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Transaction ID 26263249
Case No. 4385-VCP



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ACS STATE HEALTHCARE, LLC,
Plaintiff

v.

WIPRO INC. and WIPRO LIMITED,
Defendants

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)
) Civil Action No. 4385-VCP
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"CLAWBACK" STIPULATION AND [PROPOSED] ORDER

WHEREAS, the Parties¹ believe that it will promote the efficient, just, and economical resolution of this Litigation to supplement the existing Confidentiality Stipulation by entering into this stipulation and order (the "Clawback Order") regarding the exchange of certain Discovery Material;

WHEREAS, based upon a good faith belief that such procedures are likely to generate documents relevant and/or responsive to the discovery requests in this Litigation, the Parties have previously agreed to limit their respective document collection and production efforts to certain document custodians and repositories, and further agreed to utilize electronic keyword search terms to identify potentially relevant documents from the foregoing document sources;

WHEREAS, despite these limitations on the scope of discovery, the volume of documents that are likely relevant and/or responsive to the discovery requests in this Litigation is of a magnitude that a document-by-document review of documents prior to

¹ Unless otherwise defined, capitalized terms herein have the meanings assigned in the Stipulation and Order Governing the Protection and Exchange Of Confidential Material entered in this Litigation (Trans. ID 24495804; the "Confidentiality Stipulation").

production would cause substantial delay and would be unduly burdensome on the Producing Parties;

WHEREAS, the Parties believe that permitting the production of documents pursuant to this Clawback Order, without the necessity of a document-by-document review by the Producing Party prior to production, will materially reduce the cost and duration of discovery, and the attendant burdens on the Parties;

WHEREAS, adopting the approach set forth herein may result in the inadvertent disclosure of Discovery Material that is subject to a claim of attorney-client, work product and/or other applicable privilege or immunity (collectively, "Privileged Discovery Materials"), as well as the disclosure of other materials irrelevant to this Litigation ("Irrelevant Materials"); and

WHEREAS, although Delaware has not adopted a rule of evidence similar to Federal Rule of Evidence 502,² the Parties understand and stipulate that disclosure of Privileged Discovery Materials pursuant to this Clawback Order will not prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client, work product or other applicable privilege or immunity, under Delaware law;

IT IS HEREBY STIPULATED, AGREED AND ORDERED:

1. Any Party may designate any document(s) (or collection of documents) that such Party produces in this Litigation as "Clawback Discovery Material" under the terms of this Clawback Order, if counsel for such Party in good faith reasonably concludes that:

² Entitled "Attorney-Client Privilege and Work Product; Limitations on Waiver."

(i) such Clawback Discovery Material is likely to contain documents or information responsive to the opposing Party's requests for the production of documents; and (ii) a document-by-document review by the Producing Party prior to production to confirm responsiveness or to identify privileged materials is not practicable in light of the delay and/or burden associated with such a review.

2. A Producing Party shall not be obligated to conduct a document-by-document review of Clawback Discovery Material prior to its production; provided however, that a Producing Party shall utilize keyword search terms (*e.g.*, the names of counsel and law firms for the Producing Party), analytical software tools and/or other reasonable means to locate and exclude potentially Privileged Discovery Materials prior to the production of Discovery Material as Clawback Discovery Material. Any potentially Privileged Discovery Materials so excluded shall be reviewed by the Producing Party and, if such material is responsive and non-objectionable, either (i) produced (if such material is not deemed Privileged Discovery Material), or (ii) placed onto the Producing Party's privilege log (if such material is deemed Privileged Discovery Material), in the normal course of discovery, consistent with the rules of this Court. If a Producing Party complies with this paragraph, such Producing Party shall be deemed to have implemented adequate precautions to prevent inadvertent disclosure of any Privileged Discovery Materials produced as Clawback Discovery Material.

3. Unless otherwise agreed by the Parties, the designation of Discovery Material as Clawback Discovery Material shall be made in a manner consistent with paragraph 5

of the Confidentiality Stipulation, and the Producing Party shall either affix an appropriate legend or utilize a separate Bates number prefix for Clawback Discovery Material.

4. Unless otherwise agreed by the Parties, Clawback Discovery Material shall be produced in an electronically searchable format (*e.g.*, as text searchable PDFs or TIFFs, native format, etc.), and shall otherwise comply with any production protocols agreed to by the Parties.

5. Clawback Discovery Material shall be deemed Highly Confidential Discovery Material under the Confidentiality Stipulation, and the provisions of paragraph 28 with regard to objections to a confidentiality designation shall apply; provided however, that Clawback Discovery Material shall not be disclosed, summarized, described, characterized or otherwise communicated or made available in whole or in part to the persons identified in paragraphs 8(f) of the Confidentiality Stipulation (*i.e.* "the Court, persons employed by the Court, and court reporters transcribing any hearing, trial or deposition in this Litigation or any appeal therefrom"), except for court reporters transcribing any deposition in this Litigation, unless the Producing Party is first provided with reasonable notice of the intent to use the document and an opportunity to claim that the Clawback Discovery Material in question constitutes Inadvertent Production Material.

