

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) governs the disclosure of information between _____ (“Company”) and Allscripts Healthcare, LLC, and its direct and indirect subsidiaries and affiliates (hereinafter “Allscripts”), as of the latter of Allscripts or Company’s signature below (“Effective Date”). Company and Allscripts may also be referred to each as a “Party” and collectively as the “Parties”.

1. **Background.** Company and Allscripts may wish to exchange certain Confidential Information (as defined below) solely to enable the Parties to evaluate a potential business opportunity (the “Purpose”). Notwithstanding the foregoing, this Agreement does not require that either Party disclose any Confidential Information to the other Party, nor does it obligate either Party to enter into any further agreement or business relationship with the other Party. As used below, “Receiving Party” refers to either Party that receives Confidential Information from the other Party pursuant to this Agreement and “Disclosing Party” refers to such other Party disclosing such Confidential Information hereunder.

2. **Confidentiality.**

- (a) **Definition.** “Confidential Information” means non-public information and certain proprietary, confidential documents, trade secrets and other materials and information that a Party considers to be of a confidential or proprietary nature or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, whether in tangible or intangible form, and whether or not stored, compiled or memorialized physically, electronically, graphically, photographically or in writing, including without limitation: (i) business processes and financial information; (ii) employee information; (iii) any released or unreleased software or hardware products and services; (iv) sales and marketing plans of any existing or planned products and services of the Disclosing Party; (v) data products, technology and other technical information; (vi) research, experimental work, and development projects; (vii) customer and prospective customer lists; and (viii) information received from others that Disclosing Party is obligated to treat as confidential.
- (b) **Exclusions.** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- (c) **Scope.** The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose outside the Purpose, except with the Disclosing Party’s prior written permission. Notwithstanding the foregoing, the Parties agree that this Agreement shall not preclude the Receiving Party from independently developing or acquiring products similar or identical to the Disclosing Party’s products without use of the Disclosing Party’s Confidential Information. The Disclosing Party shall retain all rights, title, and interest in and to its Confidential Information, including but not limited to any intellectual property and proprietary rights, and no license or any other interest in the Disclosing Party’s Confidential Information is granted or implied by this Agreement. Nothing in this Agreement shall be construed to prevent the Receiving Party’s employees who access Confidential Information from using Residuals for any purpose. The term “Residuals” means information of a general nature, such as general knowledge, professional skills, know-how, work experience or techniques, that is retained in the unaided memories (without conscious memorization or subsequent reference to the material in question) of the Receiving Party’s employees who have had access to Confidential Information. Memory shall be considered unaided if the employee or contractor has not intentionally memorized the information contained within the Confidential Information for the purpose of retaining and subsequently using or disclosing same.

- (d) **Protection.** Each Party agrees to protect the other Party's Confidential Information with the same degree of care that it uses to protect its own Confidential Information, but no less than commercially reasonable care. In addition, the Receiving Party agrees that it shall not reproduce, disseminate, or in any way disclose any Confidential Information of the Disclosing Party to any person, firm or business, except to those of its employees, officers, or authorized representatives, on a need to know basis, and only to those that have executed appropriate written agreements sufficient to enable the Receiving Party to enforce the confidentiality obligations of this Agreement. In addition, in the event the Confidential Information of the Disclosing Party includes software programs, the Receiving Party agrees that it shall not modify, reverse engineer, decompile, create other works from, or disassemble such software programs without the prior written consent of the Disclosing Party nor shall the Receiving Party export any such software programs in violation of any applicable law(s).
- (e) **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, the Receiving Party shall: (i) provide the Disclosing Party with reasonable prior notice of such compelled disclosure (to the extent legally permitted); (ii) provide reasonable assistance to the Disclosing Party, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure; and (iii) limit the scope of any disclosure only to such portion of the Confidential Information that it is legally required to disclose and shall use commercially reasonable efforts to obtain the highest level of protection afforded under applicable law or regulation for such disclosure.
- (f) **Breach Notification.** The Receiving Party shall notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information and shall reasonably cooperate with the Disclosing Party to help the Disclosing Party regain possession of its Confidential Information and prevent further unauthorized use or disclosure.
3. **Remedies.** The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that the Disclosing Party shall be entitled, without waiving other rights or remedies, to seek injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, as agreed upon herein. The remedies provided herein shall be cumulative with any other remedies available to either Party at law or in equity. The provisions of this paragraph shall survive the termination of this Agreement.
4. **Termination; Return of Confidential Information.** The term of this Agreement shall commence on the Effective Date. Either Party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other Party. Except with respect to Confidential Information that is a trade secret which the Receiving Party must keep confidential for so long as such Confidential Information remains a trade secret under applicable law, the Receiving Party's non-disclosure and non-use obligations under this Agreement with respect to Confidential Information it has received hereunder shall not expire until five (5) years following termination of this Agreement. Upon termination of this Agreement or at the Disclosing Party's request, the Receiving Party shall destroy all Confidential Information of the Disclosing Party in its possession, including any copies, and certify destruction thereof; provided, however, the Receiving Party is not obligated to destroy any computer files generated during its automatic system back-up process, which are subsequently stored securely and not accessed by the Receiving Party and which will be destroyed in the normal course of business. Notwithstanding the foregoing, with respect to any customer or prospective customer lists provided to Company by Allscripts, Company shall destroy such lists and certify their destruction immediately following the end of any evaluation period granted by Allscripts.
5. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS-IS" BASIS AND THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES. IN NO EVENT SHALL THE DISCLOSING PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE USE BY THE RECEIVING PARTY OF THE DISCLOSING PARTY'S CONFIDENTIAL INFORMATION OR ANY PORTION THEREOF.

6. Miscellaneous.

- (a) **Assignment.** Neither Party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. Any attempt to transfer all or part of either Party's rights or obligations without such consent is null and void and of no effect.
- (b) **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon personal delivery to the intended recipient at the address appearing below the signature of each Party, with confirmed receipt by express carrier. Either Party may change the address to which notices, demands or other communications shall be sent by giving notice to the other Party in the manner provided herein.
- (c) **Governing Law.** This Agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Illinois, USA, without regard to conflict of law provisions thereof. The Parties agree to venue in the appropriate courts located in Cook County in the State of Illinois.
- (d) **Applicable Law.** Each Party agrees to comply with applicable laws in carrying out its obligations under this Agreement.
- (e) **Amendment.** This Agreement may only be changed by mutual written agreement signed by authorized representatives of both Parties.
- (f) **Independent Contractors.** This Agreement does not create a partnership, joint venture or other relationship between the Parties and neither Party has any authority to act on behalf of the other Party.
- (g) **Waiver.** The failure to enforce any provisions of this Agreement shall not be deemed a waiver or a continuing waiver of the same or other provision of this Agreement unless such waiver is in writing and signed by the Party to be charged.
- (h) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- (i) **Entire Agreement.** This Agreement contains the entire agreement of, and supersedes any and all prior or contemporaneous understandings, arrangements and agreements between the Parties hereto, either oral or written, with respect to the subject matter hereof.
- (j) **Counterparts.** This Agreement may be signed in counterparts. The Parties also agree that a signature transmitted via facsimile or electronically shall be deemed original for all purposes hereunder.

[Remainder of page intentionally left blank; signature page follows.]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Company

Allscripts Healthcare, LLC

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Business Address:

Business Address:

222 Merchandise Mart Plaza
Suite 2024
Chicago, IL 60654