

## COMPUTER SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT ("Agreement"), consisting of this document and the schedules attached hereto, is effective as of 6-28-2013, between Computrition, Inc., a California corporation with its principal place of business at 8521 Fallbrook Avenue, Suite 100, West Hills, California 91304 ("Licensor"), and Texas Health and Human Services Commission, with its principal place of business at 909 West 45<sup>th</sup> Street, Room 111, Bldg 3, Austin, TX 78751 ("Licensee"), for the purpose of granting Licensee a limited license to use certain software furnished by Licensor in Executable Code form.

### 1.0 GRANT OF LICENSE.

1.1 Software License and Services. Subject to the terms and conditions of this Agreement (including Licensee's obligation to pay the applicable license and other fees to Licensor when due), Licensor hereby grants to Licensee and Licensee hereby accepts, a non-exclusive, non-transferable, and non-sublicenseable, annual subscription-based license, to use the computer software products and systems described in Schedule A attached hereto (in Executable Code form) (the "Software") and attendant end user documentation provided therewith, in either hard copy or electronic format (the "Documentation"). Licensor also hereby sells to Licensee and Licensee hereby purchases those services described in Schedule A attached hereto (the "Services"). Licensor will activate the Software for Licensee within a reasonable period following the Effective Date. The Software will be delivered in accordance with Licensee's reasonable instructions. For purposes of this Agreement, the term "Executable Code" means the fully compiled binary version of a software program that can be executed by a computer and used by an end user without further compilation.

1.2 Additional Software/Clients. If Licensee requests to upgrade the Software or to license and use program modules or workstations/clients in addition to those described in Schedule A, the parties agree to execute an addendum to Schedule A for each such upgrade or additional program module or workstation(s)/client(s). Upon the parties' execution of such addendum, such addendum will become part of this Agreement, and the license granted hereunder will apply to such additional program modules or workstations/clients. The fee to upgrade from one Software system to another Software system or to add another workstation/client will be the difference in the fees for the respective Software systems or number of

workstations/clients pursuant to Licensor's standard price list then in effect. The fee for an additional program module will be pursuant to Licensor's standard price list then in effect. The provisions of this Section 1.2 are not intended to apply to any support-related updates or enhancements to the Software licensed hereunder, as such updates or enhancements are further described in Sections 4.1 (C) and 4.1 (D).

**1.3 No Sale of Software.** Licensee acknowledges and agrees that Licensor never sells but only licenses the right to "use" its Software, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Documentation, or related materials is contemplated hereunder.

**1.4 Ownership; Proprietary Rights Notices.** The Software, Documentation, and related materials supplied by Licensor hereunder, and all Intellectual Property Rights therein or related thereto, are and will remain Licensor's sole and exclusive property. All rights in and to the Software, Documentation, and related materials not expressly granted to Licensee in this Agreement are reserved by Licensor and its suppliers, and there are no implied licenses granted hereunder. Licensee agrees not to remove, alter, or obscure any proprietary rights notices (including copyright notices) on the Software, Documentation, or related materials, or authorize any third party to do so. As used in this Agreement, the term "Intellectual Property Rights" means and includes all copyrights, trade secrets, patents, patent applications, moral rights, contract rights, trademarks, service marks, and other proprietary rights.

**1.5 Use Rights.** Licensee acknowledges and agrees that only the Licensee sites listed in Schedule A (as applicable) may share the license and use the Software licensed hereunder. No other Licensee sites may use the Software without Licensor's express, prior written consent. Without limiting the generality of the foregoing, Licensee will have the right to use the Software licensed hereunder to process the information of its patients, clients, and customers.

**1.6 Licensee's Ownership Rights.** All data relating to Licensee's operations and all data files created by or for Licensee are and will remain the property of Licensee.

1.7 **Hardware.** Licensee agrees that the Software licensed hereunder will be installed on the Managed Hosting Service System as noted in Schedule A and described in Schedule B.

1.8 **Duration of Specifications.** Licensor uses commercially reasonable efforts to ensure that Hardware specifications remain current. However, Licensee acknowledges that as current technology changes and becomes obsolete, Licensor may be required to update specifications accordingly and therefore, Licensor is unable to guarantee compatibility with current hardware or third party software specifications for more than one (1) year after the hardware or software has been recommended.

