

Kaman Court

Faraday Way

Blackpool

FY2 0JH

England

 www.clinisafe.com

**Confidentiality Agreement**

**CLINISAFE LIMITED** **(1)**

**- and -**

 **[ ]** **(2)**

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THIS AGREEMENT is made effective the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2\_\_\_\_\_ (“Effective Date”), by and between:

**PARTIES:**

1. **CliniSafe Limited**, a company incorporated in England and Wales (Company Registration No: 05001098) whose registered office is at 9 Garden Street, St Annes, Lancashire FY8 2AA ("**CliniSafe Ltd**"); and
2. Organisation details

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 ("**the Company**").

Collectively the "**Parties**" (and "**Party**") shall be construed accordingly).

**BACKGROUND:**

1. The parties wish to exchange Confidential Information in connection with the Purpose and they recognise that the unauthorised disclosure or use of the Confidential Information could cause commercial harm to the Disclosing Party.
2. The Parties agree to disclose Confidential Information solely for the Purpose and to determine whether the Parties wish to enter into further contractual relationships with each other in relation to the Software.

**OPERATIVE PROVISIONS**:

# Definitions

 1.1 In this Agreement, except to the extent that the context otherwise requires:

 **Business Day** means a day (other than a Saturday or Sunday) on

which the banks are ordinarily open for business in the City of London;

**Confidential Information** means any information or data in any form whatsoever which is owned or held by the Disclosing Party and which is regarded by the Disclosing Party as confidential, including but not limited to inventions, experimental methods and protocols, processes, results, data, ideas, discoveries, technologies, know-how, documents, notes, reports, computer disks and files, business and research plans, and any other information relating to the work, business or Intellectual Property of the Disclosing Party whether disclosed in writing, orally or by any other means. For the avoidance of doubt, the confidential know-how and/or information subsisting in the Software shall be deemed to be the Confidential Information of **CliniSafe Ltd**;

 **Disclosing Party** means the party and any of the party’s

Affiliates who disclose Confidential Information to the other party;

**Affiliate** means every company which is from time to time a subsidiary or holding company of that party or a subsidiary of such holding company and the terms “subsidiary” and “holding company” of a party shall mean a company, which directly or indirectly, controls, is controlled by or is under common control with such party. Control means ownership of at least fifty percent (50%) of the capital stocks or the voting rights of the respective company;

**Intellectual Property** means patents, inventions, discoveries, copyright, rights in software, database rights, design rights, registered designs, unregistered designs, trade marks, service marks, domain names, know-how, utility models, confidential information and, where relevant, any and all applications for any such rights, and all and any other industrial or intellectual property rights subsisting anywhere in the world;

 **Software** means the novel computer program known as

CliniSafe which has been developed and is owned by **CliniSafe Ltd** and which subsists within the United States patent application number 11/833,192 (in the name of **CliniSafe Ltd**) and including any updates to such Software and related confidential know-how and information owned by **CliniSafe Ltd**;

 **Purpose** means the purpose solely of the enabling the

Parties to assess the Software and to determine whether or not they wish to enter into a contractual relationship with each other in connection with the Software;

**Receiving Party** means the party to whom Confidential Information is disclosed under the terms of this Agreement.

1.2 The headings to clauses are inserted for convenience only and will not affect the interpretation or construction of this Agreement.

1.3 References to persons include an individual, company, corporation, firm or partnership. References to clauses are to the clauses of this Agreement.

1.4 The word and phrases “other”, “including” and “in particular” will not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

# Confidentiality Undertakings

2.1 In consideration of the Disclosing Party making available its Confidential Information to the Receiving Party, save as expressly authorised by the Disclosing Party in writing

or as otherwise permitted in accordance with the terms of clause 3, the Receiving Party will (and will procure that its Affiliates will):

