

## SOFTWARE LICENSE AGREEMENT

**PLEASE READ THIS SOFTWARE LICENSE AGREEMENT BEFORE INSTALLING THE SOFTWARE. BY USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SOFTWARE**

This Software License Agreement (this "License Agreement") is made by and between you (the "CUSTOMER") and Net Health Systems, Inc. ("Net Health"), a Pennsylvania corporation having its principal place of business at 40 24<sup>th</sup> Street, Pittsburgh, PA 15222.

WHEREAS Net Health has developed, owns, and will continue to support and upgrade from time to time certain software, associated interfaces and documentation which relate to rehabilitation therapy (collectively, the "Software", which term does not include products developed and owned by third parties for which Net Health may be a reseller), as more fully described in the applicable Sales or Subscription Agreements, Quotes, or Purchase Schedule (collectively, and including any ancillary riders or agreements, the "Purchase Agreement");

WHEREAS CUSTOMER is an individual or an entity which practices rehabilitation therapy or educates rehabilitation therapists; and

WHEREAS CUSTOMER desires to use the Software, initially and as it is upgraded from time to time, in its rehabilitation related business, and Net Health desires to permit such use by CUSTOMER in accordance with the terms and conditions set forth in this License Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, and intending to be legally bound hereby, the parties agree as follows:

**1. Sale or Subscription.** CUSTOMER and Net Health have entered into this License Agreement for the consideration of either (a) an initial payment to Net Health and a commitment to pay such support and upgrade fees as are set forth in the Purchase Agreement, in exchange for the right to have a specified number of Licensed Users (defined in Section 2.3 ) use the Software in accordance with this License Agreement, (a "Sale"), or (b) a subscription whereby CUSTOMER has agreed to pay to Net Health certain fees on a periodic basis in exchange for the right to have a specified number of Licensed Users use the Software in accordance with this License Agreement (a "Subscription"). Except as specifically differentiated herein, the terms and conditions of this License Agreement pertain equally whether this License Agreement is based upon a Sale or a Subscription arrangement.

### **2. License.**

**2.1 License.** Net Health grants CUSTOMER, and CUSTOMER accepts from Net Health, a nonexclusive and non-transferable limited license for a specified number of Licensed Users, then currently employed and/or contracted by CUSTOMER to access and use: (1) the version of the Software delivered to CUSTOMER with this License Agreement (the "Original Version"); (2) upgraded versions of the Software revised to reflect certain enhancements to the Original Version made by Net Health, if any, (the "General Release Upgrades") as described further in Section 2.2 below; (3) the current version of one or more non-custom interface programs delivered to CUSTOMER with this License Agreement, if any (the "Interface"); and (4) upgraded versions of the Interface revised to reflect any enhancements to the Interface made by Net Health or by third parties pursuant to an agreement with Net Health, if any ("Interface Revisions"). CUSTOMER may not transfer the license(s) granted herein to any other party without the prior written approval of Net Health. THE SOFTWARE IS PROVIDED TO ASSIST THE CUSTOMER IN PATIENT CARE DOCUMENTATION. CUSTOMER SHOULD NOT SOLELY RELY ON INFORMATION PROVIDED BY OR THROUGH THE SOFTWARE OR USE THE SOFTWARE TO REPLACE ITS DUTY TO ADHERE TO THE REQUIRED STANDARD OF PRACTICE IN CUSTOMER'S MEDICAL COMMUNITY OR PROFESSIONAL MEDICAL JUDGMENT INCLUDING WITHOUT LIMITATION, WITH RESPECT TO DECISIONS ABOUT MEDICATIONS, DIAGNOSIS OF DISEASES, DETERMINING TREATMENTS OR PERFORMING ANY OTHER TASKS THAT CONSTITUTE THE PRACTICE OF MEDICINE/THERAPY.

**2.2 Delivery of General Release Upgrades.** General Release Upgrades include, without limitation,

modifications to the Software that increase the speed, efficiency or ease of operation of the Software and/or incorporate additional capabilities, minor enhancements and/or "bug" fixes to the Software. CUSTOMER understands that General Release Upgrades may not include functionality and/or major enhancements for which Net Health, in its sole discretion, charges separate fees ("Modules").

**2.3 Use and Users.** The Software shall be used solely by the Licensed Users for the lawful processing of information within CUSTOMER's own business. The Software shall not be used to violate any known law, rule or regulation, including but not limited to local, state, and federal legislation governing the provision of healthcare or the laws governing the reimbursement for such services. CUSTOMER shall maintain the Software for use by no more Licensed Users than have been authorized by Net Health under the Purchase Agreement. A "Licensed User" is defined to mean a particular individual licensed to practice a recognized therapy in accordance with applicable practice acts (such as a Physical Therapist, Occupational Therapist, or Speech Pathologist); or a licensed assistant to any such therapist, employed or contracted by CUSTOMER and who is intended to use the Software in connection with his or her work for CUSTOMER; or other non-licensed user (e.g., clerical or administrative) staff members employed by CUSTOMER and who use the Software in connection with work for CUSTOMER. CUSTOMER shall obtain a User License for each Licensed User so employed or contracted, and shall designate such individual as "users" as provided in the Software. CUSTOMER may from time to time change the individuals designated as Licensed Users corresponding to bona fide changes in its employee roster, and may re-designate individuals during extended, bona fide, changes in staffing (for example, during a therapist's maternity leave); provided, however, that each such change shall constitute a separate representation by CUSTOMER that any individual removed from the list of designated Users has left CUSTOMER's employment roster, is on a bona fide extended leave, or is no longer intended to use the Software in connection with his or her work. CUSTOMER agrees to indemnify, defend, and hold Net Health harmless against any and all claims, including claims made by third parties, which arise directly or indirectly out of CUSTOMER's use of the Software.