1.9 **Terms Specific to Oracle Components.** The following terms and conditions apply to any and all Oracle programs (the "Oracle Programs") used with or incorporated within the Software. In the event that the terms of this Section 1.9 conflict with any other terms set forth in this Agreement, the terms of this Section 1.9 will apply, but only with regard to the Oracle Programs. Use of the Oracle Programs is limited to use by the legal entity that executes this Agreement, and further is restricted to use of the Oracle Programs within the scope of use as embedded in or bundled with the Software. Use is limited to Licensee's internal business operations. Licensee's agents or contractors (including without limitation, outsourcers) are permitted to use the Oracle Programs, solely on Licensee's behalf for Licensee's internal business purposes as described above, subject to the other terms and conditions of this Agreement, provided that Licensee is and will remain responsible and liable for Licensee's agents' and contractors' (including outsourcers') use of the Oracle Programs and compliance with this Agreement. Oracle or its licensors retain all ownership and intellectual property rights to the Oracle Programs. Notwithstanding anything set forth in this Agreement to the contrary, Licensee may not assign, give, or transfer the Oracle Programs and/or any Oracle services ordered or an interest in it for them to another individual or entity. Licensee is expressly prohibited from: (a) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing; (b) removing or modifying any program markings or any notice of Oracle's or its licensors' proprietary rights; (c) making the Oracle Programs available in any manner to any third party for use in such third party's business operations (unless such access is expressly permitted for the specific Software license); (d) doing anything that would result in title to the Oracle Programs passing to Licensee or any other party; (e) reverse engineering (unless required by law for interoperability), disassembling, or decompiling the Oracle Programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs); (f) reproducing the Oracle Programs, except for a sufficient number of copies of the Oracle Program for

Licensee's licensed use, as well as one copy of the Oracle Program media. Oracle disclaims liability for: (i) any and all damages, whether direct, indirect, incidental, special, punitive, and/or consequential; and (ii) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs. Upon the expiration or early termination of this Agreement for any reason, Licensee agrees to immediately discontinue use and to destroy or return to Licensor all copies of the Oracle Programs and related documentation. Licensee may not publish any benchmark tests run on the Oracle Programs. Licensee agrees to comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws, to assure that neither the Oracle Programs, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws. Licensee acknowledges and agrees that the Oracle Programs are subject to a restricted license and can be used only in conjunction with the Software. Oracle is not required to perform any obligations or incur any liability not previously agreed to between Licensor and Oracle. Licensor shall have the right, at any time, to audit Licensee's use of the Oracle Programs, and Licensee agrees to provide reasonable assistance and access to information in the course of such audit; Licensor has the right to report the audit results to Oracle, or to assign Licensor's audit rights to Oracle. In no event shall Oracle be responsible for Licensee's costs incurred in connection with the audit. Licensee acknowledges and agrees that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of this Agreement. Third party technology that may be appropriate or necessary for use with some Oracle Programs is specified in the Documentation or otherwise notified by Licensor. Such third party technology is licensed to Licensee only for use with the Software under the terms of the third party license agreement specified in the Documentation or as otherwise notified by Licensor, and not, for the avoidance of doubt, under the terms of this Agreement. Oracle is a third party beneficiary of the terms of this Section 1.9 and the Agreement.

## **2.0 PRICES AND PAYMENT TERMS.**

**2.1 General.** Licensee agrees to pay the license fees for the license of the Software (the "License Fees"), and services fees for the purchase of the Services (the "Services Fees") in the amounts set forth in Schedule A and according to the payment schedule below. All amounts will be paid to Licensor at Licensor's principal place of business, or at such other mailing address as Licensor may specify from time to time upon written notice to Licensee. All payments must be made in U.S. dollars. For the Software initially licensed under this Agreement, the payment schedule is as follows:

- (A) 60% upon the placement of order or the Effective Date, whichever occurs first; and
- (B) 25% upon activation of Managed Hosting Service and the Software not to exceed 30 days from date of activation; and
- (C) 15% upon "acceptance" of the Software or within six (6) months following the Effective Date, whichever is earlier.

