

## NERVECENTRE END USER LICENSE AGREEMENT

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THIS IS A LICENSE AND NOT A SALE

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### **1 License**

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1.1 Subject to the terms and conditions of this Agreement Nervecentre grants solely for use by the entity of record in Nervecentre business records a non-exclusive, non-transferable license to use the Program solely for its own internal business purposes at the site specified in the applicable Nervecentre business records and solely in accordance with the accompanying Documentation.

1.2 All proprietary rights and trade secrets in the Program and the Documentation, and all copies (in whole or part) shall be the exclusive property of Nervecentre (and its licensors), and are protected by international laws and international treaty provisions. Licensee shall have no right, title, or interest therein except for the rights expressly granted under this Agreement.

1.3 Neither this Agreement nor any licenses granted hereunder may be assigned, sub-licensed or otherwise transferred or used for the benefit of third parties without the prior written consent of Nervecentre.

1.4 Licensee may not use, copy, alter, merge, adapt, modify, rent, or lease the Program or the Documentation, or any copy thereof, in whole or in part, except as expressly provided in this Agreement or under applicable statutes.

1.5 The Program may include certain third party open source and other free download components ("Free Download Components"). Licensee may have additional rights in the Free Download Components that are provided by the third party licensors of those components. The Free Download Components and any such third party licences and third party-required notices for the Program which govern your use of the Free Download Components are provided with the Program and can be viewed on the log in page of the Program. By accepting this Agreement Licensee hereby agrees to abide by the terms of all such licenses. Any obligations undertaken by Nervecentre in this Agreement in relation to the Free Download Components as part of the Program are provided by Nervecentre alone, and not by the third party licensors of the Free Download Components. The Free Download Components are provided "as is" by the third party licensors who disclaim all liabilities, damages (even if they have been advised of the possibility of such damages), warranties, indemnities and other obligations of any kind, express or implied, with regard to the Free Download Components. The Free Download Components are excluded from any indemnity provided by Nervecentre in this Agreement. Nothing in the foregoing affects any performance warranty provided by Nervecentre with regard to the Program as a whole.

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## **2 License Fees**

Unless expressly stated in any signed license agreement, Licensee shall pay the non-refundable license fees and maintenance fees for the Programs set out in the applicable invoice within 30 (thirty) days of the date of such invoice. Past due amounts owed by the Licensee shall bear interest at a rate of 1.5% (one and a half percent) per month or the maximum allowed under applicable law. Licensee also shall be responsible for all reasonable costs incurred in the collection of past due amounts owed by Licensee and all taxes and duties, including but not limited to any local sales taxes, withholding taxes or use taxes, or import or export duties, assessed in connection with the licensing of the Program (except for any taxes based on Nervecentre's net income).

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## **3 Confidentiality**

3.1 The Program and the Documentation contain certain information that is confidential and of substantial value to Nervecentre. Except as expressly permitted herein, Licensee shall not use or disclose said confidential information, or cause it to be disclosed, to any third party.

3.2 No benchmark results nor results of any functional testing or evaluation of the Program shall be disclosed to any third party or used for any purpose other than to facilitate Licensee's internal use of the Program.

3.3 In the nature of its business as a healthcare provider, Licensee has access to sensitive personal information relating to patients ("Personal Data"). It is expressly agreed that Licensee retains entire responsibility for maintaining the security and backup of such Personal Data and will not seek to claim against Nervecentre in relation to any loss or disclosure of any such Personal Data unless caused directly by the negligence of Nervecentre. Nervecentre shall not disclose Licensee's or Licensee's customers' Personal Data to any person except as required or permitted by the Agreement or with Licensee's written consent

3.4 Licensee agrees to act as a reference for Nervecentre and hereby grants Nervecentre the right to issue a press release concerning the engagement the subject of this Agreement.

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## **4 Limited Warranty and Disclaimer**

4.1 Nervecentre warrants that the Program when used in accordance with the terms of this Agreement will operate substantially as set forth in the accompanying Documentation for a period of 90 (ninety) days following delivery of the Program to Licensee.

4.2 Nervecentre warrants that prior to delivery of the Program to Licensee, Nervecentre has used commercially reasonable efforts to prevent the Program and any modified or enhanced versions of the Program prepared by, or at the direction of, Nervecentre, from being infected with, any "worms", "viruses", "Trojan Horses", "protect codes", "data destruct keys" or other programs or programming devices that might be used to access, modify, delete or damage the Program, or other software, computer hardware or data of Licensee. However, due to the continual development of new techniques for intruding upon and attacking networks, Nervecentre does not warrant that the Program or any equipment, system or network on which the Program is used will be free of vulnerability to intrusion or attack.

4.3 Licensee's sole and exclusive remedy for breach of any of the above warranties shall be, at Nervecentre's option, the repair or replacement of the Program.

4.4 This warranty does not apply if the Program or any other equipment on which the Program is authorized to be used (a) has been altered, except by Nervecentre or its authorized representative, (b) has not been installed, operated, repaired or maintained in accordance with

the instructions supplied by Nervecentre, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Program warranty does not apply to (e) any temporary software modules or (f) any Program for which Nervecentre does not receive a license fee.

4.5 EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4 AND NOTWITHSTANDING ANY OTHER TERMS IN THIS AGREEMENT, NERVECENTRE MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE PROGRAMS, DOCUMENTATION OR MAINTENANCE TO BE SUPPLIED BY NERVECENTRE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NERVECENTRE DOES NOT WARRANT THAT ANY PROGRAMS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ANY PROGRAMS CAN BE CORRECTED.

