

# CNS Vital Signs Licensing Agreement

This Authorized Provider Agreement (this "Agreement") is a legal, binding agreement between you, the user of the CNSVS software ("Software") associated with this Agreement ("You" or "Provider") and CNS Vital Signs, LLC ("CNSVS").

**Please read all the terms and conditions of this Agreement carefully and, if you agree, indicate your acceptance by clicking the "I ACCEPT" button at the end of this Agreement. By clicking the "I ACCEPT" button below or otherwise using the software, you agree to be bound by the terms and conditions of this Agreement, and you represent and warrant that you have full power, authority and legal capacity to enter into this Agreement and bind Provider to its terms. Please contact CNSVS at 598 Airport Blvd, Suite 1400, Morrisville, NC, 27560 (Phone +1 888-750-6941) if you have any questions about this Agreement.**

## DEFINITIONS

**"Content"** means the information, data, graphics, reports, and other materials included as part of or in conjunction with the Software.

**"Documentation"** means the electronic and written manuals, guides, help text, and other documentation relating to the installation, use, operation or support of the Software and delivered to Licensee under this Agreement.

**"Licensed Product"** means, collectively, the Software, Web Based Access to Software, Content, and Documentation.

## PROVIDER QUALIFICATIONS

By entering into this Agreement, Provider represents and warrants that it is a properly licensed healthcare provider and that all individual employees or contractors of Provider using the Licensed Product have sufficient credentials, training, and qualifications in order to understand and interpret the Licensed Product. Provider further represents and warrants that it shall consider the results of use of the Licensed Product only in conjunction with a variety of other information in connection with relevant diagnostic and treatment decisions. All use of Licensed Product is subject to the disclaimers and limitations of liability contained in this Agreement.

Subject to your payment of any applicable license fee, CNSVS grants to Provider the personal, non-exclusive, non-transferable right to use the Licensed Product under the terms of this Agreement.

## UNDER THIS LICENSE, YOU MAY:

- You may either, use and install the Software on only one computer at a time, except for limited evaluation versions of the Software, which may be used and installed on any computer in your organization; or use via an authorized CNSVS Web Based Account
- Make a single copy of the Software, solely for backup purposes;
- Use the Software on a portable or second computer, if the Software is permanently installed on the hard disk or other storage device of a computer (other than a network server) and you use that computer at least 80% of the time that computer is in use;
- Allow your patients to use the Software under your direction (You agree to be solely responsible for obtaining all necessary consents and authorizations from patients to all for such use and any associated analysis and disclosures of acquired patient information); and
- Distribute and use Content and Documentation solely for the internal purposes of your organization.

## YOU SHALL NOT:

- Use, copy or transfer copies of the Licensed Product except as provided in this License Agreement;
- Install the Software on a network so that it can be accessed by more than one user at a time;
- Disassemble, decompile or otherwise reverse engineer the Software in order to discover the source code or related proprietary information and trade secrets, or have a third party do so;
- Rent, lease, sublicense, distribute, transfer, modify or timeshare the Licensed Product; or
- Place the Licensed Product on a Bulletin Board System, the Internet, or other on-line Licensed Product or system.

NOTE: The Software may be licensed on a "per-test", "per-protocol"; and/ or other "per-use" basis, and may require the payment of additional fees and entry of additional passwords or keys in order to expand use rights. You agree to abide by all limits on number of tests and/or other license restrictions associated with your order of the Software. On occasion, CNSVS will provide complimentary testing sessions, which is intended to be utilized for training purposes. The Provider should not utilize the complimentary software sessions for re-imburement from third party payors (i.e Medicare, Medicaid etc..) Please contact CNSVS for the availability of expanded license and use rights.

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## PROPRIETARY RIGHTS

CNSVS owns all proprietary rights, including all copyrights, patents, and trademarks, in and to the Licensed Product. The Software source code and related proprietary information and trade secrets are not licensed to Provider, and any modification, addition or deletion of or to the Licensed Product is strictly prohibited. Provider agrees to take all reasonable steps to prevent unauthorized disclosure, use or copying of the Licensed Product. Provider also agrees to include in all copies of the Content, and the backup copy of the Software, all CNSVS copyright and proprietary notices. CNSVS reserves all rights not expressly granted to Provider.