**2.2 Acceptance.** As used herein, the term "acceptance" means Software performance in substantial conformity with Licensor's published specifications. Within thirty (30) days following implementation of the initial Software licensed hereunder, Licensee will review the operation of such Software for thirty (30) days to confirm that its performance does not deviate materially from Licensor's published specifications. If any material deviations (i.e., "errors") are found, Licensee will so inform Licensor in writing, using its best efforts to do so at the earliest possible date. Licensor and Licensee will jointly divide the Software errors, if any, into two groups:

- major errors, or those which prevent the use of the particular Software as described in the published specifications therefore; and
- minor errors, or those, which do not prevent the use of such Software.

However, if the parties cannot reach agreement as to whether an error is major or minor, Licensor's opinion will be determinative. In the event of a major error, Licensor will use its commercially reasonable efforts to begin correction of such error within five (5) days. Licensor will notify Licensee in writing when such error has been corrected and a new "acceptance" test will be commenced by Licensee within five (5) days of receipt of such notification. This "acceptance" testing will be considered complete upon correction of all major errors, and Licensee will thereupon issue a final "acceptance" letter, which will not be unreasonably withheld, authorizing final payment to Licensor in accordance with Section 2.1 (C) hereof. Any minor errors shall be corrected by Licensor as soon as is reasonably practicable. Licensee may not withhold acceptance of the Software in the event that minor errors are found. All Software other than the initial Software licensed hereunder will be deemed irrevocably accepted upon delivery.

**2.3 Other Fees and Charges.** Other fees and charges will be due and payable within thirty (30) days after delivery of Software or rendering of Services by Licensor, except that annual license/subscription services fees will be invoiced sixty (60) days in advance of -- and are due and payable upon -- Licensee's annual license/subscription fee anniversary date.

**2.4 Taxes.** The fees and charges to be paid by Licensee exclude all sales, use and other taxes, and all applicable export and import fees, customs duties, and similar charges, and Licensee will be responsible for payment of all such taxes (other than taxes based on Licensor's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of the license fees and/or services fees or the delivery of license of the Software, Hardware, and related services to Licensee. Licensee will make all payments to Licensor free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments to Licensor will be Licensee's sole responsibility, and Licensee will provide Licensor with official receipts issued by the appropriate taxing authority, or such other evidence as Licensor may reasonably request, to establish that such taxes have been paid.

**2.5 Invoice Disputes; Late Fee.** Any invoice disputes must be initiated by Licensee in good faith, in writing, within the specified payment period of the applicable invoice; otherwise, Licensee will be deemed to have waived any dispute regarding the applicable invoice. If Licensee initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Licensor and Licensee agree to use good faith efforts to address and resolve any properly initiated dispute, within thirty (30) days following Licensee's notice to Licensor regarding such dispute. With regard to any undisputed invoiced amount that is not paid when due, Licensor reserves the right to charge, and Licensee agrees to pay, a late fee of one and one-half percent (1-1/2%) per month (eighteen percent (18%) per annum) or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. If it is determined that Licensor properly charged the amount disputed by Licensee, the late fee will be assessed and paid on the disputed amount.

**2.6 Texas Prompt Payment Act.** Notwithstanding any provisions in this Agreement to the contrary, the due date for any payments owed by Licensor under this Agreement and the accrual of interest or any kind of fee for late payment are governed by the provisions of Chapter 2251, *Texas Government Code* (the "Prompt Payment Act"), as amended.

### **3.0 TRAINING AND IMPLEMENTATION SERVICES.**

**3.1 General.** The total price set forth in Schedule A includes delivery, training, and implementation of the Software licensed hereunder for installation at the site(s) noted in Schedule A, or, in the event of failure of the computer(s) at the above location(s), temporarily (not to exceed thirty (30) days) at an alternate computer facility. Licensee will notify Licensor of the address of any such alternate computer facility in writing within ten (10) days of any such computer failure. Licensee will notify Licensor of any changes in any designated computer facility from time to time within thirty (30) days thereof. Subject to the restrictions set forth in this Section 3, all training services to be provided by Licensor will be rendered at such times and to such individuals as Licensee will reasonably request.