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## **5 Limitation on Liability**

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IN NO EVENT SHALL NERVECENTRE BE LIABLE FOR ANY LOSS OF PROFITS, USE, BUSINESS, DATA OR INFORMATION, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM LOSS OF ANTICIPATED SAVINGS OR LOST DATA, EVEN IF NERVECENTRE HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RESULTING FROM ANY AND ALL CLAIMS BY ANY THIRD PARTIES. THE AGGREGATE LIABILITY OF NERVECENTRE HEREUNDER WHETHER IN CONTRACT OR IN TORT SHALL IN NO EVENT EXCEED THE LESSER OF THE FEES PAID BY LICENSEE OVER THE PRECEDING 12 (TWELVE) MONTHS OR THE POUNDS STERLING EQUIVALENT OF £100,000 (ONE HUNDRED THOUSAND POUNDS). THIS LIMITATION SHALL NOT APPLY TO ANY LIABILITY THAT BY LAW CANNOT BE RESTRICTED.

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## **6 Indemnity**

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6.1 Nervecentre shall indemnify Licensee for any claim, demand or cause of action by a third party ("Demand") to the extent that it is based upon a claim that the Programs infringe any U.K. patent, or U.K. trademark, or Berne Convention copyright, or that the Programs misappropriate any trade secret of any third party within the country in which the Programs are located. The foregoing indemnification is conditioned on Licensee notifying Nervecentre promptly in writing of such Demand, Licensee giving Nervecentre sole control of the defense thereof (and any negotiations for settlement or compromise thereof), and Licensee cooperating in the defense thereof at Nervecentre's request and expense, provided that Licensee may, at its own expense, assist in such defense if it so chooses. Nervecentre, at its sole option and expense may: (a) procure for Licensee the right to continue using the Programs; or (b) substitute a non-infringing version of the Programs so that the Programs become non-infringing and still conform to the applicable specifications; or (c) return the license fee paid by Licensee hereunder for the Programs, less an amount equal to straight line depreciation of the Programs over 4 (four) years, and Licensee shall immediately return the Programs to Nervecentre. Licensee shall not incur any costs or expenses on behalf of Nervecentre under or pursuant to this Section without Nervecentre's prior written consent.

6.2 Nervecentre shall have no liability to Licensee for any Demand by a third party alleging infringement or misappropriation based upon (a) any use of the Programs in a manner other than as permitted in this Agreement; or (b) any use of the Programs in combination with any product not provided by Nervecentre, to the extent that such Demand is directed against the combination.

Notwithstanding the foregoing, no indemnification is given in relation to Free Download Components. THE FOREGOING STATES THE ENTIRE LIABILITY OF THE PARTIES AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEMANDS.

6.3 Licensee acknowledges that it is Licensee's responsibility to ensure alternative processes are in place to ensure no loss or harm if the Program becomes unusable whether as a direct result of a failure of the Program or as a result of a failure of systems upon which the Program relies including power, network or telephone systems or for any other reason.

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## **7 Term and Termination**

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7.1 The license granted herein shall be perpetual (unless recorded otherwise in Nervecentre's business records), subject to Nervecentre's receipt of the applicable license fees and Nervecentre's right to terminate the license in accordance with this Section.

7.2 Nervecentre may terminate this license and the Agreement immediately upon written notice to Licensee if Licensee breaches the provisions of Section 1 (License). Either party may at its option terminate this license and the Agreement immediately upon written notice in the event that the other party: (a) breaches any term of this Agreement, which breach remains uncured for a period of 30 (thirty) days after written notice of such breach to the other party; or (b) becomes insolvent or asserts that it is insolvent, fails to pay its general obligations as they become due, institutes or has instituted against it any proceeding, arrangement, receivership or assignment for the benefit of creditors, or files or has filed against it any petition under applicable bankruptcy laws.

7.3 ON TERMINATION OF THIS LICENSE FOR ANY REASON LICENSEE SHALL CEASE USING THE PROGRAMS AND THE DOCUMENTATION AND ALL COPIES OF THE SAME SHALL BE IMMEDIATELY RETURNED TO NERVECENTRE.

7.4 The operation of Clauses 1, 3, 5, 6, 7 and 8 shall survive the termination of this Agreement.

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## **8 General**

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8.1 The Program is subject to laws and regulations that restrict its export. Licensee agrees not to export or "re-export" (transfer) the Program unless all applicable government export controls and approvals have been compiled with.

8.2 Nervecentre and its licensors shall have the right to conduct an audit of (and to copy) Licensee's records on reasonable notice and not more than once in each 12 (twelve) month period to verify that Licensee is complying with the terms hereof. In the event that an underpayment is revealed as the result of such audit Licensee shall immediately upon being so requested by Nervecentre pay such underpayment together with the costs of any such audit.

8.3 If one or more provisions of this Agreement are held to be illegal or unenforceable under applicable law, such illegal or unenforceable provision(s) shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable in accordance with its terms.

8.4 This Agreement shall be governed by and construed under the laws of England and Wales and the parties hereto submit to the exclusive jurisdiction of the courts of England save that Nervecentre may assert its intellectual property rights in any jurisdiction.

8.5 Licensee agrees that this Agreement is the complete and exclusive statement of the mutual understanding between the parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. It may not be modified or waived except in writing signed by authorized representatives of both parties.

8.6 All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, or after being sent by prepaid certified or registered mail to and received by the address of the party to be noticed or such other address as such party last provided to the other by written notice.

8.7 Licensee shall not assign, transfer, or sublicense any obligations or benefit under this Agreement without the prior written consent of Nervecentre (and any such attempt shall be void). Nervecentre may assign this Agreement in whole or in part.

LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ THE TERMS OF THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS.

ACCEPT

DECLINE