

PRONTO SOFTWARE SYSTEM LICENSE CONTRACT

This Pronto Software System License Contract is made on this date, between (*Equinox Medical, Licensor*) a corporation organized and existing under the laws of the state of (*MA*), with its principal office located at *310 George Washington Hwy, Suite 200, Smithfield, RI 02917*, referred to herein as *Licensor*, a corporation organized and existing under the laws of the state of (*applicable based on customer application*), with its principal office located at (*applicable based on customer application*), referred to herein as *Licensee*.

Whereas, Licensor has developed and is the sole and exclusive owner of a proprietary software package entitled (*Pronto, Customer Notification Application*), hereinafter referred to as the *System*; and

Whereas, Licensee desires to purchase a license from Licensor to use the *System*; and

Whereas, Licensor desires to grant non-exclusive licenses to the *System*;

Now, therefore, for and in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

- 1. Grant of License.** Licensor hereby grants and Licensee accepts a personal, non-transferable and non-exclusive right and license to use the *System* upon the terms and conditions set forth herein.
- 2. License.** Each license granted under this Software License Agreement conveys to Licensee only a personal, non-exclusive, non-transferable right and license to use the *System* on the computer system designated herein. This Software License Agreement may not be assigned by Licensee and the *System* to which it applies and documents and materials relating thereto may not be disclosed, sublicensed, published, released or transferred to another party by Licensee without the prior written consent of Licensor.
- 3. Term.** This Software License Agreement shall commence upon the receipt by Licensee of the *System* and shall terminate according to the provisions of **Paragraph 13** or upon termination of its use by Licensee in conjunction with the computer system designated
- 4. Charges.** Licensee agrees to pay Licensor a total purchase price of (based on software pricing set by Equinox) plus any applicable sales and excise taxes. This purchase price shall be due and payable to Licensor at its principal place of business as follows:
 - A.** An initial payment of (applicable when the licensee agrees to pricing) upon execution of this Software License Agreement; and
 - B.** (Applicable after licensee agrees to the pricing) which is payable in full within thirty (30) days after Licensee receives the *System* object code,

documentation and test files, which, in the sole opinion of Licensor, are sufficient to operate the System.

5. Additional Charges. In addition to the purchase price of **Paragraph 4**, Licensee agrees to pay an additional charge for all out-of-pocket expenses incurred by Licensor in installing the System on the Licensee's computer system. A computer technician shall be made available to Licensee by Licensor free of charge for up to and including one (1) day of installation support time. Additional installation support time may be obtained from Licensee at a rate of \$_____ per hour per technician. This provision shall **NOT** constitute an agreement by Licensor to render additional programming services or the like upon request by Licensee.

6. Warranty. Licensor warrants to Licensee that the System will substantially perform in the manner described in the System's documentation for a period of ninety (90) days after Licensee receives the System object code, documentation and test files which, in the opinion of Licensor, are necessary to operate the System or Licensor will refund the purchase price of the System paid by Licensee. **EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.** The warranty and obligation of Licensor stated above is conditioned upon:

A. The System being used in connection with the designated computer system; and

B. There having been no alterations or modifications to the System by persons other than Licensor, which have not been approved in writing by Licensor.

7. Software Maintenance.

A. Licensor agrees to make available to Licensee, a software maintenance option for a period of sixty (60) days after the expiration of the warranty period set forth in **Paragraph 6** above at a rate of one percent (1%) of the purchase price of the System per month, payable quarterly and in advance. Licensor's obligation for software maintenance upon the exercise of the software maintenance option by Licensee shall be for Licensor to attempt to correct any error, malfunction or defect in the System for which it receives written notice from Licensee. For the purpose of this Software License Agreement the phrase *error, malfunction or defect* shall mean only significant deviations from the design specification for the most current release of the System.