## TERM

This Agreement is effective until terminated. Provider may terminate this Agreement by destroying or returning the Licensed Product and all copies thereof. This license will also terminate if Provider fails to comply with any term or condition of this Agreement. Provider agrees, upon such termination, to destroy all copies of the Licensed Product. Except as provided in the following section, returning the Licensed Product to CNSVS following the opening and/or use of the Licensed Product will not entitle Provider to a refund. The provisions of this Agreement relating to confidentiality; proprietary rights; limitation of liability; and exclusions of warranties shall survive termination of this Agreement.

## LIMITED WARRANTY

CNSVS warrants for a period of 30 days from date of purchase that: (a) the Software will substantially conform to the specifications set forth in the Documentation, provided it is used on the computer hardware and operating systems for which it was designed, and (b) the magnetic media on which the Software is distributed and the Documentation are free from defects in workmanship or materials. CNSVS will use commercial efforts to correct any breach of the foregoing warranty at no charge, provided Provider returns the items with dated proof of payment to CNSVS within 30 days of date of purchase. If CNSVS is unable to correct the nonconformance or to replace the defective media or Documentation, CNSVS will refund any license fee you have paid CNSVS. These are Provider's sole remedies and CNSVS' entire liability for any breach of warranty.

CNSVS does not warrant that the Licensed Product or the functions contained in the Software will meet Provider's requirements, operate without interruption, or be error-free. Provider is solely responsible for the proper installation and operation of the Software in accordance with the instructions and specifications set forth in the Documentation.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CNSVS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE.

## LIMITATION OF LIABILITY

COMPANY UNDERSTANDS AND AGREES THAT CNSVS IS NOT ACTING AS A PHYSICIAN OR OTHER HEALTH CARE PROVIDER OR DIAGNOSTIC SERVICE, AND THAT THE SOFTWARE IS AN INFORMATION PROCESSING TOOL ONLY. The Software is not intended to replace the professional skills and judgments of Provider and its employees and contractors. Provider alone shall be responsible for the accuracy and adequacy of information and data furnished for processing and any use made by Provider of the output of the Software or any reliance thereon. Provider represents and warrants that it is a properly licensed healthcare provider and that all individual employees or contractors of Provider using the Licensed Product have sufficient credentials, training, and qualifications in order to understand and interpret the Licensed Product and its results. Provider further represents and warrants that it shall consider the results of use of the Licensed Product only in conjunction with a variety of other information in connection with relevant diagnostic and treatment decisions. IN NO EVENT SHALL CNSVS BE RESPONSIBLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR LOST PROFITS, AS A RESULT OF USE OF, OR INABILITY TO USE, THE SOFTWARE, PERSONAL INJURY, OR DEATH, EVEN IF CNSVS IS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL CNSVS' LIABILITY EXCEED THE AMOUNT OF THE LICENSE FEE PAID TO CNSVS IN CONNECTION WITH THE LICENSED PRODUCT.

## SUSPENSION AND OPERATION OF LICENSED PRODUCT

CNSVS may at its discretion suspend or terminate operation of the Licensed Product offered on the internet for maintenance or other reasons. In addition, technical and other issues, including issues with the internet, may make the Licensed Product unavailable from time to time, and CNSVS will have no liability for such unavailability.

## ADDITIONAL PROVISIONS

Export and use of the Licensed Product outside of the United States is subject to the Export Administration Regulations of the Bureau of Export Affairs, United States Department of Commerce. In the event you desire to use or allow permitted users to use the Licensed Product outside the United States, you, at your own expense, shall comply with all applicable regulations

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governing such export. CNSVS makes no warranty relating to the exportability of the Licensed Product to any particular country.

U.S. Government Restricted Rights. The Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the government is subject to restrictions set forth in subparagraphs (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 225.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

CNSVS's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

You agree that any claim or cause of action arising out of or related to use of the Licensed Product or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

This Agreement is governed by the laws of North Carolina, USA, without regarding to its internal rules regarding conflicts of law. CNSVS may elect to resolve any controversy or claim arising out of or relating to this Agreement or the Site by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Raleigh, North Carolina, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. Either party may seek any interim or preliminary relief from a court of competent jurisdiction necessary to protect its rights or property (or rights or property of its agents, suppliers, and subcontractors), pending the completion of arbitration.

If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of this Agreement shall continue in effect.

CNSVS shall have no liability for any failure or delay resulting from any condition beyond the reasonable control of CNSVS, including but not limited to governmental action or acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures and Internet disturbances.

### **MODIFICATIONS TO THE LICENSED PRODUCT AND THIS AGREEMENT**

CNSVS reserves the right, in its sole discretion, to modify or change this Agreement at any time by posting the changes on the Site and/or the Licensed Product. Your continued use of the Licensed Product following the posting of such changes constitutes acceptance of those changes. CNSVS will use reasonable efforts to provide notice of material changes by e-mail to registered users of the Licensed Product.