**3.2 Training.** Training of Licensee personnel on the features, operation, and use of the programs included in the licensed Software will be provided hereunder. This training and go-live will be held during weekdays. Licensor's installation and training personnel will have expertise and actual experience in the application area designed for installation at Licensee's site. One Licensor trainer may train up to eight (8) persons per training session. Licensee will make adequate hardware (at least one (1) workstation per two (2) trainees, with one (1) workstation per one (1) trainee recommended) available for the entire training session.

**3.3 On-Site Training Preparations by Licensee.** If the parties agree that training will be provided on-site at Licensee's facility, Licensee will: (i) provide and have properly prepared and set up an adequate training room or space; and (ii) at least one (1) week prior to scheduled training, have the hardware loaded with the operating system software and the Software, with all being adequately tested on-site.

**3.4 Reimbursable Expenses.** All travel and related expenses necessitated by training, implementation, and/or consulting services being rendered by Licensor hereunder at Licensee (designated) sites will be reimbursed by Licensee to Licensor. Such travel and related expenses will include will include travel time at a rate of \$25/hour and expenses to include lowest possible coach class airfare, transportation to and from Licensee site (approximately \$75/day), lodging (approximately \$129/night), meals (approximately \$60/day) and miscellaneous (tips, tolls, etc., -approximately \$15/day).

**3.5 Effect of Cancellation.** If Licensee cancels a scheduled and confirmed training session within thirty (30) days prior to such session, or if Licensee has not complied with Sections 3.2 and 3.3 above, then Licensee will be responsible for any airline ticket penalties that Licensor incurs, a \$50 cancellation fee, and a \$945 per day fee for any time the trainer spent in transit. All phases/sessions of training must be completed within six (6) months from receipt of the software, or all prepaid training fees will be lost.

**3.6 Additional Training.** Upon Licensee's request, Licensor will provide further services to train any additional Licensee personnel on the features, operation, and use of the Software, at Licensor's standard price list per diem rates in effect at the time such training is requested by Licensee (a minimum of two (2) days).

**3.7 Other Assistance.** Licensee acknowledges and agrees that telephone support is intended to address specific problems experienced by Licensee relating to the Software, and is not intended to train Licensee's employees or to support other Licensor or third party products ("Other Assistance"). Licensor will advise Licensee during a telephone support session if Licensor considers such telephone support to constitute Other Assistance. Following such notice, if Licensee wishes for the telephone support session to continue, Licensee will pay for such Other Assistance based on Licensor's then-current rates.

#### **4.0 ANNUAL LICENSE/SUBSCRIPTION SERVICES.**

**4.1 General.** In consideration of the License Fees, Services Fees, and other charges specified in Sections 2.1 and 2.3, respectively, Licensor will provide, in a timely manner and without additional charge to the annual license/subscription fee(s), annual license/subscription services to Licensee as follows:

- (A) Annual renewal of the right to "use" under license, as provided herein, the Software, Documentation, and related materials.
- (B) Commercially reasonable efforts to correct any known errors or defects in the Software, Documentation, and related materials; provided, however, that Licensee acknowledges and agrees that not all software errors are capable of being corrected.
- (C) Updates to the Software and Documentation as reasonably necessary to ensure the proper function and continued material conformity of the Software with the applicable Documentation.
- (D) Enhancements to the Software, with attendant Documentation, consisting of modifications or improvements to the Software which relate to the operating performance but do not change the basic function



of the Software (and which are not separately charged for by Licensor to other customers). Any programs which provide new functionality or expand the function of the Software and are regarded as new products by Licensor, and for which Licensor separately charges other customers, are not covered by this Agreement, but will be offered to Licensee for license on terms consistent with this Agreement.

(E) Review of and reasonable assistance in maintaining the integrity of Licensee's data file and diagnosis of Software-related problems.

(F) Provision of direct primary support regarding the use and operation of the Software via a toll-free 800 telephone number from 6:00 a.m. to 6:00 p.m. Pacific Time, (3:00 a.m. for Nutrition Care Management Modules), Monday through Friday, except for Thanksgiving Day, Christmas Day, New Years Day and July 4<sup>th</sup> (as adjusted to reflect national observances). Licensor will respond to all Licensee requests for support Services within four (4) business hours following receipt of Licensee's support request. In instances in which problems with the Software products have rendered the system inoperable, Licensor will respond to Licensee's support request within one (1) hour following receipt of same.