B. Licensor further agrees to make available to Licensee all standard updates, enhancements, and/or improvements in the System during the term of the warranty period and, if applicable, during the term of the software maintenance agreement. Licensee's refusal to accept such standard updates, enhancements and/or improvements in the System shall, at Licensor's sole option, void any warranties and/or software maintenance agreements in effect at that time. Similarly,

unapproved changes, modifications or alterations in the System's object code shall, at the sole option of Licensor, **(i)** terminate the warranty provisions of this Software License Agreement; and, if applicable, **(ii)** terminate any software maintenance agreement resulting from Licensee's exercise of the software maintenance option provided herein; and **(iii)** void the indemnity and hold harmless provisions of **Paragraph 12**.

9. Servicing of the System.

A. Licensee agrees to advise Licensor in writing of the precise nature of any suspected error, malfunction or defect and provide Licensor with all relevant information upon request in order that Licensor may render the services set forth herein. Licensor does not represent or warrant the service results or that all errors, malfunctions or defects will be corrected.

B. Licensee will provide Licensor with reasonable computer time, and, at Licensor's request, run a tracer or monitor for the purpose of determining and correcting any error, malfunction or defect, or making other changes requested by Licensee and agreed to by Licensor. In addition Licensee will provide Licensor with a *memory dump* and such additional data as Licensor requests in machine readable or interpreted form deemed necessary or desirable by Licensor in order to reproduce the environment in which the System operated. If Licensor determines that there was no error, malfunction or defect in the System, Licensee shall pay for all time and materials spent by Licensor in attempting to determine and correct Licensee's problem. If Licensee notifies Licensor during Licensor's normal business hours Monday thru Friday, excluding national holidays, of a suspected error, malfunction or defect, Licensor agrees to use its best efforts to confirm, in a timely manner, the existence of such an error, malfunction or defect. If the suspected error, malfunction or defect is confirmed, Licensor shall attempt to correct such error, malfunction or defect but does not warrant the results of such an attempt.

10. Protection and Security.

A. Licensee acknowledges that the System constitutes a valuable asset and trade secret of Licensor and Licensee further acknowledges that Licensor has an exclusive proprietary right and interest in and to the System and that any information, documents, flow charts, logic diagrams, source code, test materials, or the like relating in any way to the System is Licensor's **Confidential Trade Secret Information**. Licensee, therefore, agrees to use the System only as provided in this Software License Agreement and only during the term of the license granted by this Software License Agreement. Licensee further agrees not to provide or otherwise make available any written materials, documents, flow charts, logic diagrams, source code, test materials, or other information relating to the System in any form, to any person other than Licensee's or Licensor's employees without prior written consent from Licensor. Licensee agrees not to use

the System on any computer other than the designated computer system currently installed at Licensee's principal place of business. For the purpose of this Software License Agreement, the designated computer system is:

B. Licensee further agrees to protect all written materials, flow charges, logic diagrams, source code, test materials, or other information relating to the System, in any form, from unauthorized disclosure by its agents, employees or customers.

11. Permission to Copy.

A. Any portion of the System furnished by Licensor in machine readable form may be copied by Licensee only for use with the designated computer system and for the following purposes: **(i)** to enable Licensee to understand the contents of the System or **(ii)** to modify the System in accordance with this Software License Agreement, or **(iii)** for safe keeping and back-up purposes, provided, however, that no more than three machine readable copies and five printed copies of any portion of the System shall be in existence at any one time. Licensee agrees that the original copy of all portions of the System and all copies thereof made by Licensee are and shall remain the sole and exclusive property of Licensor.

B. An original or copy of all or any portion of the System may be kept in storage at a location separate from that of the designated computer system provided, however, that Licensee agrees to notify Licensor immediately in writing of the location of such back-up and safe keeping of original or copies upon request by Licensor.

C. The parties agree that Licensee shall have the right to modify any portion of the System supplied by Licensor in machine readable form or otherwise for Licensee's use under this Software License Agreement, and may combine such with other programs or materials to form an update work, provided, however, upon discontinuance or termination of the rights granted under this Software License Agreement, all portions of the System supplied by Licensor shall be completely and permanently removed from the updated work and any and all portions of the System or copies thereof shall be immediately returned to Licensor or disposed of in accordance with written instructions from Licensor. Nevertheless, the provisions of **Paragraph 6** and **Paragraph 12** remain applicable.

