



## MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into as of [REDACTED] ("Effective Date") between Align Technology Incorporated, a Delaware corporation, with principal business offices at 2820 Orchard Parkway, San Jose, California 95134 ("Align"), and [REDACTED], a [REDACTED], having a principal place of business at [REDACTED] ("Company").

1. **Purpose.** This Agreement is entered into for the purpose of authorizing the parties to exchange certain Confidential Information, as defined below, relating to (a) a potential business and/or technical opportunity of mutual interest, (b) furthering an existing business relationship, (c) fulfilling each party's commitments if a proposed business and/or technical transaction is pursued, or as the parties otherwise agree. Pursuant to the foregoing, each party may disclose or already has disclosed to the other certain Confidential Information, which the disclosing party desires to be treated as confidential.
2. **Definition of Confidential Information.** As used herein the parties includes each party's officers, directors, employees, affiliates, subsidiaries and assigns. For purposes of this Agreement, "Confidential Information" shall mean all tangible and intangible information or material disclosed by one party ("Disclosing Party") or otherwise made available or accessible to the other party ("Receiving Party") whether intentionally or inadvertently regardless of the manner or medium of disclosure or access (e.g. visual, oral, writing, electronic form) that is described as proprietary or confidential or considered as proprietary or confidential by the Disclosing Party and shall include, but is not limited to, the following types of information and other information of a similar nature: Trade secrets, plans, discoveries, ideas, concepts, papers, software and software in various stages of development, database rights, inventions, designs, drawings, products, mask works, semiconductor topography rights, utility models, specifications, techniques, models, prototypes, data, source code, object code, algorithms, documentation, manuals, diagrams, flow charts, schematics, research, processes, procedures, functions, "know-how", registered and unregistered design rights, manufacturing processes, procedures and related technology, all aspects of manufacture related to products or other related services, materials and equipment, capacities, marking techniques and materials, all marketing and development plans, all business plans and services, business process information, customer or patient names and other information related to customers or patients, prices and pricing policies, budgets, financial information, information related to manufacturing, production and training information, licensing and/or distribution arrangements, the terms of or existence of any business discussions between the parties, feedback, information regarding the skills and/or compensation of employees or contractors of the Disclosing Party, information disclosed by any third party which information the Disclosing Party is obligated to treat as confidential or proprietary information, and any copies, compilations, summaries or other information or material produced by the Disclosing Party or any third party that is based on or includes any part of the Confidential Information referenced above. Notwithstanding the foregoing, the Receiving Party expressly agrees that the failure by the Disclosing Party to designate any information as Confidential Information shall not give the Receiving Party the right to treat such information as free from the restrictions imposed by this Agreement. All Align Confidential Information is owned by Align.
3. **Permitted Use and Confidentiality Obligations.** The parties shall use the Confidential Information to evaluate whether to enter into a contemplated business transaction and if the parties enter into the transaction, to fulfill each party's commitments for the transaction. Each Receiving Party shall treat all Confidential Information of the Disclosing Party with the same degree of care it accords its own Confidential Information of like nature, but not less than reasonable care. Neither party may reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to a party hereunder. Recording, copying, photographing, or any other reproduction is prohibited without the prior written approval of an authorized representative of Align.

The Receiving Party's obligations under this Agreement with respect to any portion of the Disclosing Party's Confidential Information shall cease to thereafter apply to the extent that Receiving Party can document to the Disclosing Party's reasonable satisfaction that the Confidential Information:

- (a) is now or subsequently becomes publicly known through no act or fault on the part of Receiving Party;
- (b) was rightfully in the possession of Receiving Party prior to receipt or access from Disclosing Party;
- (c) is hereafter rightfully furnished to Receiving Party by a third party without breach of any direct or indirect obligation of confidence to the Disclosing Party or a party in privity to the Disclosing Party; or
- (d) was developed by the Receiving Party independently and without reference to such Confidential Information.

Each Receiving Party agrees not to disclose Confidential Information of the Disclosing Party to anyone other than those employees, affiliates, contractors of the Receiving Party (except that Receiving Party shall not disclose Disclosing Party's Confidential Information to competitors of Disclosing Party without prior written permission) who need to know such Confidential Information for the purpose set forth above and who have entered into binding obligations of confidentiality substantially similar to the obligations set forth herein.

