

MICROMEDEX, INC.
Customer License Agreement

This agreement ("Agreement") is effective this ____ day of ____, 2001 ("Effective Date") between ____ ("Licensee"), with offices at ____ ("Facility"), and MICROMEDEX, INC. ("Micromedex"), a Delaware corporation with offices at 6200 S. Syracuse Way, Suite 300, Greenwood Village, Colorado 80111-4740.

WHEREAS, Micromedex both creates and licenses from third parties, markets, sublicenses, distributes and supports certain medical and industrial computer database/software products, which may be accompanied by documentation (individually and collectively referred to herein as the "Products"); and

WHEREAS, Licensee wishes to license certain Products from Micromedex for use at its Facility.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. License.

- A. Micromedex grants to Licensee a nonexclusive, limited license to use the Products requested from Micromedex ("Subscription") pursuant to the terms of this Agreement and separately issued invoices. The Products shall only be loaded on Licensee's own CPUs ("Authorized Hardware").
- B. The Products may only be used by Licensee's employees, students, contractors, and/or physicians having privileges at Licensee's Facility, who are trained or training in the fields for which the Products are being utilized ("Authorized Personnel"). However, only Authorized Personnel who are competent healthcare professionals who rely on their clinical discretion and judgment in diagnosis and treatment may use the Products for medical diagnosis or treatment purposes. As between Licensee and Micromedex, Licensee hereby assumes full responsibility for ensuring the appropriate use and reliance upon the Products in view of all attendant circumstances, indications and contraindications.
- C. Micromedex or its representative ("Distributor") shall periodically deliver updated versions of the Products ("Updates") to Licensee. Updates are Products and subject to the terms of this Agreement. Within seven (7) days of receipt of any Updates, Licensee will install such Updates, return to Micromedex or its Distributor (via traceable carrier) all original material which the Updates supersede, and destroy all backup copies of the superseded material. Micromedex may embed an automatic shutdown feature in the Products which will render the Products inoperable beyond the scope of the Agreement.
- D. With respect to the CareNotes™ System only, Authorized Personnel may (i) distribute to patients one (1) printed copy of any document produced using such Product, and (ii) modify information content within the functionality of such Product.
- E. Micromedex may make changes to the Products, or cease distribution of a Product or a portion of a Product. If Micromedex ceases to distribute a Product, Micromedex shall provide as much notice as reasonably possible, whereupon the Subscription shall terminate as to such Product. Licensee shall be entitled to a pro rata refund of the prepaid Subscription Fee (defined below) attributable to the terminated Product.
- F. The Products may only be employed for Licensee's own internal uses. Without limiting the foregoing, Licensee may not, (except as expressly permitted in this Agreement):
 - (i) copy, download, upload or in any way reproduce the Products in any form, except that: (a) one (1) copy of the Products may be made to the hard drive of the Authorized Hardware, (b) one (1) copy of the Product may be made for backup purposes only, and (c) limited excerpts of information from the Product may be copied into any medium or printed for internal use only;
 - (ii) sell, distribute, sublicense, provide access, or transfer the Products, in whole or part, to a third party (including, without limitation, by facsimile);
 - (iii) create compilations or derivative works of the Products;
 - (iv) use any version of the Products other than the most current version;
 - (v) use the Products for the benefit of a third party or give any third party beneficial use of the Products, including, without limitation, any affiliated company; or
 - (vi) reverse engineer, decompile or disassemble any part of the Products.
- G. Licensee may not access or use, or permit others to access or use, the Products on a multi-user computer system, such as a network, Internet, intranet or multi-user accessible mainframe, unless Licensee has paid the appropriate

multi-user Subscription Fees; and then only those such Products. Licensee may make and maintain during the Subscription sufficient electronic copies of such Products for appropriate multi-user system and back-up purposes.