CNSVS also reserves the right to modify the Site and the Licensed Product at any time without prior notice to you.

### **HIPAA BUSINESS ASSOCIATE ADDENDUM**

If you are a covered entity under HIPAA, CNSVS may create, receive, use and/or disclose for or on your behalf certain Protected Health Information relating to your patients that is subject to protection under the privacy and security regulations of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Sections 160, 162, and 164 ("HIPAA"), as amended by American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act.

In this Addendum, the parties agree to the following HIPAA business associate terms. The term "Privacy and Security Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A, C and E. Capitalized terms used but not defined herein have the same meaning as set forth in the Privacy and Security Rule.

#### **1. Obligations and Activities of CNSVS.** CNSVS agrees to:

(a) not use or further disclose Protected Health Information other than as permitted or required by this Addendum or as Required by Law.

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(b) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than in accordance with this Addendum. CNSVS will also use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any Protected Health Information that is transmitted by Electronic Media CNSVS creates, receives, maintains, or transmits on behalf of You ("Electronic Protected Health Information").

(c) report to you any use or disclosure of the Protected Health Information not in accordance with this Addendum of which CNSVS becomes aware. CNSVS will also report to you any Security Incident related to Electronic Protected Health Information of which CNSVS becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, CNSVS agrees to mitigate, to the extent practicable, any harmful effect that is known to CNSVS of a use or disclosure of Protected Health Information by CNSVS in violation of the requirements of this Agreement.

(d) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by CNSVS on behalf of, you agrees to the same restrictions and conditions that apply through this Addendum to CNSVS with respect to such information. CNSVS also agrees to ensure that any agent, including a subcontractor, to whom CNSVS provides Electronic Protected Health Information that was created, received, maintained or transmitted on behalf of You, agrees to use reasonable and appropriate safeguards to protect the Electronic Protected Health Information.

(e) make available Protected Health Information to the extent, for the purposes and in the manner required by 45 CFR 164.524 (Access of individuals to Protected Health Information) and 45 CFR 164.526 (Amendment of Protected Health Information) and incorporate any amendment to Protected Health Information as required under 45 CFR 164.526.

(f) make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by CNSVS on behalf of, you available to the Secretary of Health and Human Services for purposes of the Secretary determining your compliance with the Privacy and Security Rule.

(g) document such disclosures of Protected Health Information and information related to such disclosures as would be required for you to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 (Accounting of disclosures of Protected Health Information).

(h) provide to you, at a time and in a manner agreed by the parties, information collected in accordance with Section 2(g) of this Addendum to permit you to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### **2. Permitted Uses and Disclosures by CNSVS**

Subject to the terms of this Addendum, CNSVS may use or disclose Protected Health Information to perform the functions, activities, services for, or on behalf of, Covered, provided that such use or disclosure would not violate the Privacy and Security Rule if done by you. In addition, CNSVS may:

(a) use or disclose Protected Health Information for the proper management and administration of CNSVS (such as for the purposes of quality improvement; developing products applicable to You and other covered entities; support; and system maintenance), provided that, with respect to disclosures: (1) such disclosures are Required by Law; or (2) CNSVS obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies CNSVS of any instances of which it is aware in which the confidentiality of the information has been breached.

(b) use Protected Health Information to provide Data Aggregation services relating to your healthcare operations as permitted by 42 CFR 164.504(e)(2)(i)(B).

(c) De-identify Protected Health Information entered or received by CNSVS under this Addendum; provided that the de-identification conforms to the requirements of the Privacy and Security Rule.

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### 3. Termination

Upon termination of this Agreement for any reason, CNSVS shall return or destroy all Protected Health Information received from you, or created or received by CNSVS on your behalf. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of CNSVS. CNSVS shall retain no copies of the Protected Health Information.

### 4. Miscellaneous

(a) You shall not request CNSVS to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rule if done by you, except as set forth in Section 3(b) above.

(b) A reference in this Addendum to a section in the Privacy and Security Rule means the section as in effect or as amended, and for which compliance is required.

(c) The Parties agree to take such action as is reasonably necessary to amend this Addendum from time to time as is necessary for you or CNSVS, as applicable, to comply with the requirements of the Privacy and Security Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(d) Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits you and/or CNSVS, as applicable, to comply with the Privacy and Security Rule.