1. ensure that the Confidential Information is kept secret and confidential and will not disclose it or allow it to be disclosed in any manner to any other party whatsoever including (without limitation) to employees and directors of the Receiving Party other than in accordance with the terms of clause 2.1(d);
2. use the Confidential Information solely for the Purpose and for no other purpose whatsoever;
3. restrict the disclosure and maintain the confidentiality of the Confidential Information by treating it with at least the same degree of care, and by exercising no lesser security measures to the Confidential Information, as the Receiving Party applies to its own proprietary and confidential information;
4. only disclose the Confidential Information on a need-to-know basis to those employees, directors and advisors of the Receiving Party who have been assigned to evaluate the Confidential Information for the Purpose or to persons previously approved in writing by the Disclosing Party and, in either case, only provided that such persons have agreed in writing on terms no less onerous than those contained within this Agreement to keep such Confidential Information secret and confidential;
5. not copy, duplicate or reproduce any Confidential Information in any manner or form whatsoever except to the extent reasonably required for the Purpose, such copies to remain the property of the Disclosing Party;
6. clearly label all Confidential Information and any notes and copies made thereof by the Receiving Party as being “confidential” and the property of the Disclosing Party;
7. maintain a record of any notes and copies made of any Confidential Information as well as a list of any third parties (including employees, directors and contractors of the Receiving Party) to whom the Receiving Party has disclosed the Confidential Information and promptly provide this information to the Disclosing Party if so requested by the Disclosing Party in writing at any time;
8. not use, copy, transform or store any Confidential Information in an externally accessible computer or electronic information retrieval system nor transmit it in any form or by any means outside the Receiving Party's usual place of business;
9. return to the Disclosing Party all Confidential Information as it was provided to the Receiving Party and delete any notes, copies, extracts, computer records and other manifestations of the Confidential Information made by the Receiving Party within seven (7) Business Days of any written request by the Disclosing Party to return or destroy such information and certify such deletion to the reasonable satisfaction of the Disclosing Party.

2.2 A failure by the Disclosing Party to so mark, or confirm the Confidential Information disclosed orally shall not relieve the receiving party of its obligations under this Agreement where the Receiving Party knows or has reason to know that the Confidential Information disclosed to it is confidential

# Release from Confidentiality

3.1 The obligations and restrictions of this Agreement will not apply to any information disclosed by the Disclosing Party to the Receiving Party which:

1. is already in or becomes part of the public domain other than due to a breach of the confidentiality obligations in this Agreement by the Receiving Party;
2. comes into the possession of the Receiving Party from a third party without breaching any duty of confidentiality;
3. the Receiving Party can demonstrate by written records, to the reasonable satisfaction of the Disclosing Party, that the information was already in the possession of the Receiving Party before disclosure by the Disclosing Party;
4. the Receiving Party can demonstrate, by written records, to the reasonable satisfaction of the Disclosing Party, was generated or developed by or on behalf of the Receiving Party independently from the information disclosed by the Disclosing Party;
5. is expressly deemed in writing by the Disclosing Party not to be confidential or disclosed by the Disclosing Party to a third party without restriction on disclosure or use;
6. is ordered to be disclosed by a court of competent jurisdiction, provided that such information is disclosed only to the extent actually required by law and prior to such disclosure the Receiving Party gives the Disclosing Party such prior notice that it is reasonably able to give in order to give the Disclosing Party the opportunity to seek a protective order for the Confidential Information.

3.2 In the event that the Receiving Party wishes to be released from its obligations and restrictions under this Agreement due to any of the provisions of clause 3.1, it will, forthwith after it becomes aware of such facts and matters as give it grounds for belief that it may be so released, give notice to the Disclosing Party. Failure to give such notice will disallow the Receiving Party from relying on such facts and matters subsequently.

# Duration of Confidentiality Obligation

4.1. The period for exchanging Confidential Information between the parties shall commence on the Effective Date and continue for a period of five (5) years from that date.

4.2. The restrictions and obligations of this Agreement shall survive any expiration, termination or cancellation of this Agreement, and continue to bind the parties, their successors and assigns for a period of fifteen (15) years after the end of said disclosure period.

# Ownership

5.1 The Receiving Party acknowledges and agrees that the Confidential Information, and any and all Intellectual Property contained in the Confidential Information, are and will remain at all times the property of the Disclosing Party.

