



\_\_\_\_\_, 2008

THE PHARMACY CONNECTION SOFTWARE  
END-USER LICENSE AGREEMENT

between

Virginia Health Care Foundation (Licensor) and \_\_\_\_\_ (Licensee)

LICENSOR'S PROGRAM IS COPYRIGHTED AND LICENSED (NOT SOLD).  
LICENSOR DOES NOT SELL OR TRANSFER TITLE TO THE LICENSED PROGRAM  
TO YOU. YOUR LICENSE OF THE LICENSED PROGRAM WILL NOT COMMENCE  
UNTIL YOU HAVE EXECUTED THIS AGREEMENT AND AN AUTHORIZED  
REPRESENTATIVE OF LICENSOR HAS RECEIVED, APPROVED, AND EXECUTED A  
COPY OF IT AS EXECUTED BY YOU.

**1. License.** In consideration of your obligations set forth herein, Licensor grants you a nonexclusive license to use the package of computer programs and data in machine-readable form and related materials, including documentation and listings, identified in Exhibit A, which together constitute the "Licensed Program," subject to the following terms and conditions.

**2. Scope of Rights.** You may:

- i. Install the Licensed Program in your own facility at the location specified in Exhibit A;
- ii. Use and execute the Licensed Program on the computer specified by type/model and serial (or plant number) in Exhibit A for purposes of serving the internal needs of your agency, organization or operations;
- iii. In support of your authorized use of the Licensed Program, store the Licensed Program's machine-readable instructions or data in, transmit it through, and display it on machines associated with the specified computer; and

- iv. Make one copy of the Program in machine-readable, object code form, for nonproductive backup purposes only, provided that Licensor's proprietary legend is included.

**3. Your Obligations.** You agree to:

- i. Review and comply with the patient eligibility requirements of the pharmaceutical companies, including any changes to such requirements which may have occurred since the release of the Licensed Program; and
- ii. Generate and send to Licensor a tracking report on the fifteenth day of each January, April, July, and October during the term of this Agreement, which report covers the previous calendar quarter. If said report is not received on time, Licensee will be locked out of the system until such report is sent. Instructions for generating the report are set forth in the Licensed Program documentation. Furthermore, Licensee agrees not to reveal or otherwise use the information in such tracking report, or any other report generated by the software, until at least thirty (30) days after the report to Licensor.
- iii. Pay a fee of \$750 for one software license or installation. This fee also includes up to one year of maintenance described in paragraph 11 of this agreement.
- iv. A fee of \$100 must be paid for each additional installation of the software.
- v. Have access to the internet in order to receive all updates and to send tracking reports.

**4. Taxes.** You are solely responsible for payment of any taxes (including sales or use taxes, intangible taxes, and property taxes) resulting from your acceptance of this license and your possession and use of the Licensed Program, exclusive of taxes based on Licensor's income. Licensor reserves the right to have you pay any such taxes as they fall due to the Licensor for remittance to the appropriate authority. You agree to hold harmless Licensor from all claims and liability arising from your failure to report or pay such taxes.

**5. Support.** Licensor shall support the Licensed Program in the manner specified in Exhibit A. However, Licensor offers support only for the most current version of the Licensed Program issued by Licensor from time to time, so you must make sure to obtain

and substitute or incorporate all new releases or fixes issued by Licensor pursuant to its warranty and support programs.

**6. Your Responsibilities.** You are responsible for selecting an operator who is qualified to operate the Licensed Program on your own equipment and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program. Licensor reserves the right to refuse assistance or to charge additional fees if an operator seeks assistance with respect to such basic background information or any other matters not directly relating to the operation of the Licensed Program.

The Licensed Program is designed for use with the peripheral equipment and accessories specified in Exhibit A. Except as agreed otherwise in writing, Licensor assumes no responsibility under this Agreement for obtaining or providing such equipment. You are also responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program will operate, including an uninterrupted power supply.

Except as agreed otherwise in writing, Licensor assumes no responsibility under this agreement for converting your data files for use with the Licensed Program.

**7. Proprietary Protection and Restrictions.** Licensor shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Program and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to you herein by Licensor. This Agreement does not provide you with title or ownership of the Licensed Program, but only a right of limited use. You must keep the Licensed Program free and clear of all claims, liens, and encumbrances.

You may not use, copy, modify, or distribute the Licensed Program (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Licensor. You may not reverse assemble, reverse compile, or otherwise translate the Licensed Program. Your rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the Licensed Program in its entirety to (1) a successor in interest of your entire business who assumes the obligations of this Agreement, or (2) any other party who is reasonably acceptable to Licensor, and enters into a substitute version of this Agreement. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized by Licensor. You may not install the Licensed Program in any other computer system or use it at any other location without Licensor's express written authorization

obtained in advance (which will not be unreasonably withheld); provided that you may transfer the Licensed Program to another computer temporarily if the computer specified in Exhibit A is inoperable. If you use, copy, or modify the Licensed Program or if you transfer possession of any copy adaptation, transcription, or merged portion of the Licensed Program to any other party in any way not expressly authorized by Licensor, your license is automatically terminated.