D. Licensee agrees to include Licensor's copyright notice and any Licensor proprietary notice on all copies, including partial copies, in any form including machine readable form, made by Licensee under or in accordance with this Software License Agreement.

E. Licensee expressly agrees that any use not in accordance with the foregoing is an unauthorized use of the System.

12. Indemnification.

A. In the event that any portion of the System or related materials furnished to Licensee by Licensor is, in Licensor's sole opinion, likely to or does become the subject of a claim of infringement of a copyright or patent, Licensor may, at its option and expense, procure for Licensee the right to continue using the System or related materials or modify the System or related materials to make them non-infringing. If in Licensor's opinion, neither of the foregoing alternatives is reasonably available to Licensor, then Licensor may terminate this Software License Agreement upon thirty (30) days written notice to Licensee.

B. Licensor agrees to hold Licensee harmless from any patent or copyright infringement arising out of the Licensee use of the System provided Licensor is notified promptly in writing and is given complete authority and information required for defending or settling any charge of patent or copyright infringement or suit resulting therefrom, and further provided that Licensee is not in default of any of the provisions of this Software License Agreement.

13. Cancellation or Termination.

A. The right and license granted hereunder may be cancelled by Licensor if Licensee is in default of any amount due under this Agreement for a period of thirty (30) days and may be cancelled by either party at any time upon default by the other party of any covenant of this Software License Agreement if such default is not corrected within thirty (30) days after receipt of written notice thereof.

B. Licensee agrees to pay all applicable costs and attorney's fees, if permitted, and to the extent permitted by law, for the collection of payments and other charges due under this Software License Agreement.

C. Within one hundred twenty (120) days after the termination of this Software License Agreement and within thirty (30) days after the cancellation for default of this Agreement for any reason, Licensee shall deliver to Licensor any and all portions of the System and any information, documents, flow charts, logic diagrams, source code, test materials source code, or the like relating thereto and all copies thereof in whatever form, including partial copies, which may have been modified by Licensee or Licensor.

D. Licensee expressly agrees that provisions of **Paragraph 10** shall survive the termination of this Software License Agreement.

14. Limitation of Liability.

A. IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR LOSS OF PROFIT OR OTHER ECONOMIC LOSS, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, ARISING OUT OF ANY BREACH OF THIS SOFTWARE LICENSE AGREEMENT OR ANY OBLIGATIONS UNDER THIS AGREEMENT OR THE

LICENSE GRANTED OR FOR ANY CLAIM MADE AGAINST LICENSEE BY ANY OTHER PARTY, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 12.

B. Licensor shall not be liable for any damages caused by delay in delivery, installation or furnishing of the System or related object code, documentation or test files or in furnishing the software maintenance services under this license. If a charge is payable with respect to the System or related materials or if a charge has been established in the regular course of business by Licensor for licensing the same or similar products then Licensor's liability, if any, for loss or damages relating to or arising out of the license thereof shall not exceed the charges attributable to such system or related materials.

15. Miscellaneous. Licensee agrees not to hire, solicit for hire, or otherwise employ, either on a full time or a part time basis, any employee, agent or independent contractor of Licensor, or during the term of this Software License Agreement and for a period of two (2) years after the termination or cancellation thereof by either party.

16. Severability. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

17. No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

18. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of *Rhode Island*.

19. Notices. Unless provided herein to the contrary, any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

20. Mandatory Arbitration. Notwithstanding the foregoing, and anything herein to the contrary, any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

21. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of

this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

22. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

23. Assignment of Rights. The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

25. Compliance with Laws. In performing under this Agreement, all applicable governmental laws, regulations, orders, and other rules of duly-constituted authority will be followed and complied with in all respects by both parties.

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