2. Property Rights.

- A. The Products, the copyrights thereto, and the trademarks used in connection therewith are and shall remain the sole property of Micromedex or its third-party licensors. Licensee shall not modify or remove any proprietary markings or restrictive legends placed on the Products.
- B. Micromedex regards the Products, or any part thereof, as proprietary information. Licensee shall take appropriate security precautions to effect its obligations under this Agreement.
- C. Upon expiration or termination of any Subscription, Licensee shall return (via traceable carrier) the applicable Products to Micromedex or its Distributor, and destroy all copies thereof, within seven (7) days. No copies of the applicable Products, or any information contained therein, may be retained by the Facility, except that the Facility shall not be obligated to destroy work product of Authorized Personnel produced in accordance with this Agreement.
- D. During this Agreement, and for twelve (12) months following termination thereof, Licensee shall permit Micromedex to inspect, during regular business hours and upon prior notice, the point or points at which the Products are or were used and shall furnish all assistance reasonably necessary for Micromedex to determine Licensee's compliance or the extent of Licensee's noncompliance with Sections 1 and 2 hereof.

3. Fees and Payment.

- A. Licensee shall pay Micromedex or its Distributor all fees due for each Subscription ("Subscription Fees") and any applicable one-time, nonrefundable software license fees ("Software License Fees") invoiced to Licensee.
- B. All Subscription Fees and Software License Fees are exclusive of applicable state or local sales, use, ad valorem, personal property taxes or other taxes not based upon the net income of Micromedex. Licensee shall pay any such taxes, unless exempt. However, this Section 3(B) does not apply to, and Licensee has no obligation under this Agreement or otherwise to pay or reimburse Micromedex for, any taxes imposed on Micromedex' income or any withholding taxes of a similar nature imposed on payments from Licensee to Micromedex.
- C. All amounts due hereunder are payable in United States currency (unless otherwise stated on the invoice) within thirty (30) days after the date of the invoice. Any amount not paid when due may be subject to a late payment fee equal to the lesser of 1½% of the unpaid amount per month, or the maximum rate allowed by law. Failure to pay the entire amount when due may also result in the withholding of Updates until Licensee's account is current.

4. Term.

- A. This Agreement shall take effect on the Effective Date, and shall continue in effect until all required obligations regarding termination set out in Section 2(C) are completed with regard to each existing Subscription.
- B. If either party breaches this Agreement, the other may, in addition to pursuing all other legal remedies, terminate the Subscription to which the breach applies, or all Subscriptions under this Agreement, upon thirty (30) days' prior written notice unless such breach is cured within such time. If the breaching party is Licensee, Micromedex may cease distributing Updates until the breach is cured. If Licensee terminates a Subscription due to a breach by Micromedex, Licensee shall be entitled to a pro-rata refund of the applicable prepaid Subscription Fees.

5. Warranties.

- A. For ninety (90) days after the date the Products are shipped to the Facility ("Warranty Period"), Micromedex warrants that the media will be free from defects in material and workmanship and will be of a quality suitable to provide access to the content when used on the Authorized Hardware. Micromedex' sole obligation under this warranty is, at its option, to replace the nonconforming media within a reasonable time, or give Licensee a pro rata refund of the Subscription Fee, provided Licensee has given Micromedex written notice of such defect within the Warranty Period.
- B. Micromedex shall indemnify and hold Licensee harmless against all claims and damages including, without limitation, reasonable attorneys' fees which Licensee incurs as a result of any claim against Licensee that the Products infringe any copyright or proprietary right of any third party, provided that: (i) Licensee notifies Micromedex promptly in writing of such claim; (ii) Micromedex has sole control over the defense or settlement



- of such claim; and (iii) use of the Products has been in accordance with the terms of this Agreement. Notwithstanding the above, Micromedex shall not be so obligated if the infringement occurs as the result of: (a) a combination with, or the addition of, products not supplied by Micromedex, and/or (b) a modification of the Products after delivery by Micromedex, if the infringement would not have occurred without such combination, addition and/or modification. In the event of a claim for infringement, Micromedex may terminate Licensee's right to the allegedly infringing Products and either replace such with substantially similar products or give Licensee a pro rata refund of the applicable portion of the Subscription Fees.
- C. Micromedex warrants that the information contained in the Products (other than information which has been modified, as permitted hereunder) has been obtained from what it believes are reliable sources. However, except as set forth above, the Products are provided "as is," and **NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER IS MADE REGARDING THE PRODUCTS. MICROMEDEX MAKES NO WARRANTY THAT THE PRODUCTS WILL PERFORM WITHOUT INTERRUPTION OR FREE FROM ERRORS.**
- D. In no event will Micromedex be liable for any direct, indirect, incidental, special or consequential damages arising from or caused by use of, reliance on, or inability to access and use any information contained in the Products, even if Micromedex has been previously advised of the possibility of such damages or losses.
- E. In any action against Micromedex arising out of, related to, or in any way connected with this Agreement or with respect to the Products, services, or any other products and/or services furnished to Licensee under this Agreement or otherwise, Licensee shall not be entitled to recover any sum as damages, reimbursement, contribution, indemnity or otherwise, in excess of the total of all payments made by Licensee to Micromedex under this Agreement during the twelve (12) months immediately preceding the date on which the claim arose.
- F. Regardless of its form, no action arising from this Agreement may be brought by Licensee more than twelve (12) months after the cause of action arises.
- G. Licensee agrees to indemnify Micromedex and hold it harmless against all claims and damages including, without limitation, reasonable attorneys' fees, arising out of, related to, or in any way connected with any use of the Products, unless such claims or damages result from the infringement of any copyright or other proprietary right of any third party (except if due to a combination, addition or modification).

