



Medstrat, Inc
1901 Butterfield Rd.
Suite 600
Downers Grove, IL 60515

CONFIDENTIALITY AND MUTUAL NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND MUTUAL NON-DISCLOSURE AGREEMENT (“NDA”) is entered this _____ day of _____ (month), _____ (year) by and between **Medstrat, Inc.** (Medstrat), a Delaware corporation, with its principal place of business at 1905 Butterfield Road, Suite 600, Downers Grove, IL 60515 and _____ (the “Company”). For purposes of this NDA, Medstrat and Company shall be deemed to include any parent, subsidiary, affiliate of, or entity under common control with any entity constituting Medstrat or the Company.

1. Business Purpose. In connection with work being done (the “Services”), which can be physical or intellectual, in conjunction with or on behalf of the Company, Medstrat has requested that the Company or its representatives furnish Medstrat or its representatives with certain information relating to the Company or the Services. In addition, the Company has requested that Medstrat or its representatives furnish the Company or its representatives certain information relating to Medstrat or the Services.

2. Obligations of the Parties. Each of Medstrat and the Company and their respective Representatives (i) will keep the Information, as herein defined, confidential and will not (except as required by applicable law, regulation or legal process, and only after compliance with paragraph 4 below), without the prior written consent of the other party, disclose any Information in any manner whatsoever, and (ii) will not use any Information other than in connection with the Services; provided, however, that each party may reveal the Information to its Representatives (a) who need to know the Information for the purpose of evaluating the Services, (b) who are informed of the confidential nature of the Information and (c) who agree to act in accordance with the terms of this NDA. Each party agrees to use its reasonable best efforts to cause its Representatives to observe the terms of this NDA, and each party will be responsible for any breach of this NDA by any of its Representatives.

3. Confidential Information. “Information” for purposes of this Agreement shall include, but not be limited to (a) patent and patent applications, (b) trade

secrets, and (c) proprietary information – ideas, concepts, samples, techniques, sketches, drawings, works of authorship, models, inventions, know-how, finances, facilities, development plans, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of each of the parties, and their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans, and information regarding third parties, (whether transferred orally, in writing, visually, electronically or by any other means) furnished (whether before or after the date hereof) by Medstrat or the Company or their respective directors, officers, employees, affiliates, representatives (including, without limitation, financial advisors, attorneys and accountants) or agents (collectively, “Representatives”) to the other party, and all analyses, compilations, forecasts, studies or other documents prepared by Medstrat or the Company, or their respective Representatives in connection with the review of, or interest in, the Services which contain or reflect any such information. The term Information will not, however, include information which (i) is or becomes publicly available other than as a result of a disclosure by the receiving party or its Representatives, (ii) is or becomes available to the receiving party on a nonconfidential basis from a source (other than the disclosing party or its Representatives) which, is not prohibited from disclosing such Information to receiving party by a legal, contractual or fiduciary obligation, (iii) is independently developed by the receiving party as demonstrated by written or documented evidence or (iv) was known by the receiving party prior to disclosure to the receiving party by the disclosing party, as demonstrated by written or documented evidence.

4. Other Disclosure. In the event that either party or any of its Representatives are requested pursuant to, or required by, applicable law, regulation or legal process to disclose any of the Information, such party will notify the other party promptly in writing of such request or requirement and the documents or Information requested, so that the other party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this NDA. In the event that no such protective order or other remedy is obtained, or that the other party does not waive compliance with the terms of this NDA, such party will furnish only that portion of the Information with it is reasonably advised by its counsel is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information to the extent possible.

5. Return of Information. If either party determines not to proceed with the Services, such party will promptly inform the other party of that decision in writing and, in that case, and at any time upon the request of either party, both parties will either (i) promptly destroy all copies of the written Information in its or its Representatives possession and confirm such destruction to the other party in writing, or (ii) promptly deliver to the other party at the other party's expense all copies of the written Information in its or its Representatives' possession. In such event, neither party will retain any copies, exhibits, notes, memoranda or other writings prepared by the other party or its Representatives based on the Information.

6. Non-Solicitation. Each party agrees that, for a period of 18 months from the date of this NDA, it will not, directly or through its Representatives, solicit for employment or hire any employee of the other party or any of its affiliates or subsidiaries with whom it has had contact or who became known to such party in connection with its consideration of the Services, in any business that is in competition with a business in which the other party has engaged or has in active development during the term of this NDA.

7. Remedies, Injunction, Etc. Each party acknowledges that remedies at law may be inadequate to protect the other party against any actual or threatened breach of this NDA by such party or by its Representatives, and, without prejudice to any other rights and remedies otherwise available to the other party, each party agrees that the other party shall be entitled to injunctive relief. In the event of litigation relating to this NDA, if a court of competent jurisdiction determines in a final, nonappealable order that this NDA has been breached by such party or by its Representatives, then such party will reimburse the other party for its costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with all such litigation.

8. Waiver. Each party agrees that no failure or delay by the other party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. Governing Law. This NDA will be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts between residents of that State and executed in and to be performed in that State.

10. Entire Agreement. This NDA shall supersede all prior agreements and contains the entire agreement between Medstrat and the Company concerning

the confidentiality of the Information, and no modifications of this NDA or waiver of the terms and conditions hereof will be binding upon Medstrat or the Company, unless approved in writing by each of Medstrat and the Company.

11. No Creation of Ownership Interests. Nothing in this NDA, nor any action taken by either party, including, without limitation, any payment of monies by one party to the other party, during any discussions prior to the consummation of the Services shall be construed to convey to either party any right, title or interest in the Information, or any license to use, sell, exploit, copy or further develop in any way any Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the disclosing party has any right, title or interest.

12. Successors and Assigns. This NDA shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

13. Warranty Exclusion. Each party warrants that it has the right to make the disclosure of the Information contemplated by this NDA. In providing the Information under this NDA, the disclosing party makes no representation, either express or implied, as to its adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such Information, and the disclosing party shall not incur any responsibility or obligation whatsoever by reason of such Information.

14. Counterparts. This NDA may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. This NDA shall become effective when counterparts have been signed by each of the parties and delivered by facsimile or other means to the other party.

15. Severability. If any provision or portion of this NDA is held invalid, illegal, void or unenforceable by reason of any rule or law, administrative or judicial provision or public policy, all other provisions of this NDA shall nevertheless be construed so as to remain in full force and effect.

16. HIPAA. The Company shall abide by all HIPAA / HITECH requirements while this NDA is in effect and agrees to destroy any and all Protected Health Information (PHI) disclosed in connection with the Services in the event that this NDA is terminated.



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IN WITNESS WHEREOF, the parties hereto have executed the NDA by their duly authorized officers or representatives as of the date first above written.

**Medstrat, Inc.
1901 Butterfield Rd., Suite 600
Downers Grove, IL 60515**

By: _____

Name:
Title:

**Name:
Address:**

By: _____

Name:
Title: