

ePrescribe Customer License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE ALLSCRIPTS PROPRIETARY ePRESCRIBE SYSTEM ("ePrescribe"). BY ACCESSING OR USING ALL OR ANY PORTION OF THE SERVICES OR BY CLICKING THE "I ACCEPT" BUTTON AT THE END OF THE AGREEMENT, YOU ACKNOWLEDGE YOUR ACCEPTANCE OF THE AGREEMENT AND REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THE AGREEMENT ON BEHALF OF CUSTOMER. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE BY HSPS AND/OR ALLSCRIPTS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU HAVE NOT BEEN GRANTED THE RIGHT TO USE THE SERVICES AND YOU SHOULD CLICK ON THE "I DO NOT ACCEPT" BUTTON AND CANCEL OPERATION OF THE SERVICES.

THE TERMS AND CONDITIONS OF THIS AGREEMENT APPLY TO ANY AND ALL USE OF EPREScribe BY YOU AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS REGARDLESS OF THE TYPE OF USE OF THE SERVICES BY YOU.

This ePrescribe Customer License Agreement, as amended from time to time, (this "Agreement") is between you or the entity you represent (collectively "You") and Henry Schein Practice Solutions Inc., a Utah corporation with its principal place of business at **1220 South 630 East Suite 100, American Fork, UT 84003 ("HSPS")**.

THE ALLSCRIPTS ePRESCRIBE SOFTWARE, CONTENT AND SERVICES ARE PROPRIETARY TO ALLSCRIPTS HEALTHCARE, LLC ("ALLSCRIPTS"). SUBJECT TO THE TERMS AND CONDITIONS HEREIN, YOU ARE OBTAINING THE ALLSCRIPTS ePRESCRIBE SOFTWARE, CONTENT AND SERVICES FROM HSPS, AN AUTHORIZED RESELLER OF ePRESCRIBE.

1. GENERAL INFORMATION AND RESPONSIBILITIES

- a. ePrescribe FACILITATES ELECTRONIC PRESCRIBING AND RENEWALS. ePrescribe DOES NOT GIVE MEDICAL ADVICE, NOR DOES IT PROVIDE MEDICAL OR DIAGNOSIS SERVICES OR PRESCRIBE MEDICATION. USE OF ePrescribe IS NOT A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF HEALTHCARE PROVIDERS IN DIAGNOSING AND TREATING PATIENTS. YOU ACKNOWLEDGE THAT YOU ARE SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY OF PATIENT INFORMATION (INCLUDING, WITHOUT LIMITATION, BY OBTAINING ALL APPLICABLE PATIENT'S MEDICAL AND MEDICATION HISTORY, AND ALLERGIES), AND FOR ALL MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO THE MEDICAL CARE, TREATMENT AND WELL BEING OF YOUR PATIENTS, INCLUDING, WITHOUT LIMITATION, ALL YOUR ACTS OR OMISSIONS IN TREATING THE APPLICABLE PATIENT. ANY RELIANCE BY YOU UPON ePrescribe SHALL NOT DIMINISH THAT RESPONSIBILITY.
- b. YOU MAY NOT USE ePrescribe TO PERFORM MEDICAL DIAGNOSTIC FUNCTIONS, TO SET TREATMENT PROCEDURES OR TO SUBSTITUTE FOR THE MEDICAL JUDGMENT OF A QUALIFIED HEALTHCARE PROVIDER. WHEN SELECTING A NARRATIVE CONDITION OR CODED DIAGNOSIS, IF SUCH FEATURE IS AVAILABLE IN THE VERSION OF ePrescribe FOR WHICH YOU HAVE SUBSCRIBED, YOU MUST MAKE AN INDEPENDENT AND INFORMED JUDGMENT, BASED UPON THE PATIENT'S CONDITION AND SYMPTOMS AND/OR A PRACTITIONER'S SUBMITTED DIAGNOSIS, TO SELECT AN ACCURATE DIAGNOSIS CODE APPROPRIATE FOR THAT PATIENT. NEITHER ALLSCRIPTS NOR HSPS NOR ITS CONTRACTORS MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE APPROPRIATENESS OF ANY OF THE NARRATIVE OR CODED DIAGNOSIS CODES DISPLAYED FOR ANY OR ALL PATIENTS.
- c. CERTAIN VERSIONS OF ePRESCRIBE ALLOW FOR THE ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES ("EPCS"). YOU HEREBY ACKNOWLEDGE AND AGREE THAT IN ORDER TO ACCESS OR USE THE EPCS YOU MUST COMPLY WITH THE EPCS USER GUIDE AND EPCS IMPLEMENTATION GUIDE AS MAY BE UPDATED FROM TIME TO TIME. YOU FURTHER HEREBY ACKNOWLEDGE AND AGREE THAT THE IDENTITY PROOFING AND VERIFICATION OF MEDICAL PROVIDERS IS NOT BEING PERFORMED OR OTHERWISE VERIFIED BY ALLSCRIPTS OR HSPS, AND HSPS DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR ANY IDENTITY PROOFING AND VERIFICATION OF PROVIDERS AND ALL OTHER LIABILITY RELATED TO THE EPCS FUNCTIONALITY OF ePRESCRIBE, AND YOU HEREBY WAIVE ANY CLAIMS YOU MAY HAVE, NOW OR IN THE FUTURE, ARISING, RELATING OR RESULTING THEREFROM.

