



MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement"), by and between Surescripts, LLC, a Delaware limited liability company ("Surescripts") and the County of San Bernardino, a political subdivision organized and existing under the constitution and the laws of the State of California ("County"), is made as of the date of execution. Surescripts and the County wish to discuss the formation of a business relationship or the expansion of an existing business relationship, and in connection therewith, desire to inspect, evaluate, and/or utilize the Confidential Information (as defined below) of the other party hereto. Surescripts represents that during such discussions, Surescripts may disclose information to County, portions of which Surescripts asserts constitute, contain or reveal valuable trade secrets or other information belonging to Surescripts ("Confidential Information") that is exempt from disclosure under the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code Section 54950, and California Government Code Section 6250 (collectively, "Regulations"). Therefore, the parties, intending to be legally bound, hereby agree as follows:

1. Confidential Information. "Confidential Information" means information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that falls within an exemption to the Regulations and the Disclosing Party clearly designates as "Confidential" or "Proprietary". Confidential Information may include any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data. If Surescripts believes that any portion of the information it is providing under this Agreement is exempt from public disclosure, Surescripts must indicate the specific portions believed to be confidential and not subject to disclosure on Attachment I - Public Records Act Exemptions, as attached hereto. Surescripts also must include a brief description that sets out the reasons for exemption from disclosure. Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that do not meet the requirements of this section will not be considered. Information marked "Confidential" or "Proprietary" in its entirety will not be honored, and County will not deny public disclosure of any information so marked. Surescripts represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations.

2. Protection. This Agreement applies to any disclosures between Surescripts and County, even if such disclosures occurred prior to the date of execution of this Agreement. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. The Receiving Party, for five (5) years after the effective date of this Agreement, shall hold Confidential Information in confidence, shall use Confidential Information only for the purpose of discussions between the parties, and shall use at least as great a standard of care in protecting Confidential Information as it uses to protect its own Confidential Information of like character, but in no event less than a reasonable degree of care. The Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided hereunder. Notwithstanding the foregoing, all proposals, quotes and other material, including contract terms and cost information, will be held in confidence during the evaluation and negotiation process. Thereafter, such information is subject to becoming a non-exempt public record. County will use reasonable means to ensure that Confidential Information is safeguarded, but will not be held liable for

inadvertent disclosure of Confidential Information, provided that County, AMRC, and Representatives (defined below) shall ensure that disclosure of Confidential Information is restricted pursuant to Section 3 of this Agreement. All proposals, quotes and other material submitted become the property of the County solely to the extent that such submitted materials need not be returned, and are subject to release to public records according to the Regulations. In avoidance of doubt, all ownership of Confidential Information and intellectual property contained in submitted materials shall remain entirely with Surescripts. No license, rights, or other interests is granted to the County.

3. Disclosure to Representatives. Each party agrees that it shall not disclose any Confidential Information of the other party to any other person except to its employees, officers, shareholders, agents, consultants, or contractors ("Representatives"): **(i)** who need to have access to the Confidential Information for purposes of evaluating the potential business opportunity; **(ii)** who are informed by the Receiving Party of the obligations imposed by this Agreement. Each Receiving Party shall be liable for any breach of this Agreement by itself or any of its Representatives as if such breach were caused by Receiving Party itself. The Receiving Party shall promptly notify the Disclosing Party in writing upon becoming aware of any unauthorized disclosure, use, or loss of all or any part of the Confidential Information of the Disclosing Party or any other breach of this Agreement by the Receiving Party.

4. Return of Materials. To the extent permitted by law, immediately upon the request of the Disclosing Party, the Receiving Party: **(i)** will return to the Disclosing Party or destroy (and certify such destruction) all of the documents or other materials disclosed by the Disclosing Party containing any Confidential Information, including any copies thereof; and **(ii)** will destroy all materials, notes, or other documents, whether in written form or electronic form (e.g., information on hard drives or e-mail), that include, refer to, summarize, or analyze any part of the Confidential Information, which may have been produced or created by or on behalf of the Receiving Party ("Internal Data"), without keeping a copy of any such material. Notwithstanding the foregoing, the Receiving Party may retain a copy of any Internal Data solely to satisfy the Receiving Party's archival and business recordkeeping requirements, which retained Confidential Information will remain subject to the Receiving Party's obligations under this Agreement until such information has been destroyed by the Receiving Party.

5. Independently Available Information. Neither party hereto shall have any obligation with respect to any portion of such Confidential Information which: **(i)** is already known to the Receiving Party or is publicly available at the time of disclosure; **(ii)** becomes publicly available after disclosure through no act of the Receiving Party; **(iii)** is independently developed by the Receiving Party (so long as the development of such information is not based on, or is not as a result of, whether directly or indirectly, obtaining any of the Disclosing Party's Confidential Information); or **(iv)** is provided, or made available, to the Receiving Party from a third party, provided such third party is not bound by an obligation of confidentiality to Disclosing Party with respect to such information.

