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all other discussions, representations, agreements, and understandings of every kind or nature, whether oral or written, with respect to such matters, including, but not limited to other business associate agreements or agreements related to patient data and the access, use, privacy, security and confidentiality of patient data. Neither Party will be bound by any representation, warranty, covenant, term or condition related to such subject matter other than as expressly set forth herein and in the event of any conflict between the terms of this BAA and the terms of any other discussions, representations, agreements, and understandings between the Parties, the terms of this BAA shall control.

IN WITNESS WHEREOF, the parties hereto have executed this BAA as of the Effective Date.

ALLSCRIPTS HEALTHCARE, LLC

BUSINESS ASSOCIATE
(Complete Contact Info Below)



By: _____
Authorized Representative

By: _____
Authorized Representative

Name: Robyn Eckerling

Name: _____

Title: Chief Privacy Counsel

Title: _____

Date: _____

Date: _____

EXHIBIT A
ASSESSMENT
(see attached)