2. LICENSE GRANT, USE AND COPYRIGHT

Subject to the terms and conditions of this Agreement, You are hereby granted by Allscripts, through HSPS, its authorized reseller, a limited, non-transferable, nonsubicensable, non-exclusive license to use, during the term of Your subscription, ePrescribe, subject to the limitations specified herein, and only where allowed by law. You are authorized to use ePrescribe solely for Your personal use in connection with Your practice; provided, however, You may allow any number of non-practitioner users to use ePrescribe, but only in support of Your legal and professional use and provided further that You agree that You are responsible for such users' compliance with all the terms of this Agreement. ePrescribe is protected by copyright under both United States and foreign laws. ePrescribe is the proprietary copyrighted property of Allscripts. Title and ownership to ePrescribe shall be and at all times remain with Allscripts. The rights granted to You hereunder do not include the right to develop derivative or related works to ePrescribe. You shall not, nor shall you cause or permit any third party to, under any circumstances, (a) distribute, rent, sell, lease or otherwise display, disclose, transfer or make available ePrescribe to any third party; (b) modify, change, reverse assemble, reverse compile or reverse engineer ePrescribe, or otherwise attempt to discover any software source code or underlying proprietary information of Allscripts; (c) remove, efface or obscure any copyright notices, logos or other proprietary notices or legends (whether Allscripts' or its partners) from ePrescribe; or (d) copy ePrescribe in any form, without the express written consent of Allscripts. You may not use or allow any person to examine ePrescribe for the purpose of creating another system and you will not use or disclose any data or information relating to ePrescribe, or the technology, ideas, concepts, know-how or techniques embodied in ePrescribe, except as necessary to operate ePrescribe as contemplated by this Agreement. You agree to use ePrescribe only in accordance with its directions for use and only in connection with your internal business conducted at the address(es) identified in connection with your registration ("professional use"). Any use of ePrescribe not expressly permitted herein is a breach of this Agreement and may violate copyright, trademark, and other laws. All rights not expressly granted herein are reserved to Allscripts and HSPS. If you violate any provision of this Agreement, your permission to use ePrescribe automatically terminates, and you must immediately destroy any copies you have made of any portion of the materials.

3. FEES, PAYMENTS AND SUPPORT

In consideration of the License granted hereunder, You agree to pay HSPS a license fee in the amount set forth on the Invoice. Payment is due on the date on which You click "I agree." All fees are subject to change at the sole discretion of HSPS at any time; provided that You shall have the right following notice of the change in fees but prior to the effective date of such change to discontinue Your use of ePrescribe. Support for ePrescribe is covered under Your current and existing Customer Service Plan Agreement. If You do not have a Customer Service Plan Agreement, a per incident charge will be charged to You at the then current standard support rate as determined by HSPS. Such rates shall be charged to You on a per incident basis. Such rates are subject to change at any time without notice.

4. TERM AND TERMINATION

This Agreement, and Your right to access and use ePrescribe shall become effective when You click "I Agree" and shall continue for a period of one (1) year. Thereafter, this Agreement may be renewed for successive one year terms upon the mutual agreement of HSPS and You. Such agreement may be evidenced by Your payment of HSPS's invoice. Notwithstanding the foregoing, HSPS may terminate this Agreement, and Your right to access and use ePrescribe, at any time for any reason or for no reason. Thereafter, unless specified otherwise in changes to this Agreement, this Agreement, and Your right to access and use ePrescribe, shall automatically terminate.