5.2 No rights or obligations other than those expressly set out in this Agreement are to be implied and nothing contained in this Agreement will:

1. be construed as granting or conferring upon the Receiving Party either expressly or by implication any right, licence or interest in any Intellectual Property of the Disclosing Party; or
2. in any way affect the rights of the Disclosing Party in respect of the Confidential Information under the laws of any country relating to Intellectual Property or any law protecting information that has been disclosed.

5.3 The Receiving Party acknowledges that the Disclosing Party asserts it is the owner of all Intellectual Property relating to the Confidential Information of the Disclosing Party. All inventions, improvements, developments, advances or discoveries whatsoever made by the Receiving Party which incorporate any Confidential Information and/or Intellectual Property of the Disclosing Party will be deemed to be the property of the Disclosing Party.

#  Disclosure to Affiliates

6.1 The Disclosing Party agrees that the Receiving Party is entitled to disclose to their Affiliates the Confidential Information to the extent that such disclosure is reasonably necessary for the Receiving Party to achieve the Purpose and provided that:

1. each of the Receiving Party's Affliliates agrees in writing with the Receiving Party to keep the Confidential Information secret and confidential and to comply with the provisions of this Agreement at all times in connection with the Confidential Information; and
2. the Receiving Party indemnifies the Disclosing Party against any and all losses, costs (including without limitation legal fees), expenses and damages that the Disclosing Party or its Affiliates suffer or incur due to the failure of any of the Receiving Party’s Affiliates to comply with the terms of this Agreement.

# No representation or warranty

7.1 The Receiving Party acknowledges that the Disclosing Party makes no representation or warranty in relation to the accuracy or completeness of any of the Confidential Information which it discloses to the Receiving Party.

# Damages Not An Adequate Remedy

8.1 The Receiving Party acknowledges and confirms that damages may not be an adequate remedy for the Disclosing Party for any breach by the Receiving Party of the terms of this Agreement and the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief, for any threatened or actual breach of the terms of this Agreement and no proof of special damages shall be necessary for its enforcement.

# Non Compete

10.1 The Receiving Party shall within seven (7) Business Days of receipt of the Confidential Information inform the Disclosing Party if it is in receipt of or in development of the same or similar software to the Software.

# General

11.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and supersedes all prior and collateral communications, reports and understanding between the Parties in relation thereto.

11.2 No purported alteration to this Agreement will be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties to this Agreement.

11.3 The rights and remedies of either party in respect of this Agreement will not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party neither to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement will be in writing. The waiver by either Party of any breach of this Agreement will not prevent the subsequent enforcement of that provision and will not be deemed to be a waiver of any subsequent breach of that or any other provision.

11.4 This Agreement may be entered into in the form of two counterparts, each executed by one of the parties, and, provided that both the parties will so enter into the Agreement, each of the executed counterparts, will be deemed to be an original but, taken together, they will constitute one instrument.

11.5 If any part of this Agreement is declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11.6 No Party may assign or transfer its obligations contained in this Agreement to any third party without the prior written consent of the other Party.

11.7 By signing below the individual attests that he/she has full authority on behalf of his/her Party to commit that Party to the provisions of this Agreement.

11.8 The Contracts (Rights of Third Parties) Act 1999 will not apply to this Agreement. No person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) will have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this clause.

11.9 All notices under this Agreement shall be in writing and sent by facsimile, e-mail or first class registered or recorded delivery post to the addresses of the parties set out at the head of this Agreement.

# Governing Law and Jurisdiction

12.1 This Agreement and any dispute or claim arising out of or in connection with it will be governed by, and construed in accordance with, the laws of England.

12.2 All disputes or claims arising out of or relating to this Agreement will be subject to the non-exclusive jurisdiction of the English Courts to which the parties irrevocably submit.

**IN WITNESS** whereof the duly authorised signatories of the parties have executed this Agreement on the Effective Date written at the head of this Agreement.

**CliniSafe Limited Name of client**

##

**By**:……………………………………… **By**:…………………………………………

**Name**:………………………………….. **Name**:…………………………………….

**Title**:…………………………………… **Title**:………………………………………

**Date**:…………………………………… **Date**: ………………………………………