

COMMERCIAL SOFTWARE LICENSE AGREEMENT

This Agreement establishes the terms, rights, and obligations for use of the health information system software (hereinafter: HIS) created and owned by Pacific Business Ventures (hereinafter: PBV), a duly registered company in the United States of America. This agreement is classified as a 'no cost commercial software use license'.

TERMS AND CONDITIONS

1. BACKGROUND

PBV wrote the HIS software for use by health delivery systems in developing countries. It was designed to allow incremental modification to meet local needs, while maintaining a consistent core structure that enables customers to take advantage of ongoing development work through periodic upgrades.

The HIS requires use of the Alpha Software 'Alpha Anywhere' runtime application server software running on a Microsoft Windows operating system. It also requires use of a relational database management system (eg., MySQL, Oracle, SQL Server). These components must be obtained separately from their respective vendors and configured in a network accessible to end users.

2. DEFINITIONS.

"Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a party hereto (with "control" meaning ownership of more than fifty percent (50%) of the voting stock of the entity or, in the case of a non-corporate entity, an equivalent interest).

"Commercially Released Software" means Software components in binary form that PBV has formally released for use under the terms of this License. It also includes but is not limited to updates to such software that are made available for use under this License.

"Confidential Information" means proprietary technology information (including but not limited to Source Code, algorithms, formulae, methods and processes), the disclosure of which to unauthorized third parties could cause PBV to suffer a significant loss of competitive and/or commercial advantage in its markets. Information excluded from this definition includes that which:

- (a) is presently known or becomes known to Licensee from an independent source,
- (b) enters the public domain after the date of initial disclosure to Licensee through no fault or act of Licensee,
- (c) was independently developed by or on behalf of Licensee

"Damages" means any damages, losses, liabilities finally awarded by a court of competent jurisdiction or amount agreed to be paid in a written settlement agreement.

"HIS" means any computer code and its associated documentation used under this License. It includes but is not limited to:

- (a) Commercially Released Software,
- (b) Pre-Release Software, and
- (c) Software Updates made available pursuant to a software support agreement with PBV.

"Licensee" means the individual or entity that accepted and agreed to be bound by the terms and conditions of this License.

"PBV" means any one or more of PBV, its Affiliates, or their respective directors, officers, employees, agents, suppliers or contractors.

"Pre-Release Software" means any software other than Commercially Released Software, including but not limited to experimental, demo, trial, unsupported or other components made available to Licensee for use under this License.

"Update" means any new version of a software component that provides error corrections, functional enhancements and/or performance improvements to the Commercially Released Software.

3. USE LICENSE.

PBV hereby grants to Licensee a limited commercial, non-exclusive, non-sub-licensable, non-transferable, indivisible, and royalty-free license for the following installation types (and server/user limits if applicable):

- (a) primary production instance supporting users associated with one facility owned or operated by Licensee.
- (b) backup production instance for failover redundancy of the primary production instance.
- (c) test instance for validating functionality prior to production deployment, user training, and other internal use.

Such license is subject to the terms and conditions herein, and to payment by Licensee when due of any applicable fees.

The Licensee is permitted to integrate (without modifying any part of the HIS) the HIS into other application software systems, and to create any derivative work that utilizes the standard HIS database schema (including for example, development of reports based on SQL data extracts, and development of interfaces between systems).

4. PROHIBITED ACTIVITIES.

Licensee will not; and will not assist, permit or enable any other party to:

- (a) decompile, disassemble, decrypt, extract, unbundle, translate, or otherwise reverse engineer any part of the HIS (except as permitted by any applicable open source license issued by PBV applying to a specific part of the HIS).
- (b) alter, remove, or cover any trademark, logo, proprietary or licensing notices, labels, or marks in or on any part of the HIS including electronic media and printed documentation.
- (c) utilize the HIS in any manner that contravenes the Use License terms above.
- (d) make use of the HIS available to any entity not a party to this Commercial Software License Agreement.

5. OWNERSHIP AND RIGHTS.

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6. SOFTWARE SUPPORT.