5. CURRENT ALLSCRIPTS REQUIRED TERMS AND CONDITIONS

- (i) Without limiting Section 9 hereof, You agree that data and information provided via ePrescribe is for Your convenience only, and that the sole and exclusive responsibility for determining the accuracy, completeness, or appropriateness of any such data or information resides solely with You. Neither HSPS nor Allscripts, or their respective licensors, contractors and suppliers are responsible for, nor do they represent or warrant the accuracy, timeliness, completeness, appropriateness or helpfulness of any content, data or information. You acknowledge that You are solely responsible for inputting and retrieving data from ePrescribe, and You are solely responsible for the accuracy and adequacy of information and data furnished for processing. You understand and acknowledge that any information provided by ePrescribe may be incomplete and that any formularies presented as part of ePrescribe are subject to change.
- (ii) Because of the rapidly changing legal and regulatory environment (particularly with regard to state requirements applicable to electronic prescribing and dispensing of medication), the information in ePrescribe may not be current, and accordingly, You should not rely solely upon ePrescribe for such information. IN PARTICULAR, YOU ARE SOLELY RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL APPLICABLE LAWS AND REGULATIONS WITH RESPECT TO FAXING OR ELECTRONICALLY TRANSMITTING OR PRINTING A PRESCRIPTION.
- (iii) The laws of each state may vary with regard to treatment of the Drug Enforcement Agency's ("DEA") classes of drugs. You are responsible for: (i) verifying that the DEA class is correct for each prescription that You transmit via electronic transmission, (ii) with respect to generic drugs, verifying that generic drugs, offered in their respective classes, are properly classified according to FDA regulations and guidelines. In prescribing generic drugs using ePrescribe, You accept sole responsibility for the prescription of the generic drug for the patient, the complete review of the drug, and an understanding of its proper uses. In selecting a generic drug, You accept sole responsibility for any payor issues arising due to classification of the generic drugs.

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- (iv) With respect to Drug Utilization Review (including, but not limited to, Drug to Drug interactions), the presence or absence of any warning through ePrescribe does not imply that any drug being prescribed, or having been prescribed, is suitable or safe for the patient for whom it is being, or has been, prescribed, or for any other patient. The clinical information presented by ePrescribe is generalized and may not be appropriate for any given patient. You are responsible for independently considering possible drug-to-drug interactions given a patient's history.
- (v) You represent and warrant that: (a) all of the information and data submitted as part of the ePrescribe enrollment process is accurate and complete and that You have the authority to submit such information and data; (b) You, and all Your users of ePrescribe, have all permits and licenses (including without limitation a valid state license) necessary to legally prescribe medication; (c) during the term of this Agreement, You will maintain all such licenses and permits in full force and effect; (d) You will immediately cease any and all use of ePrescribe if, at any time during the term of this Agreement, You no longer have the right to legally prescribe medication. You acknowledge and agree that HSPS and/or Allscripts has the right to (i) take all steps necessary to confirm Your and Your users' identities and otherwise verify all information and data provided to HSPS and/or Allscripts, including without limitation, the right to submit such information and data to third parties; (ii) otherwise use such information and data in the course of the ePrescribe enrollment process or the ePrescribe service for any legal purpose (including without limitation, the right to share such data with third parties); and (iii) use such information and data to contact you regarding the ePrescribe enrollment process and the ePrescribe service. You specifically consent to the foregoing uses of such information and data. You acknowledge that You are solely responsible for inputting and retrieving data from ePrescribe, and for the accuracy and adequacy of information and data furnished for processing. YOU ACKNOWLEDGE THAT YOU SHALL HAVE FULL AND SOLE RESPONSIBILITY FOR THE CARE AND WELL BEING OF YOUR PATIENTS, AND ANY RELIANCE BY HSPS UPON THE LICENSED MATERIALS SHALL NOT DIMINISH OR ALTER SUCH RESPONSIBILITY.
- (vi) Notwithstanding the foregoing, You shall grant Allscripts the right to use or disclose protected health information ("PHI") for any of the following purposes: (i) interfacing ePrescribe with other software used by HSPS or You; (ii) training You and Your users in the use of ePrescribe; (iii) providing help desk support to You and Your users; (iv) repairing ePrescribe; (v) upgrading ePrescribe; (vi) updating information on ePrescribe; (vii) transmitting prescriptions, dictations, claims, orders, results or other records as requested by You, Your users and/or the patient to another covered entity, either directly or through its business associate, in connection with a use for which the HIPAA privacy rule allows such disclosure, provided that the receiving covered entity, either directly or through its business associate, represents to HSPS and/or Allscripts that (1) it has or had a relationship with the individual who is the subject of the PHI being requested, (2) the PHI pertains to such relationship and (3) the PHI will be used only for the treatment activities of the receiving covered entity, a purpose listed in the definition of "health care operations" under the HIPAA privacy rule, for health care fraud and abuse detection or compliance, or for the receiving covered entity's payment activities; (viii) any other purpose which supports the intended use of ePrescribe by You or Your users; (ix) any other purpose which requires consent or authorization of the patient, if such consent or authorization is obtained; or (x) for its proper management and administration or to carry out its legal responsibilities. HSPS and/or Allscripts may also de-identify and aggregate PHI, which it may then use or disclose to others for purposes of product development, preparing commercially available normative and benchmark data and databases, screening eligibility for clinical trial opportunities, internal and external research and analysis purposes, and for any other lawful purpose; provided, however, any such de-identified and aggregated PHI shall be aggregated with all other similar data available to HSPS and/or Allscripts and provided further that such data shall not be attributed, either directly or indirectly, to You.
- (vii) You shall notify HSPS and Allscripts of (i) any limitation(s) in Your notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of PHI; (ii) any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect the use or disclosure of PHI; and (iii) any restriction to the use or disclosure of PHI that You have agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or disclosure of PHI.
- (viii) You and Your users will obtain from their patients all requisite written consents in order to utilize the capabilities of ePrescribe in compliance with applicable laws and regulations, as amended from time to time, including, but not limited to HIPAA, and to carry out the purposes of this Agreement. You understand the confidential nature of clinical patient information and agree that You are solely responsible for maintaining any and all necessary measures to assure such confidentiality. Neither HSPS or Henry Schein, Inc. shall be liable for damages or claims arising from the breaches or potential breaches of patient information maintained by You.