6. Miscellaneous.

- A. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement shall not be modified or amended except by a writing signed by both parties, and shall supersede the terms of any purchase order, trial agreement or similar instrument relating to the Products.
- B. This Agreement is binding upon Licensee, its employees, officers and agents. The rights and obligations of Licensee hereunder may not be transferred, sublicensed or assigned to any person or entity without the express written approval of Micromedex, which shall not be unreasonably withheld. Micromedex may terminate this Agreement upon change of ownership or control of Licensee.
- C. This Agreement shall be construed and the rights and liabilities of the parties determined in accordance with the laws of the State of Colorado, without giving effect to any body of law or precedent relating to conflicts of laws.
- D. Licensee acknowledges that a violation of any term of this Agreement could result in irreparable injury to Micromedex and its business, and Micromedex may be entitled to equitable remedies, including an injunction, in addition to any other remedy that Micromedex may have at law.
- E. All notices under this Agreement may be delivered in person or may be sent by courier, facsimile, express or overnight mail, or postage prepaid certified or registered air mail (or its equivalent under the law of the country where mailed), addressed to the party for whom it is intended, at the address set forth above. Either party may change its address for notice by giving notice to the other party of the change.
- F. This Agreement and License is subject to any and all export laws of the United States. Compliance with such laws, and compliance with the laws of any foreign countries, shall be Licensee's responsibility.
- G. Notwithstanding the expiration or termination of this Agreement for any reason whatsoever, the provisions of Sections 2 and 5 shall survive and bind the parties indefinitely.
- H. If any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the remainder of this Agreement shall remain valid and enforceable.
- I. The failure of either party to give notice of nonperformance, breach or termination, or to otherwise enforce any rights hereunder, shall not constitute a waiver of any terms or conditions of this Agreement.



- J. Any terms or conditions appearing on any purchase orders, acknowledgments or confirmations that are different from or in addition to those contained herein shall not bind the parties, even if signed and returned, unless both parties expressly agree in a separate writing to be bound by such terms and conditions.
- K. The parties may, by mutual consent, retain a mediator to aid the parties in their discussions and negotiations by informally providing advice to the parties. Any opinion expressed by the mediator shall be strictly advisory and shall not be binding on the parties, nor shall any opinion expressed by the mediator be admissible in any subsequent proceedings. The mediator may be chosen from a list of mediators previously selected by the parties or by other agreement of the parties. Costs of the mediation shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses.

7. U.S. Government Customers .

The Products are provided to the Federal government and its agency with RESTRICTED RIGHTS. USE, DUPLICATION OR DISCLOSURE BY THE GOVERNMENT IS SUBJECT TO RESTRICTIONS SET FORTH IN SUB-PARAGRAPH (c)(1)(ii) OF THE RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE CLAUSE AT DFARS 252.227-7013 OR SUB-PARAGRAPHS (c)(1) OR (2) OF THE COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS AT 48 CFR 52.227-19, AS APPLICABLE. CONTRACTOR/MANUFACTURER IS MICROMEDEX, INC., 6200 S. Syracuse Way, Suite 300, Greenwood Village, Colorado 80111-4740, USA.

IN WITNESS WHEREOF, each of the parties, representing that it has the authority to enter into this Agreement, hereto has caused this Agreement to be executed by a duly authorized representative.

MICROMEDEX, INC.

LICENSEE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____