You hereby authorize Licensor to enter your premises in order to inspect the Licensed Program in any reasonable manner during regular business hours to verify your compliance with the terms hereof.

You acknowledge that, in the event of your breach of any of the foregoing provisions, Licensor will not have an adequate remedy in money or damages. Licensor shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. Licensor's right to obtain injunctive relief shall not limit its right to seek further remedies.

**8. No Warranty and Limitation of Liability.** LICENSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, ANY NEGLIGENCE, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

The cumulative liability of Licensor to you for all claims relating to the Licensed Program and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount you have paid to Licensor hereunder. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

Licensor shall have no liability for loss of data or documentation, it being understood that you are responsible for reasonable backup precautions.

In no event shall Licensor be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against you, even if Licensor has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

**9. Term of Agreement; Termination.** Your license of the Licensed Program shall become effective upon delivery of the Licensed Program to you and shall continue indefinitely, unless sooner terminated as provided herein.

Licensor may terminate this license at any time upon thirty (30) days' written notice, and immediately in the event of your breach of the Agreement.

Upon termination of this Agreement, all rights granted to you will terminate and revert to Licensor. Promptly upon termination of this Agreement for any reason or upon discontinuance or abandonment of your possession or use of the Licensed Program, you must return or destroy, as requested by Licensor, all copies of the Licensed Program in your possession (whether modified or unmodified), and all other materials pertaining to the Licensed Program (including all copies thereof). You agree to certify your compliance with such restriction upon Licensor's request.

**10. Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without resort to the conflicts of laws rules thereof.

**11. Maintenance Fee.** An annual maintenance fee of \$500 will be assessed on the first day of November. The maintenance fee entitles you to software updates and upgrades, new and updated manual pages, access to the technical support line and any trainings needed for up to five new staff. Organizations who do not pay the fee within 30 days of the due date will have their maintenance service discontinued.

No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought. References to your use or benefit include any subsidiaries you may own directly or indirectly by more than 50 percent, provided that, to the extent of their use and benefit, they comply with the restrictions herein.

Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed.

In the event that any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement and

all the remaining terms of this Agreement shall remain in full force and effect.

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF LICENSOR'S OBLIGATIONS AND RESPONSIBILITIES TO YOU AND SUPERSEDES ANY OTHER PROPOSAL, REPRESENTATION, OR OTHER COMMUNICATION BY OR ON BEHALF OF LICENSOR RELATING TO THE SUBJECT MATTER HEREOF.

Accepted and Approved:

\_\_\_\_\_  
(LICENSOR)

Date: \_\_\_\_\_

By: Virginia Health Care  
Foundation

Name: Deborah D. Oswalt

Title: Executive Director

Address: 707 East Main St.  
Suite 1350  
Richmond, VA  
23219

Telephone: (804) 828-5804

Facsimile: (804) 828-4370

\_\_\_\_\_  
(LICENSEE)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

## EXHIBIT A

1. Identification of licensed program and specifications.
  - The Pharmacy Connection release version as noted.
  - The Pharmacy Connection User's Manual.
2. Location of licensee's facility (installation site).
3. Specification of computer system on which licensed program will execute.
4. Support terms (including training, call-in help and on-site troubleshooting, customized modifications, updates, and enhancements).

A training session will be offered to each of the licensees. At a minimum, sessions will be held in each of the following locations: 1) Central Virginia; 2) Southside Virginia; 3) Southeast Virginia; 4) Northern Virginia; and 5) Southwest Virginia

  - Telephone support and/or on-site support will be provided as needed, if deemed necessary by the Licensor, and only for matters directly related to The Pharmacy Connection.
  - Updates and enhancements will be distributed to Licensees from time to time as determined by the Licensor.
5. Necessary hardware and software accessories.
  - Intel Pentium Processor 1.5GHz or Higher
  - Operating System - Windows 2000 Professional, Windows XP Professional, Windows 2003 or Windows 2000 or 2003 Server
  - High Speed Internet Connection
  - 512 MB of Memory

- CD-RW Drive
- At least 150 MB of free disk space (this depends on the amount of data)
- Monitor appropriately sized for 1024 x 768 resolution
- Access to a Printer.
- Access to e-mail and the Internet.
- The version of Microsoft Word installed will have to be Word 2000, Word 2003 or Word XP Professional

6. Delivery date for licensed software.

Upon receipt of signed license agreement and payment.