6. PASSWORDS AND ACCESS

ePrescribe is structured to allow access only to users with a valid password. You will be responsible for the assignment of access and usage privileges to users of ePrescribe, including but not limited to taking all reasonable steps to ensure that no unauthorized person shall have access to Your ePrescribe password or account. It is Your sole responsibility to: a) control the dissemination and use of activation codes and passwords; b) authorize, monitor, and control access to and use of Your ePrescribe account and password; c) promptly inform HSPS or Allscripts of any need to deactivate a password. Your assignment of access and usage privileges shall be in conformity with applicable laws and regulations, including but not limited to those related to proper licensure of users. You will be responsible for ensuring that the licensing information and the dates for permitted use of the ePrescribe service are correctly entered and updated. Neither HSPS nor Allscripts is responsible for the granting or monitoring of user privileges to ePrescribe nor any incorrect entry or lack of updating of licensing information by You. You grant HSPS and Allscripts and all other persons or entities involved in the operation of ePrescribe the right to transmit, monitor, retrieve, store, and use your information in connection with the operation of ePrescribe. Neither HSPS nor Allscripts assumes any responsibility or liability for any information You submit, or Your users or third parties' use or misuse of information transmitted or received using ePrescribe.

7. OWNERSHIP OF INTELLECTUAL PROPERTY

You acknowledge and agree that Allscripts owns all right, title and interest (including all copyrights and other intellectual property rights) in ePrescribe. You acquire no proprietary interest in ePrescribe, or any portion thereof. Except for the limited rights expressly granted to You in this Agreement, all other rights in ePrescribe are owned and retained by Allscripts.

8. CONFIDENTIAL INFORMATION

You agree that ePrescribe, the pricing, documentation, discounts and any business, technical, financial or other information and all other terms offered to You, and other materials of a confidential and proprietary nature provided by HSPS to You are the confidential property of HSPS ("Confidential Information"), and that any Confidential Information, disclosed by HSPS to You pursuant to this Agreement is the Confidential Information of HSPS. You agree that You shall not use the Confidential Information for any purpose not expressly permitted by this Agreement, and that You shall hold in confidence and shall not disclose to any third party such Confidential Information or the material terms of this Agreement, and that You shall similarly bind Your users and personnel. You shall not be obligated under this section with respect to information that You can document: (i) is or has become readily publicly available without restriction through no fault of You, Your users or personnel, (ii) is received, without restriction, from a third party lawfully in possession of such information and lawfully empowered to disclose such information, or (iii) was rightfully in Your possession without restriction prior to its disclosure hereunder.