PBV will make its best effort to ensure software is functionally without defect according to its design specifications. PBV will provide Licensee with no cost access to such periodic software updates and fixes as are made available generally to the HIS software user community. Software releases are provided at the sole discretion of PBV. Such software updates are optional to the Licensee, and are distributed under the terms and conditions of this Commercial Software License Agreement.

Optional consultative support services are available on a paid basis from PBV under the terms and conditions of Schedule A (Software Support Addendum).

7. CONFIDENTIALITY.

Licensee and Licensee employees shall make every reasonable effort to hold all PBV Confidential Information in confidence.

Licensee may disclose Confidential Information to a third party if and only to the extent:

- (a) the third party has entered into a confidentiality agreement with terms and conditions that afford no less protection to the Confidential Information than the terms and conditions of this License; or
- (b) it is required to do so by law, provided Licensee gives PBV sufficient notice to enable it to seek an order limiting or precluding such disclosure if desired; or
- (c) an authorized signatory of PBV provides explicit prior written authorization.

Licensee will always remain responsible to PBV for the full performance of the terms and conditions of this Section by all persons to whom Licensee directly or indirectly discloses PBV Confidential Information. Any violation of confidentiality by persons accessing Confidential Information will be deemed to be Licensee's act or omission.

Upon termination of this License, and upon PBV's written request, Licensee shall promptly return all Confidential Information received from PBV, or will certify through an authorized signatory of Licensee that all such Confidential Information has been destroyed. Failure of PBV to make such request shall not entitle Licensee to make any further use of Confidential Information, or otherwise extend Licensee's rights after termination of this License.

Licensee acknowledges and agrees that the Confidential Information has been developed at significant cost and has important commercial value to PBV; and disclosure or inappropriate use of Confidential Information could cause PBV irreparable harm. In such event, PBV will have the right to seek, in addition to any of its other rights and remedies, injunctive relief for any violation of this License.

Licensee's duties with respect to Confidential Information will end five (5) years following termination of this License.

8. WARRANTIES.

8.1 COMMERCIALLY RELEASED SOFTWARE.

The HIS is general purpose application software that is provided for use in a variety of health and information technology environments. While PBV is committed to supplying a versatile and reliable product, it does not warrant that the software will function in accordance with its documentation in every combination of hardware platform, software environment and business configuration. Licensee therefore accepts responsibility for satisfying itself that the Software is suitable for the Licensee's intended use. This includes conducting rigorous testing of the software in the target environment, and thorough training of user personnel. The decision to utilize the HIS is solely within Licensee control.

8.2 PRE-RELEASE SOFTWARE.

PBV may make available to Licensee from time to time versions of the HIS software that have not been fully validated as having production quality. It may do so for the purpose of enabling Licensee to evaluate future functionality as part of its information technology planning, or for such other purposes as Licensee determines. Pre-release software may have known deficiencies, may not have been fully tested and optimized, may not be supported by PBV, and may be unreliable in use.

8.3 NO WARRANTIES.

To the maximum extent permitted by applicable law, the software provided under this License, whether Commercially Released Software or Pre-Release Software, is supplied "as is" and without warranties or conditions of any kind; including but not limited to any implied warranties and conditions of merchantability, fitness for a particular purpose, or non-infringement. Nothing in this License implies any warranty that the operation of the software will be uninterrupted or error free, or that any errors found will be corrected.

8.4 HIGH RISK APPLICATIONS.

Licensee may use the HIS software in the context of health delivery in which death or personal injury is a foreseeable consequence of software use or failure. Licensee should conduct a risk analysis to minimize potential errors in healthcare delivery which may source from software use.

9. LIMITATION OF LIABILITY.

To the maximum extent permitted by applicable law, in no event will PBV and/or its representatives be liable to Licensee or to any third party for any indirect, incidental, special, punitive, or consequential damages whatsoever including but not limited to lost revenue, lost or damaged data, or other commercial or economic loss, arising out of or relating to any use or inability to use the software or related services, even if PBV has been advised of the possibility of such damage or claim.