(G) Unlimited Licensee access to periodic national or regional users' meetings, which meetings will include modified training on most recently released updates and enhancements to the Software licensed hereunder.

## **5.0 IP PROTECTION, SECURITY, AND CONFIDENTIALITY.**

**5.1 General.** Licensee acknowledges that: (a) the Software, Services, Documentation, and related materials constitute valuable assets and trade secrets of Licensor; (b) that Licensor has significant proprietary rights and interests in and to the Software, Services, and Documentation and related materials; and (c) any information with respect to the foregoing items is, and shall continue to be, Licensor's confidential information. Accordingly, the parties agree that:

(A) Except as permitted hereunder, the Software, Services, Documentation, and related materials will not be used for the benefit of any entity other than Licensee, on any computer system(s) other than Licensee's owned and operated computer system(s), or at any location other than Licensee site(s) listed in Schedule A (as applicable), or for any purpose other than the purpose stated by Licensee and approved by Licensor. Further, Licensee will not copy the Software, Documentation, or related materials without Licensor's prior written permission, except as permitted hereunder. Licensee may maintain a reasonable

number of back-up copies of all Software, Documentation, and related materials for archival and disaster recovery purposes. All copies of the Software, Documentation, and related materials must retain all proprietary rights markings as on the original;

(B) Licensee agrees not to: (i) modify, adapt, alter, translate, or create derivative works from the Software, (ii) merge the Software with other software; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Licensed Software, or (iv) otherwise use or copy the Software except as expressly allowed under this Agreement. As used in this Agreement, the term "Source Code" means the human-readable version of a software program that can be compiled into Executable Code;

(C) In addition, except as and to the extent expressly permitted hereunder (if at all), Licensee will not sell, assign, transfer, sublicense, lease, rent, loan, or otherwise make available for any purpose, whether gratuitously or for consideration, the Software, Documentation, or any related materials or other information relating thereto, or any services provided by Licensor hereunder, to any third party of any nature; and

(D) Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors, except (i) as required by law, or (ii) pursuant to a mutually agreeable press release. Without limiting the foregoing, each party (the "Receiving Party") acknowledges that the other party (the "Disclosing Party") may possess certain trade secrets or proprietary or confidential information, (including, in the case of Licensee, patient information) (the "Confidential Information"), which may be shared with the Receiving Party or to which the Receiving Party may become exposed pursuant to this Agreement. The Receiving Party agrees not to disclose the Disclosing Party's Confidential Information to any third party. Except for information pertaining to patient data and records, the disclosure of which is prohibited, the Receiving Party's confidentiality obligations hereunder will not apply to information which the Receiving Party can document: (a) was already known to the Receiving Party prior to entering negotiations relating to this Agreement; (b) has become publicly available through no fault of the Receiving Party; (c) was rightfully obtained by the Receiving Party from a third party without restriction as to disclosure, or is approved for release by the Disclosing Party's written authorization; (d) was developed independently by the Receiving Party without access to, or use of, the Disclosing Party's confidential information; (e) is shown by written record to have been known or available to the Receiving Party without restriction as to disclosure at the time the Receiving Party received such information; or (f) is required to be disclosed by law. For purposes of this

Agreement, Licensor's Confidential Information shall include those items described in Section 5.1, as well as any other materials provided by Licensor to Licensee and marked as "confidential" or "proprietary" or with a similar marking. Licensee's Confidential Information shall include Licensee's patent information, as well as those materials provided by Licensee to Licensor and marked as "confidential" or "proprietary" or with a similar marking.

The provisions of this Section 5.0 will survive termination of this Agreement.