9. NO WARRANTIES; DISCLAIMER:

- a. a. YOU ACKNOWLEDGE THAT HSPS DISTRIBUTES ePrescribe AND IS NOT THE MANUFACTURER OF ePrescribe. HSPS IS NOT RESPONSIBLE FOR AND EXPRESSLY DISCLAIMS AND PROVIDES NO WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATION, QUALITY, RESULTS, PERFORMANCE OR RELIABILITY OF ePrescribe OR YOUR CHOICE OF ePrescribe OR THE ACCURACY OF THE INFORMATION OR DATA ACCESSIBILITY BY MEANS OF ePrescribe, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND USE OF ePrescribe IS AT YOUR OWN RISK. NO HSPS EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.
- ePRESCRIBE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF ePRESCRIBE OR THE ACCURACY OF THE INFORMATION OR DATA ACCESSIBLE BY MEANS OF THE SERVICE (IN SO FAR AS SUCH WARRANTIES MAY BE EXCLUDED UNDER ANY RELEVANT LAW), AND THE USE OF ePRESCRIBE IS AT YOUR OWN RISK. ALLSCRIPTS, ON ITS OWN BEHALF AND ON BEHALF OF ITS LICENSORS, CONTRACTORS, SUPPLIERS, INCLUDING HSPS, AND ANY OTHER PARTIES WHO MAY BE ASSOCIATED WITH THE PROVISIONING OF THE ePRESCRIBE SERVICE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES WITH RESPECT TO YOUR USE OF THE ePRESCRIBE SERVICE, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION PRESENTED VIA ePRESCRIBE DOES NOT GUARANTEE ANY INSURANCE BENEFITS WILL BE PAID.
- b. NO CLAIM YOU MAY HAVE WITH RESPECT TO ePrescribe PURCHASED FROM HSPS SHALL AFFECT YOUR OBLIGATIONS (INCLUDING, WITHOUT LIMITATION, YOUR PAYMENT OBLIGATIONS) TO HSPS FOR ePrescribe.
- c. When using ePrescribe, information will be transmitted over a medium that may be beyond the control and jurisdiction of Allscripts and its suppliers and licensors, including HSPS. Accordingly, Allscripts and HSPS assume no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of ePrescribe.

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- d. Allscripts and HSPS make no claims that ePrescribe software or content are appropriate or may be viewed, used or downloaded (if downloading is otherwise permitted by Allscripts) outside of the United States. Access to the Allscripts ePrescribe service may not be legal by certain persons or in certain countries. If you access Allscripts ePrescribe from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

10. LIMITATION OF LIABILITY

In no event shall HSPS, HENRY SCHEIN, INC. OR ALLSCRIPTS, and their officers, directors, employees, agents, consultants, information providers, licensors, or suppliers be liable to YOU OR ANY THIRD PARTY for any indirect, incidental, consequential, special, or exemplary damages, INCLUDING, WITHOUT LIMITATION, DAMAGE FOR PERSONAL INJURY, SICKNESS, USE OF ePRESCRIBE, DEATH, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, OR DAMAGES FOR LOSS OF USE, LOSS OF DATA OR LOST PROFITS OR REVENUES, arising out of or in connection with THIS AGREEMENT, even if SUCH PARTY has been advised of the possibility of such damages. IN NO EVENT SHALL HSPS' OR HENRY SCHEIN, INC.'s TOTAL LIABILITY FOR ANY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE LICENSE FEES PAID PURSUANT TO THIS AGREEMENT DURING THE MOST RECENT 12 MONTHS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE. ALLSCRIPTS SHALL BE LIABLE ONLY TO THE EXTENT OF ACTUAL DAMAGES INCURRED BY YOU, NOT TO EXCEED ONE HUNDRED DOLLARS (\$100). REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND ARE LIMITED TO THOSE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. YOU HEREBY RELEASE AND FOREVER WAIVE ANY AND ALL CLAIMS YOU MAY HAVE AGAINST HSPS, HENRY SCHEIN, INC. OR ALLSCRIPTS, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, INFORMATION PROVIDERS, LICENSORS, OR SUPPLIERS FOR LOSSES OR DAMAGES YOU SUSTAIN IN CONNECTION WITH YOUR USE OF ePRESCRIBE.