To the maximum extent permitted by applicable law, in no event will the aggregate liability of PBV and/or its representatives to Licensee or to any third party for any damages arising out of or relating to this License, whether in contract, tort or otherwise, exceed the total fees paid to PBV pursuant to this License for use of the software.

Licensee acknowledges and agrees that the limitations set forth in this License constitute an essential part of this License in the absence of which: (a) the fees and other terms in this license would be substantially different, and (b) PBV's ability to offer and Licensee ability to procure the software would be impaired.

16. SURVIVAL.

Sections 7 (Confidentiality), 8 (Warranties), and 9 (Limitation of Liability) will survive termination of this License for any reason.

17. TERM & TERMINATION.

This License remains in effect until explicitly terminated. Either party may terminate this License upon fifteen (15) days advance notice to the other party of a breach of a material term of this License if the breach has not been cured within the notice period. Termination may also occur in the event that:

- (a) either party to this agreement becomes insolvent or otherwise enters into any liquidation process; or
- (b) the software is exported to any jurisdiction where PBV may not enforce its rights under this agreement; or
- (c) the Licensee otherwise enters into any arrangement where PBV may not enforce its rights under this agreement.

19. GOVERNING LAW.

This License will be governed by and construed in accordance with the laws in force in the State of Washington, USA. The parties hereby irrevocably waive: (i) the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and (ii) any right to a trial by jury regarding the resolution of any dispute between the parties hereto arising out of or in connection with this License.

22. ENTIRE AGREEMENT.

This License constitutes the entire agreement between the parties pertaining to this subject matter and cancels and supersedes any prior or contemporaneous discussion, correspondence, negotiation, understanding, or agreement dealing with the same subject matter. No amendment, modification or waiver of any part of this License will be binding unless in a written document that expressly refers to this License and that is signed by authorized signatories of both parties.

23. ENFORCEABILITY.

Any provision of this License that is deemed unenforceable in any jurisdiction will have no impact on the remaining provisions hereof, or affect the validity or enforceability of such provision in any other jurisdiction.

24. NOTICE.

All notices required or permitted to be given under this License shall be in writing and shall be delivered:

- (a) to PBV by mail with a copy by email, and
- (b) to Licensee by mail with a copy by email.

26. LANGUAGE.

The parties agree that this agreement and all related documents be written in English.

Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés en anglais.

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SCHEDULE A: SOFTWARE SUPPORT ADDENDUM

A-1. BACKGROUND.

This optional Software Support Addendum ("Schedule A"), together with the other terms and conditions of the Commercial Software License Agreement, provide the terms and conditions upon which PBV will provide Licensee with maintenance and support services for the HIS software. Schedule A is incorporated into the Commercial Software License Agreement., whose defined terms will have the same meanings in this Schedule A.

A-2. SUBSCRIPTION.

Licensee agrees to pay to PBV a fee of USD ____ for a software support subscription during the period __/__/__ to __/__/__. The subscription remains active during this period so long as Licensee remains current in its payments.

A-3. SUBSCRIPTION SERVICES.

During the subscription period, PBV will provide Licensee with person-to-person telephone-, email-, or web-based assistance related to:

- (a) installation and configuration issues;
- (b) understanding the functionality and behavior of specific software components;
- (c) isolating problems by verifying whether or not they are software errors; and
- (d) providing software fixes or usage work-arounds for known software errors.

PBV reserves the right to publish information relating to issues reported by Licensee for the benefit of other software users, provided it does not include any details that would identify Licensee.

A-4. PROFESSIONAL SERVICES

Apart from the Subscription described above, Licensee may optionally engage PBV technical staff for specific scopes of work detailed in separate professional service work orders. PBV staff are billed to Licensee at a blended rate of USD ____ per hour or USD ____ per day. Travel time to and from customer site is billed at a ____% rate. Licensee is responsible for reimbursement of any out-of-pocket travel or other expenses.

Licensee may engage PBV staff to develop specific functionality which extends the capabilities of the standard HIS software. Such software development services are billed as professional services. Licensee agrees that it obtains no rights to custom software developed as part of a professional service agreement beyond those granted in the the Commercial Software License Agreement.