6. Disclosure of Privileged Discovery Materials in this Litigation pursuant to this Clawback Order shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any attorney-client, work product or other applicable privilege or immunity. Any

Privileged Discovery Materials produced as Clawback Discovery Material shall be deemed to have been inadvertently produced.

A. A party who receives a document designated as Clawback Discovery Material that, upon review by such party, appears on its face to be Privileged Discovery Material shall: (i) refrain from any further examination or disclosure of such document pending confirmation by the Producing Party that such document is not Privileged Discovery Material; and (ii) provide reasonably prompt written notice to counsel for the Producing Party that such document appears to be Privileged Discovery Material. Upon receiving a written notice contemplated by the preceding sentence, the Producing Party shall provide reasonably prompt written notice to the requesting party indicating whether the document in question constitutes Inadvertent Production Material.

B. A Producing Party shall be obligated to make a reasonably prompt claim of inadvertent production with respect to a document designated as Clawback Discovery Material upon the earlier of: (i) receiving notice under the preceding paragraph concerning such document, or (ii) otherwise becoming aware of the inadvertent production of such document. If a Producing Party complies with this paragraph, such party shall be deemed to have acted timely and adequately to rectify any inadvertent disclosure of Privileged Discovery Materials produced as Clawback Discovery Material.

C. The procedures set forth in paragraph 21 of the Confidentiality Stipulation shall apply to any Clawback Discovery Material which is claimed to be Inadvertent Production Material.

D. The Producing Party shall timely log any Clawback Discovery Material that is claimed to be Inadvertent Production Material, consistent with the rules of this Court.

7. Each Party shall have the right to demand the return of any Irrelevant Material produced by such Party, and the Parties agree to meet and confer in good faith to resolve any disputes that arise regarding Irrelevant Materials. Once a Party receives notice that a document designated as Clawback Discovery Material constitutes Irrelevant Material, such party shall refrain from any further examination or disclosure of such Irrelevant Material, other than as agreed to by the Producing Party or to review to the limited extent necessary to engage in the meet and confer process with the Producing Party.

8. Nothing in this Clawback Order shall:

A. require any Party to produce or disclose any Privileged Discovery Materials;

B. require any Party to produce documents or data as Clawback Discovery Material;

C. waive any Party's right to conduct limited pre-production review of Clawback Discovery Material prior to production of such materials, provided that such review is not inconsistent with the determination required by paragraph 1(ii);

D. prevent a Party from designating Discovery Material that has been subject to a limited pre-production review as Clawback Discovery Material, provided that such review is not inconsistent with the requirements of paragraph 1(ii);

E. modify the Confidentiality Stipulation, unless expressly stated herein;

F. except as expressly stated herein, modify any prior agreements among the Parties concerning the conduct of discovery in this Litigation, including but not limited to agreements regarding the collection of Discovery Material from certain custodians or the use of search terms to identify potentially responsive documents; or

G. prevent any Party from arguing that a waiver of an attorney-client, work product or other applicable privilege or immunity has occurred from circumstances other than disclosure of Clawback Discovery Material pursuant to this Clawback Order.

9. The Parties agree that any violation of this Clawback Order shall result in irreparable harm for which there is no adequate remedy at law. The Parties further agree that any Party shall be entitled to injunctive relief to enforce the terms hereof. In

addition, the Parties expressly acknowledge that the Court may, in its discretion, award such other and further relief as the Court may deem appropriate.

10. This Clawback Order applies only to Discovery Material produced by the Parties, and does not apply to Discovery Material produced by non-Parties. In the event additional parties join or are joined in the Litigation, they shall not have access to Clawback Discovery Material until the newly-joined party by its counsel has executed and, at the request of any Party, filed with the Court its agreement to be fully bound by this Clawback Order.

11. The Parties agree to be bound by the terms of this Clawback Order pending the entry of this Clawback Order by the Court, and any violation of its terms shall be subject to the same sanctions and penalties as if this Clawback Order has been entered by the Court. Notwithstanding the foregoing, the Parties shall not be obligated to provide any Clawback Discovery Material prior to entry of this Clawback Order by the Court, unless the production of such Discovery Material is expressly required by another Order of the Court.

12. Subject to any applicable rule of the Delaware Court of Chancery or the Delaware Supreme Court, the provisions of this Clawback Order shall, absent written permission of the Producing Party or further order of the Court, continue to be binding throughout and after the conclusion of the Litigation, including without limitation any appeals therefrom.

13. Nothing in this Stipulation and Order shall preclude any party from seeking judicial relief, upon notice to the Parties, with regard to any provision hereof.

14. This Stipulation and Order may be executed by PDF or conformed signature and may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one agreement.

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STIPULATED AND AGREED:

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SO ORDERED:

Vice Chancellor Donald F. Parsons, Jr.

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Donald F Parsons

File & Serve

Transaction ID: 26256096

Current Date: Jul 23, 2009

Case Number: 4385-VCP

Case Name: CONF ORDER A C S State Healthcare LLC vs Wipro Inc

Court Authorizer: Donald F Parsons

/s/ Judge Donald F Parsons