

**CONFIDENTIALITY, NON-SOLICITATION, NON-DISCLOSURE AND  
INTELLECTUAL PROPERTY AGREEMENT**

THIS CONFIDENTIALITY, NON-SOLICITATION, NON-DISCLOSURE AND INTELLECTUAL PROPERTY AGREEMENT ("The Agreement") is entered into this \_\_\_\_\_, day of \_\_\_\_\_, 2017 by and between, Marshfield Clinic Health System, Inc., referred to as "MCHS, Inc.," and \_\_\_\_\_ ("Employee")

WHEREAS, MCHS, Inc. is in the business of, among other things, developing and delivering managed services and software products to healthcare Customers including clinics, hospitals, reference laboratories, health plans and diagnostic and treatment centers (the "Business");

WHEREAS, the operation of MCHS, Inc. requires the development and disclosure of highly proprietary knowledge, confidential information and specialized training to its employees, including Employee;

WHEREAS, employees of MCHS, Inc. engage in important business-related relationships with Customers, employees and vendors, developed at great effort and expense;

WHEREAS, MCHS, Inc. has incurred great effort and expense to develop certain confidential and proprietary information and programs which give them a competitive advantage in the industry;

NOW, THEREFORE, as a condition of Employee's employment with MCHS, Inc. and in exchange for continued employment and employment compensation, and for other good and valuable consideration, Employee agrees to the following confidentiality, non-solicitation and non-disclosure provisions:

**I. Definitions**

- A.** The term "Confidential Information", as used herein, means and includes any and all data or information and documentation relating to MCHS, Inc.'s Business or to the businesses or activities of any MCHS, Inc. affiliates or third parties that is not generally known to the public or readily obtainable from outside sources, irrespective of whether owned by or licensed to MCHS, Inc., an MCHS, Inc. affiliate, or a third party. Confidential Information includes, by way of example and without limitation, the following: financial information, including but not limited to earnings, assets, debts, prices, cost information, budgets, sales and profit projections or other financial data; marketing information, including but not limited to details about ongoing or proposed marketing strategies, marketing forecasts, or information about impending transactions; product information, including but not limited to development plans, product designs, product costs and pricing policies; information regarding actual or potential customers; intellectual property, including but not limited to trade secrets, know-how, unpatented Inventions, and unpublished patent and trademark filings with any patent office anywhere in the world; employee information, compensation information and recruiting plans. Employee acknowledges that such information is confidential whether or not such information is labeled as such by MCHS, Inc.
- B.** The term "Affiliate," as used herein, means any entity, which is now, or hereafter owned or controlled by, controlling or under common ownership or control with, managed by or under contract with (such as a joint venture or partnership) MCHS, Inc., together with those entities owned, operated or managed by or in connection with the foregoing. An

entity will be deemed to control another entity if it is a corporate member holding at least 50% of the corporate membership units or shares of the entity or has the power to direct or cause the direction of the management or policies of the entity, whether through the ownership of voting securities, the right to appoint at least 50% of the board of directors, by contract, or otherwise.

- C. The term “Third Party,” as used herein, means any other entity that provides technical or information service related products, consulting or services to MCHS, Inc., including any such vendors, suppliers, professional service firms, and third parties having a common client or customer with MCHS, Inc.; any client or Customer that orders or purchases products or services from MCHS, Inc.; and any collaborative institution or consortium of which MCHS, Inc. is a member or otherwise involved, that actively participates with MCHS, Inc. in the development or provision of products or services of the type provided by MCHS, Inc. to its Customers, as employees may also be exposed to Confidential Information owned by related affiliates and unrelated third parties during the course of employment. For example, by way of illustration but not limitation, affiliate may provide its own Confidential Information to support and develop MCHS, Inc. Business or a third party Customer may expose its Confidential Information to MCHS, Inc. for the limited purpose of MCHS, Inc. adapting or tailoring its product(s) and/or service(s) to work effectively in Customer’s environment or informational infrastructure.
- D. The term “Competitive Activity” is defined and limited to engaging in activities the same or substantially similar to those of the MCHS, Inc. Business.
- E. The term “Customer,” as used herein means a customer of the Company with whom Employee conducted business within his/her most recent 12 months of employment or about whom Employee has non-public information she/he learned via his employment with MCHS, Inc. and includes prospective customers which are persons, corporations, or other entities with which the Employee, on behalf of MCHS, Inc., has held substantive discussions or provided proposals regarding the supply of any product or service of MCHS, Inc. with an anticipated purchase of not less than \$25,000.
- F. The term “Invention” as used herein means any invention, discovery, improvement, or idea, whether patentable, trademarkable, or copyrightable or not, and whether or not shown or described in writing or reduced to practice.