In addition to the foregoing, Company acknowledges and agrees that Align's clients may provide Align with Protected Health Information ("PHI"), defined as individually identifiable health information that is protected by the Health Insurance

Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder as they may be amended from time to time. To the extent that Company has access to such PHI in the course of performing hereunder, Company, its employees and consultants must not use or disclose the PHI other than as permitted hereunder or required by law. Company is required to use appropriate safeguards, including training, education and policies and procedures to prevent use, reproduction or disclosure of PHI information.

4. **Term.** Notwithstanding the conclusion or termination of the parties' relationship as described herein, whether due to cancellation, or otherwise, Receiving Party shall continue to fulfill its obligations hereunder and to maintain the confidentiality of the Confidential Information for a period of three (3) years from the last date of disclosure, except for source code which shall remain subject to this Agreement until and if it becomes publicly known and made generally available by the Disclosing Party.
5. **Return of Confidential Information.** All Confidential Information, existing in written form or recorded in any other tangible medium, shall be returned to Disclosing Party or irretrievably destroyed if requested by the Disclosing Party in writing, including non-tangible forms of Confidential Information, together with any reproductions or copies thereof. The Disclosing Party has the right to audit the Receiving Party to confirm that all Confidential Information has been returned or destroyed as instructed by the Disclosing Party, provided that the audit takes place during regular business hours, at a mutually convenient time. Align reserves the right to inspect all items at any time while on Align's facilities for cameras, recording instruments and the presence of any Align Confidential Information.
6. **No License.** All Confidential Information disclosed by the Disclosing Party shall remain the property of the Disclosing Party. The Disclosing Party is not hereby granting or extending to Receiving Party any rights of any kind under any patent, copyright, trademark, trade secret or other intellectual property right which Disclosing Party may now have or may hereby obtain with respect to the Confidential Information.
7. **Remedies.** Each Receiving Party agrees that the Disclosing Party may suffer irreparable harm if Receiving Party fails to comply with its obligations set forth herein and further agrees that monetary damages may be inadequate to compensate Disclosing Party for any such breach. Accordingly, Receiving Party agrees that Disclosing Party will, in addition to any other remedies available to it at law or in equity, be entitled to seek the issuance of injunctive relief to enforce the provisions hereof.
8. **Warranty.** Disclosing Party warrants that it has the right to make disclosures under this Agreement. Each party disclaims all other warranties, express or implied, including warranties of fitness for a particular purpose, title, merchantability, and non-infringement regarding the confidential information. All confidential information is provided “as is.”
9. **Assignment.** Neither party shall have the right to assign this Agreement (or any portion hereof) without the prior written consent of the other party. Any assignment without such consent shall be void and is a material breach hereof.
10. **Notice.** Any notice or communication to be given under this Agreement must be delivered to the addresses set forth above by a means evidenced by a delivery receipt and will be effective upon receipt. Notices to each party shall be addressed to the attention of its Chief Executive Officer, with a copy to its General Counsel.
11. **No Waiver of Rights.** The execution of this Agreement by the parties or any acts taken pursuant hereto shall not be construed as a waiver by either party, its contractors, representatives or agents of the proprietary and confidential nature of any Confidential Information as a result of its disclosure to the other for the limited purposes specified herein. Under no circumstances has either party waived any rights or remedies it may have with respect to any Confidential Information and each party expressly reserves all rights and remedies which it may have with respect to the Confidential Information. The failure of any party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's rights to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall remain in full force and effect. Any waiver must be in writing and duly executed by the party to be charged and any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time.
12. **Required Disclosure.** The terms of this Agreement are confidential and shall not be disclosed to third parties without the written consent of all parties, except to the extent required by a court or regulatory agency of competent jurisdiction, provided that Receiving Party gives the Disclosing Party prompt prior written notice and cooperates with the Disclosing Party to prevent or limit such disclosure.
13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law or invalid, such provision shall be changed by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions shall remain in full force and effect.
14. **Miscellaneous.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its conflicts of law rules. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations and understandings, whether oral or written. This Agreement may not be amended, except by a writing signed by both parties. The terms and conditions of this Agreement

shall be enforceable to the fullest extent permitted by law. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together will constitute one and the same instrument. In addition, the parties agree that documents executed and transmitted by facsimile, transmitted electronically with electronic or digital signature, or transmitted by email with a scanned copy shall be deemed to be an original signature for purposes of this Agreement. The parties have caused this Agreement to be signed by their duly authorized representatives.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[\_\_\_\_\_].

**ALIGN TECHNOLOGY, INC.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_