11. INDEMNIFICATION

You agree to defend, indemnify and hold harmless HSPS, Henry Schein, Inc. and Allscripts, and their officers, directors, employees, agents, licensors, and suppliers (including reasonable attorneys' fees and costs of litigation) against and from any and all claims, liability, losses, damages and expenses resulting from, or alleged to result from, the provision, receipt or use of any information or data submitted hereunder or Your use of ePrescribe, in breach of any of the terms of this Agreement, regardless of the form of action.

12. THIRD PARTY BENEFICIARY

Allscripts is a direct and intended third party beneficiary of this Agreement.

13. U.S. GOVERNMENT RESTRICTED RIGHTS

This section applies to all acquisitions of ePrescribe by or for the Government. EPrescribe is provided with RESTRICTED RIGHTS. This section applies to all acquisitions of EPrescribe by or for the Government. By clicking "I accept", the Government hereby agrees that ePrescribe is a "commercial item" as that term is defined at FAR 2.101 (Oct. 1999), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212 (Oct. 1999) and that the Government's use and disclosure of ePrescribe is controlled by the terms and conditions of this Agreement to the maximum extent possible. Consistent with FAR 12.212 and DFARS 227.7202 (Oct. 1999), all Government users acquire ePrescribe with only those rights set forth herein. This Agreement supersedes any contrary terms and conditions in any statement of work, contract, or other document relating to the Government's use of ePrescribe.

14. GENERAL

- (a) **Entire Agreement.** You agree that this Agreement constitutes the entire agreement between You and HSPS and shall supersede any prior agreement or any other communications relating to the use of ePrescribe or any portion thereof.
- (b) **Amendment.** HSPS may change the terms of this Agreement upon thirty (30) days' notice to You. Except as otherwise set forth herein or in the applicable notice, all amended terms shall be effective thirty (30) days after notice is given. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR SOLE RECOURSE IS TO TERMINATE THIS AGREEMENT BY SENDING A TERMINATION NOTICE TO HSPS BEFORE THE EFFECTIVE DATE OF THE AMENDMENT(S). The termination notice will be effective on the date it is received by HSPS. YOUR USE OF ePRESCRIBE AFTER THE DATE ON WHICH CHANGES BECOME EFFECTIVE WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES.
- (c) **Severability.** If any provision herein is otherwise held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- (d) **Governing Law.** This Agreement is governed by the laws of the State of New York and the United States of America, including U.S. copyright laws. The Federal and State Courts resident in New York County, New York shall have exclusive jurisdiction to adjudicate any dispute arising under or out of this Agreement.
- (e) **Assignment.** You shall not have the right to assign (by operation of law or otherwise), transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of HSPS. Except as otherwise provided herein, this Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the parties.
- (f) **Export Restrictions.** You acknowledge that ePrescribe, or any portion thereof, may be subject to U.S. export restrictions. You agree to comply with all applicable international and national laws that apply to ePrescribe, or any portion thereof, including the U.S. Export Administration Regulations, as well as destination and all other restrictions issued by U.S. and other governments.
- (g) **Notices.** Except as otherwise provided, all notices given under this Agreement shall be in writing, either by electronic or regular mail, and shall be deemed to have been duly given upon receipt if delivered by hand or facsimile transmission with receipt confirmed, three days after mailing by certified or registered mail, and one day after sending by overnight courier, to such address as a party specifies in writing to the other party. All written notices given to HSPS through certified mail under this Agreement shall be sent with a copy to **Henry Schein, Inc., 135 Duryea Road, Melville, New York 11747, Attention: General Counsel, Fax (631) 843-5660.**
- (h) **No Waiver.** The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- (i) **Force Majeure.** HSPS shall have no liability for delays, failure in performance or damages caused by factors beyond its reasonable control, including (without limitation) changes in government regulations, acts of God, Your acts or omissions, labor shortages, strikes, slowdowns, or other combined action of workmen, fires, floods, earthquakes, severe weather, serious accidents, explosions, lightning, pest damage, power surges or failures, epidemics, quarantines, wars, insurrections or riots, acts of civil or military authorities, transportation embargoes, shortages or interruptions in delivery of components and materials, acts or omissions of communications carriers, Internet inaccessibility or failure and delays by Allscripts.
- (j) **Independent Contractor.** Notwithstanding any provision hereof, for all purposes of this Agreement each party shall be and act as an independent contractor and not as partner, joint venturer or agent of the other party and shall not bind nor attempt to bind the other party to any contract.
- (k) **Headings; Sections.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

You have read this Agreement in its entirety and You understand and accept all of the provisions stated herein.