6. Legally-Required Disclosure. If the Receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the Receiving Party will then be entitled to comply with the request to the extent permitted by law. Notwithstanding the foregoing and to the extent permissible by applicable law, Receiving Party will cooperate with the other Party to obtain a protective order or other binding assurance (at the other Party's expense) that confidential treatment shall be afforded to such portion of the Confidential Information as is required to be disclosed. Surescripts

agrees to reimburse County for, and to indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to County's non-disclosure of Confidential Information at Surescripts' direction under this Agreement.

7. **[RESERVED]**

8. **Assumption of Risk.** THE RECEIVING PARTY ASSUMES ALL RISK, KNOWN AND UNKNOWN, INCIDENT TO ITS USE OF CONFIDENTIAL INFORMATION AND THE DISCLOSING PARTY WILL HAVE NO LIABILITY TO THE RECEIVING PARTY UNDER CONTRACT, TORT, OR OTHER LAW OF ANY JURISDICTION ARISING OUT OF SUCH USE.

9. **Relief.** The parties acknowledge that: **(i)** the restrictions contained in this Agreement are reasonable and necessary to protect the legitimate business interests of each party; **(ii)** remedies at law may be inadequate and any violation of these restrictions may cause irreparable damages within a short period of time; and **(iii)** each party will be entitled to seek injunctive relief as a result of any violation hereunder, without having to post a bond or other security, in addition to any other relief as is appropriate. Any right, power, or remedy provided under this Agreement to the parties shall be cumulative and in addition to any other right, power, or remedy provided under this Agreement or existing in law or in equity (including, without limitation, the remedies of injunctive relief and specific performance).

10. **No Waiver.** To the extent that any Confidential Information may include materials subject to the attorney-client privilege, the Disclosing Party is not waiving and will not be deemed to have waived or diminished its attorney work-product protections, attorney-client privileges or similar protections and privileges as a result of any inadvertent disclosure of Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted or is or may be entitled to assert such privileges and protections.

11. **Notices.** Notices required to be given pursuant to this Agreement shall be addressed to the appropriate party as provided below and shall be effective: **(i)** on the date of delivery if given in writing and hand delivered; **(ii)** on the date received, if sent by overnight courier with written proof of receipt, or by First Class United States Mail with postage prepaid and return receipt received; Refusal to accept delivery will be deemed receipt. A party may change its notice address for purposes of this Agreement by giving written notice to the other party.

If to County: County of San Bernardino
Arrowhead Regional Medical Center
400 North Pepper Avenue
Colton, CA 92324
Attn: Information Management

If to Surescripts: Surescripts, LLC
Attn: General Counsel
2550 South Crystal Drive, 10th Floor
Arlington, VA 22202

12. **Miscellaneous.** This Agreement does not obligate either party to disclose information to, or make any other agreement with, the other party, nor does it grant any rights by license or otherwise

in any software or other technology or intellectual property rights of either party. Neither this Agreement nor provision of Confidential Information pursuant to it shall be construed as an agreement, commitment, promise, or representation by either party to do business with the other or to do anything except as set forth specifically in this Agreement. This Agreement is the entire agreement of the parties with respect to the subject matter hereof and may not be modified except by a signed writing. This Agreement will survive termination of the parties' association. This Agreement shall be governed by California law (except for conflict of laws rules). If suit is filed to enforce this Agreement, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under indemnification obligations. If any part of this Agreement shall be held to be void or unenforceable, such part will be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable as long as the commercial goals of the Agreement may be reasonably met. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

COUNTY OF SAN BERNARDINO on behalf of Arrowhead Regional Medical Center **SURESCRIPTS, LLC**

The individual executing the Agreement on behalf of County has been duly authorized to act for and bind County.

Surescripts warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of Delaware and that the individual executing the Agreement on behalf of Surescripts has been duly authorized to act for and bind Surescripts.

By: _____
(authorized signature)

Name: Curt Hagman
Title: Chairman, Board of Supervisors
Date:

By: _____
(authorized signature)

Name: Thomas M. Farah
Title: General Counsel
Date:

SURESCRIPTS MUTUAL NON-DISCLOSURE AGREEMENT
ATTACHMENT I – PUBLIC RECORDS ACT EXEMPTIONS

PROPOSER NAME: Surescripts, LLC _____

ADDRESS _____

TELEPHONE# () _____ FAX # () _____

Proposer requests that specific portions of the information provided under this Agreement be held confidential and certifies that it is not subject to public disclosure pursuant to the Public Records Act. The specific portions are detailed below: (Please identify and list your exemptions by indicating the Section or Paragraph number, and Page number, of the Proposal where the content is contained.)

Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that does not meet the requirements herein will not be considered.