## **6.0 INDEMNIFICATION.**

**6.1 Indemnification by Licensor.** Licensor will defend, at its own expense, any action against Licensee brought by a third party to the extent that the action is based on a claim that the Software directly infringes any U.S. copyright or misappropriates any trade secret recognized as such under the Uniform Trade Secret law, and Licensor will pay all costs and damages finally awarded against Licensee in any such action which are attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on: (a) Licensee notifying Licensor promptly (within ten (10) calendar days) in writing of any such claim; (b) Licensee giving Licensor sole control of the defense thereof and any related settlement negotiations; and (c) Licensee cooperating with Licensor and, at Licensor's request and expense, assisting in such defense. If the Software becomes or, in Licensor's opinion, is likely to become, the subject of an infringement or misappropriation claim, Licensor may, at its option and expense, either: (x) procure for Licensee the right to continue to use the Software without modification; or (y) replace or modify such Software so that it will become non-infringing; or (z) refund any sums Licensee has paid for annual license/subscription services on account thereof for the year in which the claim arose, less a prorated amount for use, reflecting the number of months during which Licensee enjoyed uninterrupted use of the Software during that year.

**6.2 Exceptions.** Notwithstanding the foregoing, Licensor will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon: (a) any use of the Software not in accordance with this Agreement or for purposes not intended by Licensor; (b) any use of the Software in combination with other products, equipment, software, or data not supplied by Licensor; (iv) any use of any release of the Software other than the most current release made available to Licensee; or (d) any modification of the Software by any person other than Licensor or its authorized agents or subcontractors. **THIS SECTION 6**

**STATES LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

**7.0 REPRESENTATIONS AND WARRANTIES.**

**7.1 Limited Product Warranty.** For a period of thirty (30) days (the "Software Warranty Period") following the initial delivery of the Software to Licensee, Licensor warrants that such Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a Hardware and operating system platform supported by Licensor) will operate as described in the Documentation in all material respects. Licensor does not warrant that Licensee's use of the Software will be error-free or uninterrupted. Licensor will, at its own expense and as its sole and exclusive obligation and Licensee's sole and exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Licensor by Licensee in writing during the Software Warranty Period or, if Licensor determines that it is unable to correct the error, Licensor will refund to Licensee all License Fees actually paid, in which case this Agreement and Licensee's right to use the Software will be terminated. Any such error correction provided to Licensee will not extend the original Software Warranty Period.

**7.2 Services Warranty.** Licensor will render the professional services to be rendered under this Agreement in a competent and workmanlike manner at least equivalent to customary standards of the data processing industry for similar services. In the event that Licensee notifies Licensor in writing of a breach of the foregoing warranty with respect to a particular professional service within thirty (30) days following the provision of such service by Licensor, then as Licensor's sole and exclusive obligation and Licensee's sole and exclusive remedy, Licensor will reperform the service in a conforming manner or, if Licensor determines that it will be unable to do so, then Licensor will refund any amounts paid by Licensee for the particular service.

**7.3 Warranty Disclaimer.** THE FOREGOING WARRANTIES ARE IN LIEU OF, AND LICENSOR HEREBY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, DOCUMENTATION, OTHER MATERIALS, AND SERVICES PROVIDED HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH LICENSEE'S QUIET ENJOYMENT, AND NON-

INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 7. THE SOFTWARE, DOCUMENTATION, OTHER MATERIALS, AND SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, ACCURACY, AND EFFORT IS WITH LICENSEE. LICENSEE ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON ANY ORAL OR WRITTEN INFORMATION OR ADVICE, WHETHER GIVEN BY LICENSOR, ITS SUPPLIERS, DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES.

## **8.0 TERM AND TERMINATION.**

**8.1 Term.** The term of this Agreement will commence on the Effective Date and will continue for a period of one (1) year thereafter. Following the initial term, the term of this Agreement will renew for successive periods of one (1) year each, subject to Licensee's payment (in advance) of the applicable Annual License Subscription Fees for the renewal period, and subject as well to the terms and conditions of this Section 8. For the avoidance of doubt, in the event that Licensee fails to pay (in advance) the applicable Annual License Subscription Fees for the renewal period, Licensor reserves the right to elect one of the following remedies (without limiting Licensor's other available remedies): (a) notify Licensee that this Agreement will immediately terminate (or has terminated) effective as of the expiration of the then-current term; or (b) allow this Agreement to renew for another renewal period, in which event, the Annual License Subscription Fees for such renewal period will continue to be payable (provided, however, that if Licensor does not affirmatively notify Licensee that alternative (a) or (b) has been selected, then alternative (b) will apply). In addition, notwithstanding the generality of the foregoing, Licensor may elect to not renew this Agreement and the applicable Software licenses in the event that either of the following events occurred during the license subscription term then ending: (a) Licensee materially breached this Agreement (regardless of cure), (b) Licensee initiated any claim against Licensor for breach of contract, or (c) Licensee invoked its right for indemnification pursuant to Section 6 ("Indemnification") during the license subscription term then ending.