**2.4 Prohibited Use.** CUSTOMER shall not modify, rewrite, disassemble, decompile, reverse engineer, merge, disclose, sell, transfer, or copy the Software, or any portion thereof. CUSTOMER shall not: (1) permit any unauthorized person to use the Software, (2) use the Software in the operation of a service bureau or otherwise rent the Software to an unauthorized party, or (3) allow any unauthorized party access to the Software. The terms of this Section 2.4 shall survive termination of the Purchase Agreement.

**3. Term.** This License Agreement shall commence on the date CUSTOMER executes the Purchase Agreement for the Software ("Effective Date") and continues for so long as CUSTOMER is not in default under the terms of this License Agreement or the terms specified in the Purchase Agreement (i.e., continues to make all required purchase, subscription, and/or support and upgrade payments promptly when due). Net Health agrees to provide CUSTOMER notice of a termination of this License Agreement as further described in Section 7 hereof.

#### **4. Ownership of Rights, Confidentiality and Data.**

**4.1 Ownership of Rights.** CUSTOMER acknowledges that Net Health is the owner of all right, title and interest in any derivative works of and improvements upon Software, regardless of any assistance or involvement by agents or employees of CUSTOMER in any such improvements or derivations.

**4.2 Confidentiality.** CUSTOMER acknowledges that the Software contains proprietary trade secrets of Net Health, and such trade secrets are deemed confidential/proprietary information whose disclosure is restricted by this Section 4.2. CUSTOMER agrees to maintain the confidentiality of the Software in a manner using at least as great a degree of care as the manner used to maintain the confidentiality of CUSTOMER'S own confidential information. Unless otherwise permitted by this License Agreement, CUSTOMER shall not disclose any of Net Health's confidential or proprietary information to any third party without the prior written consent of Net Health. CUSTOMER, its authorized affiliates, agents, and subcontractors shall not sell, transfer, publish, disclose, display, reverse engineer, or otherwise make available to others the Software or any other material relating to the Software. CUSTOMER shall protect the Software, and any other material relating to the Software, from unauthorized access and use, including using passwords made known only to CUSTOMER'S employees who use the Software as a regular part of their employment and giving its employees written notification of the requirements of this Section 4.2. CUSTOMER shall advise Net Health immediately if CUSTOMER learns or has reason to believe that any of CUSTOMER'S employees, agents, independent contractors, or affiliates has violated or intends to violate the terms of this Section 4.2, and CUSTOMER

will cooperate with Net Health in seeking injunctive or other equitable relief against any such person including giving Net Health access to all relevant documents and the opportunity to interview CUSTOMER'S employees.

**4.3 Grant of License to Use Data.** In further consideration of the license(s) granted hereby, Net Health may use in its business in compliance with HIPAA, on a perpetual, irrevocable basis, without obligation to CUSTOMER, de-identified patient data and information which is collected and uploaded to Software including, but not limited to, patients' gender, age, medical histories and treatment (collectively, the "Data") for, among other things, the purpose of compiling aggregate wound and patient recovery profiles. Under no circumstances shall Net Health use or disclose personal health information except in the de-identified form as described above and in compliance with HIPAA. Net Health's use of the Data is necessary for Net Health to, among other things (i) compare treatment costs before and after use of Software, and (ii) use such comparisons to market the Software to potential Net Health customers.

**4.4 Violation.** Violation of any provision of this Section 4 shall be the basis for termination of this License Agreement. CUSTOMER acknowledges that if CUSTOMER breaches the provisions of this License Agreement, Net Health shall have no adequate remedy at law. CUSTOMER agrees that Net Health may, in addition to any other available remedies, obtain an injunction or temporary restraining order to terminate or prevent the continuation of any existing default or violation.

**4.5 Survival.** The provisions of this Section 4 shall survive the termination or expiration of this License Agreement.

**5. Warranty Disclaimer.** THE WARRANTIES PROVIDED IN THIS LICENSE AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY NET HEALTH. NET HEALTH MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION, REGARDING LICENSED SOFTWARE OR ANY MAINTENANCE OR SUPPORT SERVICES RELATED THERETO AND NET HEALTH SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**6. Limitation of Liability.** In no event shall Net Health be liable to CUSTOMER for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against CUSTOMER, even if Net Health has been advised of the possibility of such damages. Net Health's total liability with respect to all causes of action together will not exceed the total amount of Fees paid by CUSTOMER to Net Health under the applicable Purchase Agreement in the twelve (12) months before such claim arose.