## II. Protection of Confidential Information

- A. Employee acknowledges that the Business of MCHS, Inc. is highly competitive and that MCHS, Inc. has provided and will continue to develop and provide Employee with access to Confidential Information relating to the business of MCHS, Inc. Employee further acknowledges that Confidential Information has been or will be developed at the cost of considerable time, expense and effort by or on behalf of MCHS, Inc., is or likely will be unique and constitute valuable property of MCHS, Inc. or its Third Parties with whom MCHS, Inc. works, and that the Confidential Information provides or likely will provide MCHS, Inc. with a very valuable competitive advantage.
- B. **Non-Disclosure.** Employee agrees that he/she shall not while employed and for the period of 3 years thereafter, directly or indirectly use, divulge, furnish or make accessible

to any person or entity any Confidential Information anywhere in the United States except in the furtherance of the Business of MCHS, Inc.. Employee shall keep all Confidential Information strictly and absolutely confidential. Employee's confidentiality obligations under this provision shall extend for 3 years beyond the period he/she is employed by MCHS, Inc., no matter the reason for the termination of employment. To the extent the Confidential Information is a trade secret, the applicable state law, as well as the Federal Defend Trade Secrets Act of 2016, shall govern and Employee's post-employment obligations will not be limited to a 3-year period.

**C. Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court filing:** Employee shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (A) is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**D. Use of Trade Secret Information in Anti-Retaliation Lawsuit:** Employee may file a lawsuit for retaliation by MCHS, Inc. for reporting a suspected violation of law and may disclose the trade secret to the attorney and use the trade secret information in the court proceeding, if the Employee: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

**E. Intellectual Property.**

1. **Assignment of Rights.** Employee will assign and does hereby assign (without any further consideration) to MCHS, Inc. all rights, title and interest in any and all intellectual property, anywhere in the world, developed during his/her employment with MCHS, Inc. or as a result of his/her employment with MCHS, Inc., including but not limited to trade secrets, copyrights, inventions, trademarks, and know-how (collectively, "intellectual property"). MCHS, Inc. will retain all proprietary rights to any and all such intellectual property. Employee agrees to execute any documents necessary to perfect MCHS, Inc.'s interest in such intellectual property upon MCHS, Inc.'s request, and agrees to perform such other acts, including, without limitation, appearing as a witness in any action brought in connection with this Agreement that is necessary to enable MCHS, Inc. to obtain the sole right, title, and benefit to all such intellectual property. For purposes of this Agreement, "scope of employment" means that the intellectual property (a) relates to any subject matter pertaining to Employee's employment with MCHS, Inc., (b) relates to or is directly or indirectly connected with the business, products, projects or Confidential Information of MCHS, Inc. or Confidential Information of MCHS, Inc. affiliates or third parties to which Employee is privy by virtue of employment with MCHS, Inc., or (c) involves the use of any time, material, facility, or Confidential Information of MCHS, Inc. or Confidential Information of MCHS, Inc. affiliates or third parties to which Employee is privy by virtue of employment with MCHS, Inc..

2. **Copyrights.** Employee agrees that all and any computer programs, publications, software, or other work of authorship developed during his/her employment or as a result of his/her employment and falling within the scope of his/her employment is

“work made for hire” under U.S. copyright laws and that, accordingly, MCHS, Inc. exclusively owns all copyright rights in such computer programs, publications, software, and other works of authorship. To the extent legal requirements for a work made for hire are not met or if any rights in any such computer programs, publications, software, and other works of authorship do not accrue to MCHS, Inc. as a “work for hire,” Employee nevertheless will assign and does hereby assign (without any further consideration) to MCHS, Inc. all rights, title and interest in any and all copyright rights to works of authorship developed during his/her employment with MCHS, Inc. or as a result of his/her employment with MCHS, Inc..