**8.2 Licensee's Termination Rights.** Provided that there are no outstanding payments due to Licensor, Licensee may terminate this Agreement by giving Licensor sixty (60) days prior written notice. However, in the event that Licensee terminates this Agreement, Licensee acknowledges that Licensor shall not be required to refund any license or service fees paid by Licensee hereunder.

**8.3 Licensor's Termination Rights.** Licensor may terminate this Agreement, effective immediately upon written notice to Licensee, if: (a) Licensee breaches any provision in Section 5; (b) Licensee fails to pay any portion of any fees when due within ten (10) days after receiving written notice from Licensor that payment is due; or (c) Licensee breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Licensor.

**8.4 Effect of Termination.** Upon any termination of this Agreement, any amounts owed to Licensor under this Agreement before such termination will be immediately due and payable, and all licensed rights granted in this Agreement will immediately cease to exist. In addition, within ten (10) days following termination of this Agreement, Licensee will immediately cease using, and return and deliver to Licensor all copies of the Software, Documentation, and related materials in Licensee's possession, and any and all copies thereof made by Licensee. Further, Licensee will warrant to Licensor in writing, signed by a duly authorized officer of Licensee, that all copies of the Software stored in Licensee's computer(s) have been erased and have not been otherwise retained as archive copies, and that all copies of the Documentation and related materials have been returned to Licensor.

**8.5 Survival.** The following Sections will survive the termination of this Agreement for any reason: Section 1.3 ("No Sale of Software"), 1.4 ("Ownership; Proprietary Rights Notices"), 1.6 ("Licensee's Ownership Rights"), 2 ("Prices and Payment Terms"), 5 ("IP Protection, Security, and Confidentiality"), 6 ("Indemnification"), 7.3 ("Warranty Disclaimer"), 8.4 ("Effect of Termination"), 8.5 ("Survival"), 9 ("Limitation of Liability"), and 10 ("Miscellaneous Provisions").

**9.0 LIMITATION OF LIABILITY.**

Except as otherwise provided herein, Licensor will not be liable to Licensee for any loss or damage to Licensee or any third party, caused by failure of any Software licensed hereunder to function, in whole or in part. In no event will Licensor be liable for any special, incidental, exemplary, punitive, indirect, or consequential damages, or for any lost data or lost profits, arising from or relating to this Agreement even if Licensor has been advised of the possibility or potential of such loss or damage. In no event will Licensor be liable for any loss or damage due to the negligence of Licensee and/or use of the Software other than as specified in the Documentation provided to Licensee describing use of such Software. In any event, the cumulative total of Licensor's liability hereunder, whether in contract or tort or otherwise, will not exceed the

total of all Software license initialization fees paid to Licensor by Licensee hereunder, less a reasonable amount for use, plus the last year of annual license/subscription services fees paid to Licensor by Licensee hereunder. LICENSEE ACKNOWLEDGES THAT THE LICENSE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT LICENSOR WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN ADDITION, LICENSOR DISCLAIMS ALL LIABILITY OF ANY KIND OF LICENSOR'S SUPPLIERS.

**10.0 MISCELLANEOUS PROVISIONS.**

**10.1 Continuation of Benefits.** Licensor represents that it has and agrees that it will continue to maintain at all times a copy of the then current source code and related documentation for the software Products licensed hereunder with the current escrow agent. Upon execution of this Agreement by both parties, Licensor shall instruct such escrow agent to release to Licensee, and Licensee shall be entitled to obtain, a copy of such source code and all related documentation solely in the event that Licensor ceases to do business in the ordinary course, all for the sole purpose of enabling Licensee to continue to use the licensed software products without interruptions in accordance with this Agreement and for no other purpose whatsoever. On the effective date of this Agreement, the current escrow agent is identified for purposes of this Agreement as follows:

Iron Mountain Intellectual Property Management  
2100 Norcross Parkway, Suite #150  
Norcross, GA 30071 (770) 239-9200

**10.2 Insurance.** Licensor agrees to carry worker's compensation insurance and general liability insurance at a general aggregate limit of \$1,000,000 coverage for the term of this Agreement.