## **7. Termination.**

**7.1 Upon Notice.** Net Health shall have the right to terminate this License Agreement and license(s) granted herein upon ten (10) days' prior written notice in the event that CUSTOMER or its Licensed Users violate any provision of this License Agreement including, but not limited to, confidentiality and payment or in the event CUSTOMER (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute or (iii) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority.

**7.2 Possession.** In the event of termination hereunder, Net Health shall have the right to take immediate possession of the Software and all copies wherever located. Within ten (10) days after termination of this License Agreement, CUSTOMER shall return to Net Health the Software in the form provided by Net Health or as modified by the CUSTOMER, or upon request by Net Health destroy the Software and all copies, and certify in writing that they have been destroyed.

**7.3 Continuation of Obligations; Alternate Remedies.** Without limiting any of the above provisions, in the event of termination as a result of the CUSTOMER's failure to comply with any of its obligations under this License Agreement, the CUSTOMER shall continue to be obligated for any payments due under the applicable Purchase Agreement. Termination of the license(s) shall be in addition to and not in lieu of any equitable remedies available to Net Health.

**8. Taxes.** CUSTOMER shall, in addition to the other amounts payable under this License Agreement and the Purchase Agreement, pay all sales and other taxes, federal, state, or otherwise, however designated, which are levied

or imposed by reason of the transactions contemplated by this License Agreement. Without limiting the foregoing, CUSTOMER shall promptly pay the Net Health an amount equal to any such items actually paid, or required to be collected or paid by Net Health.

**9. Third Party Products.** CUSTOMER acknowledges that the Software may use, incorporate or access Third Party Products, or that CUSTOMER may use, incorporate or access Third Party Products in conjunction with CUSTOMER's use of the Software, or any other product or service provided to CUSTOMER by Net Health. To the extent CUSTOMER uses, incorporates or accesses any Third Party Products that are not licensed by Net Health to CUSTOMER, CUSTOMER represents it has obtained and covenants it will obtain the necessary licenses from the applicable third party vendors to use such Third Party Products and agrees that Net Health shall not be liable for CUSTOMER's failure to obtain such licenses. Net Health makes no representation or warranty with respect to any such Third Party Products. Net Health shall not be liable for any damages, costs, or expenses, direct or indirect, arising out of the performance or failure to perform of Third Party Products. "Third Party Products" includes, but is not limited to, any product, technology, tool, database, software, works, coding scheme or other intellectual property developed or owned by a third party.

## **10. General.**

**10.1 Modification.** This License Agreement may be updated by Net Health from time to time and CUSTOMER's continued use of the Software following such update shall constitute its acceptance and agreement to such updates.

**10.2 Integration.** The parties hereto acknowledge that they have read this License Agreement in its entirety and understand and agree to be bound by all of its terms and conditions and further agree that this License Agreement constitutes a complete and exclusive statement of the understanding between the parties with respect to the subject matter hereof which supersedes any and all other communications between the parties, whether written or oral. Any prior agreements, promises, negotiations or representations related to the subject matter hereof not expressly set forth in this License Agreement are of no force and effect.

**10.3 Governing Law; Jurisdiction; Venue.** This License Agreement and all Purchase Agreements and exhibits thereto shall be governed and construed in all respects in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict of laws principles. Any disputes arising out of this License Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Allegheny County, Pennsylvania, each party hereby consents to the jurisdiction of such courts, and neither party shall bring any action hereunder in any other court. The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. Any cause or action against Net Health arising out of or in connection with this License Agreement or any other agreement executed in connection herewith shall be instituted and served upon Net Health not later than two (2) years following the occurrence of the first event giving rise thereto.

**10.4 Severability.** If any provision of this License Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted.

**10.5 No Assignment.** The CUSTOMER may not assign or sub-license, without the prior written consent of Net Health, its rights, duties or obligations under this License Agreement to any person or entity, in whole or in part.

**10.6 No Third Party Beneficiary.** Nothing express or implied in this License Agreement is intended to confer upon any patient, person or party, other than the parties who have executed this License Agreement any rights, remedies, obligations or liabilities whatsoever hereunder.

**10.7 Enforcement.** Net Health shall have the right to collect from CUSTOMER its reasonable expenses incurred in enforcing this License Agreement including attorney's fees.

**10.8 Waiver of Rights.** The waiver, modification, or failure by Net Health to insist upon CUSTOMER's compliance with any of the terms or condition of this License Agreement shall not void, waive, or modify any of the other terms or conditions of this License Agreement, nor shall it be construed as a waiver of Net Health's right to insist upon future performance of any terms or conditions of the License Agreement.

**10.9 Attorney's Fees.** Should Net Health be required to seek the services of an attorney to enforce its rights under this License Agreement, and if Net Health prevails in the legal action, then Net Health shall be entitled to recover reasonable attorney's fees, legal costs, and other costs incurred by Net Health in connection with such action.