3. **Inventions.** Employee will assign and does hereby assign (without any further consideration) to MCHS, Inc. the entire right, title, and interest throughout the world in and to any Inventions that arise out of Employee’s work with MCHS, Inc. and any improvements to the Inventions, including improvements pursued or realized after termination of the employment relationship. Employee agrees to execute, verify, and deliver to MCHS, Inc. such documents, including without limitation, assignments and applications for Letters Patent that are necessary to enable MCHS, Inc. to obtain the sole right, title, and benefit to all such Inventions. To the extent it is required and requested by MCHS, Inc., Employee agrees to participate in the prosecution to obtain trademarks, copyrights, and Letters Patent and to continue to cooperate as is reasonable and necessary, given the prolonged nature of some types of intellectual property prosecution, even after termination of employment whatever the cause, provided all prosecution is at the expense of MCHS, Inc..
  - a. Employee agrees to promptly and fully disclose in writing to MCHS, Inc., and will hold in trust for MCHS, Inc.’s sole right and benefit, any Invention that Employee, during the period of employment and for one (1) year thereafter, made, conceived, or reduced to practice or cause to be made, conceived, or reduced to practice, either alone or in conjunction with others, that
    - i. Relates to any subject matter pertaining to Employee’s employment with MCHS, Inc.;
    - ii. Relates to or is directly or indirectly connected with MCHS, Inc.’s business, products, processes, or Confidential Information or to the Confidential Information of MCHS, Inc. affiliates or third parties to which employee is or was privy by virtue of employment with MCHS, Inc.; or
    - iii. Involves the use of any of MCHS, Inc.’s time, materials, facilities, or Confidential Information, or use of the Confidential Information of MCHS, Inc. affiliates or third parties to which Employee is or was privy by virtue of employment with MCHS, Inc.
  - b. Employee agrees to keep accurate, complete, and timely records for such Inventions, which records shall be MCHS, Inc.’s property and shall not be removed from MCHS, Inc.’s premises.

4. **Notice of Excluded Inventions.** Employee further agrees, and is hereby notified and advised by this writing, that the foregoing provisions of Section E, including the above agreement to assign Inventions to MCHS, Inc., does not apply to any Invention or other intellectual property for which no equipment, supplies, facility, or Confidential Information of MCHS, Inc. or of MCHS, Inc.'s affiliates or third parties to which Employee was privy by virtue of employment with MCHS, Inc. was used, which was developed entirely on Employee's own time, and
  - a. Which does not relate:
    - i. Directly to MCHS, Inc.'s business;
    - ii. To intellectual property related to the business of MCHS, Inc.; or
    - iii. To MCHS, Inc.'s actual or demonstrably anticipated work product, research or development; or
  - b. Which does not result from any work performed by Employee for MCHS, Inc.
5. **Listing of Excluded Invention.** Employee has disclosed and identified on the attached form entitled "Inventions and Developments Prior to Employment with MCHS, Inc." all of the Inventions in which Employee possesses any right, title, or interest prior to Employee's employment with MCHS, Inc. or execution of this Agreement and which are not subject to this Agreement's terms.

**III. Non-Solicitation of Employees.** While employed by MCHS, Inc. and for a period of twelve (12) months after the termination of Employee's employment (for any reason), Employee shall not, directly or indirectly: (i) solicit, cause, induce, or encourage, or attempt to solicit, cause or induce or encourage, any employee of MCHS, Inc. with whom Employee had substantial contact during the last 24 months of employment to leave his or her employment or to breach any agreement with MCHS, Inc. for the purpose of engaging in competitive activities that are substantially similar to those duties performed by such employee during his or her employment with MCHS, Inc.; or (ii) assist, cause, induce or encourage, or attempt to assist, cause, induce or encourage, any third party to take any of the actions described in subsections (i) above.