**10.3 Assignment.** Licensee may not assign or transfer, by operation of law or otherwise, any of its rights or obligations under this Agreement to any third party without Licensor's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be deemed null and void and of no effect whatsoever.

**10.4 Notices.** All notices, consents, and approvals to be given or received hereunder by the parties will be in writing and will be delivered by messenger courier, or mailed by prepaid registered or certified first class mail, with return receipt requested, to any such party at its address set forth in the first paragraph of this Agreement. Either party may, by notice, change its address for the purpose hereof. Any notice hereunder

will be deemed to have been given and effective upon its actual receipt or, when delivery is refused, five (5) business days after being deposited in the mail as required above, whichever occurs sooner.

**10.5 Governing Law; Venue.** THE PROVISIONS OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT WILL NOT APPLY TO THIS AGREEMENT.

**10.6 Waivers.** All waivers must be in writing. The waiver or modification of any term or condition of this Agreement will not void, waive or change any other term or condition hereof. The waiver by either party of a breach by the other will not be construed as a waiver of future or other breaches. No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof will be deemed of itself to constitute waiver of such right or any other rights hereunder.

**10.7 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Licensee agrees that Section 9 will remain in effect notwithstanding the unenforceability of any provision in Section 7.

**10.8 Export.** Licensee acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Software. Licensee agrees that it will not export or re-export the Software in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Licensee will, to the extent authorized by the constitution and laws of the State of Texas, defend, indemnify, and hold harmless Licensor from and against any violation of such laws or regulations by Licensee or any of its agents, officers, directors, or employees.

**10.9 Inspections.** Licensee will permit Licensor or its representatives to review Licensee's relevant records and inspect Licensee's facilities to ensure compliance with this Agreement. Licensor will give Licensee at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Licensee's normal operations.

**10.10 Government End Users.** If Licensee is a branch or agency of the United States Government, the following provision applies. The Licensed Software and Documentation are comprised of "commercial



computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

**10.11 Remedies.** Except as provided in Sections 6 and 7, the parties' rights and remedies under this Agreement are cumulative. Licensee acknowledges that the Software contains valuable trade secrets and proprietary information of Licensor, that any actual or threatened breach of Section 1 or 5 will constitute immediate, irreparable harm to Licensor for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**10.12 Force Majeure.** The obligations of the parties hereunder will be suspended to the extent and for the period of time that either party is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), acts of God, fires, storms, water, unreasonable delays in transportation, governmental action or any other cause reasonably beyond either party's control. The party who has been so affected will promptly give notice to the other party and will use commercially reasonable best efforts to resume performance as soon as possible. The foregoing provisions shall not apply to Licensee's obligation to pay any amounts to Licensor when due.

**10.13 Construction.** The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. As used in this Agreement, the word "including" means "including but not limited to".

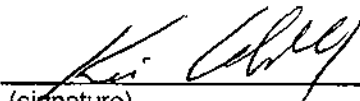
**10.14 Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

**10.15 Entire Agreement.** This Agreement, including any and all Schedules attached hereto and incorporated herein: (i) supersedes all negotiations and constitutes the entire agreement between Licensor and Licensee; (ii) contains all terms and conditions which will be binding upon either party; and (iii) may be

changed only by an instrument in writing signed by both parties. The terms of any purchase order or similar document submitted by Licensee to Licensor will have no effect.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed in its name effective as of the Effective Date.

Licensor: Computrition, Inc.

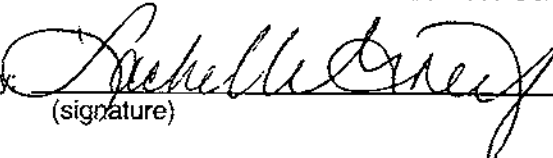
By:   
(signature)

6-28-13  
Date

Printed Name: Kim Goldberg

Title: Chief Admin Officer

Licensee: Texas Health and Human Services Commission

By:   
(signature)

6-28-13  
Date

Printed Name: Lachelle Greif

Title: Director Facility Support Services