**IV. Non-Solicitation of Customers.** While employed by MCHS, Inc. and for a period of twelve (12) months after the termination of Employee's employment (for any reason), Employee shall not either directly or through a third party, contact, attempt to contact, or meet with any Customer (including, but not limited to, contact via e-mail, text message, regular mail, telephone, fax, and instant message) for the purpose of selling the Customer any products or services that are substantially similar to MCHS, Inc. products or services or for the purpose of inducing Customer to purchase any products or services that are substantially similar to the Company products from any entity other than MCHS, Inc..

**V. Reasonableness of Restrictions.** Employee acknowledges: (i) that the scope and duration of the restrictions on Employee's activities under this Agreement are reasonable and necessary to protect the legitimate business interests of MCHS, Inc.; (ii) that nothing in this Agreement

prohibits Employee from working for any other employer, including a competitor and/or any insurance carrier or administrator, and Employee will be reasonably able to earn a living without violating the terms of this Agreement.

## **VI. General Provisions**

- A. Remedies.** Employee acknowledges that MCHS, Inc. has a legitimate business interest in preventing Employee from violating this Agreement. Employee further acknowledges that MCHS, Inc. would be immediately and irreparably harmed, and that such harm would not be readily susceptible to measurement in economic terms, or economic compensation would be inadequate, if Employee were to violate the terms of this Agreement or if any of its terms were not specifically enforced. Employee therefore agrees that in the event that Employee violates, threatens to violate, or will inevitably violate any material term of this Agreement, MCHS, Inc. is entitled to preliminary and permanent injunctive relief, specific performance, any other equitable remedies, in addition to any and all remedies at law, without the necessity of posting a bond. Employee also agrees and acknowledges that he/she will pay the reasonable attorneys' fees of MCHS, Inc. in bringing an action to enforce this Agreement in the event a court concludes (at any stage) that Employee has violated a material term of this Agreement.
- B. Governing Law.** This Agreement and all rights hereunder shall be interpreted and enforced in accordance with the laws of the state of Wisconsin, without regard to the conflicts of laws rules thereof.
- C. Modifications and Amendments.** No change, modification or amendment of any provision of this Agreement shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by MCHS, Inc..
- D. At-Will Employment.** Employee acknowledges that Employee is an employee-at-will of MCHS, Inc., which means that either Employee or MCHS, Inc. may terminate the employment relationship at any time, for any reason. Nothing in this Agreement changes Employee's status as an employee-at-will.
- E. Severability.** In case anyone or more of the provisions contained herein for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
- F. Assignment.** MCHS, Inc. may assign this Agreement without consent to any of its Affiliates. The terms of this Agreement shall bind and inure to the benefit of MCHS, Inc. and its successors and assigns.
- G. Nonwaiver.** MCHS, Inc. inaction in not enforcing a breach of any part of this Agreement shall not prevent MCHS, Inc. from enforcing it as to any other breach of this Agreement.

**VII. Acknowledgment and Understandings**

- A. Understandings.** By signing below, Employee acknowledges and agrees that:
1. Employee had the opportunity to consult legal counsel regarding this Agreement.
  2. MCHS, Inc. informed Employee, as part of the offer of employment and prior to his/her accepting employment with MCHS, Inc., that a confidentiality, non-solicitation, non-disclosure, and intellectual property agreement would be required as part of the terms and conditions of employment; and
  3. Regardless of the date of execution of this agreement, the obligations and contractual rights set forth herein shall be retroactive and shall be effective as of the date on which Employee started employment with MCHS, Inc. in any capacity.
- B. Full Agreement.** This Agreement incorporates the entire understanding between the parties as to its subject matter. This Agreement may not be canceled, modified, or otherwise changed except by another written agreement signed by MCHS, Inc. and Employee.

IN WITNESS WHEREOF, the parties hereto have executed this Confidentiality, Non-Solicitation, Non-Disclosure and Intellectual Property Agreement consisting of seven (7) pages.

\_\_\_\_\_  
Employee's Name (please print)

**Marshfield Clinic Health System, Inc.**

\_\_\_\_\_  
Employee's Signature

By: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

