



INSTITUTIONAL LICENSE TERMS OF USE AGREEMENT

IMPORTANT-READ CAREFULLY: This license agreement is a legal agreement between the purchaser of the Program ("Licensee") and the American Association of Critical-Care Nurses (AACN) which includes computer software and associated media on Disc ("Program").

By purchasing, installing, and using the Program, you agree to be bound by the terms of this Agreement.

The copyrights laws and international copyright treaties, as well as other intellectual property laws and treaties protect this Program.

1.0 LICENSE GRANT

WHEREAS AACN owns and distributes a software program on Disc known as the *Adult CCRN/CCRN-E/CCRN-K Certification Review Course, Institutional License on Disc* ("Program"); and

WHEREAS, Licensee has obtained a license from AACN to use such Program within their facility via a network of computers, or an Intranet environment.

2.0 DEFINITIONS

As used herein, the following terms shall have the following meanings: "Program" means the software program contained on the Disc. "Facility" means a health care facility that provides patient care. "Institution" means a college, university, or professional school that provides a full-time curriculum for its enrolled students toward receipt of a bachelor's or similar degree or postgraduate work and does not provide patient care. "Geographic location" means a facility at a specific location; geographic locations do not include satellite or remote locations which are considered a separate facility. "Intranet" means the structured use of technologies to conduct the internal affairs of a Facility or Institution, but isolated from or connected in a controlled way to the World Wide Web. An Intranet shall not be generally accessible from the World Wide Web at large except to those whom access is granted by a Facility/Institution. "Publisher" means The American Association of Critical-Care Nurses (AACN), with its principal office in Aliso Viejo, California. "Developer" means The American Association of Critical-Care Nurses (AACN).

3.0 LICENSE AND SCOPE OF USE OF PROGRAM

You are hereby granted a non-exclusive license to use the Program in the United States. This license is not transferable and does not authorize resale or sublicensing without the written approval of an authorized officer of AACN.

AACN retains all rights and title to all copyrights, patents, trademarks, trade secrets, and other proprietary rights in the Program. You may not remove or obscure the copyright notices in or on the Program. You agree to use reasonable efforts to protect the Program from unauthorized use, reproduction, distribution or publication.

With this Institutional License Terms of Use Agreement, Licensee may make the Program available on a Facility's/Institution's Intranet or network system provided that the Program is available for use only by the Facility's/Institution's current educators, staff, faculty and enrolled students, and provided further that Licensee agrees to instruct such individuals who will have such access on the relevant Intranet to the Program to abide by the terms of this License Agreement. No fees shall be charged for any individual who accesses the Program. **Under no circumstances may this Program be made available on a Learning Management System (LMS) or published to the Internet (World Wide Web).**

Access to the Program is not permitted outside the geographic location (actual hard walls) of the Facility. If a Facility/Institution or any member of its respective educators, staff, faculty or enrolled students who are allowed access to the Program under this paragraph fails to comply with any of the terms of this License Agreement, this license shall automatically terminate. Under no circumstance does this Institutional License Agreement give any party the authority to copy the Program and/or provide it to individuals or entities who are not current educators, staff, faculty or enrolled students of a Facility/Institution.

4.0 TERM AND TERMINATION

AACN may terminate this Agreement immediately should Licensee materially breach any of the provisions of this Agreement or take any action in derogation of AACN's rights to the Program licensed hereunder. In addition, AACN may terminate this Agreement immediately should the Program, or any portion thereof, become, or in AACN's opinion be likely to become, the subject of a claim of infringement of a patent, trade secret, copyright, mask work right, or other proprietary right.

AACN will conduct periodic review of Program's content to determine current relevance and accuracy to current nursing practice. If content is determined to be non-relevant or erroneous after periodic review, AACN, upon 30 days' written notice to Licensee, has the right to terminate this agreement.

Effect of Termination. Upon termination or expiration of this Agreement, Licensee agrees to remove the Program from its network, all computers and/or Intranet system.

5.0 GENERAL

Entire Agreement; Waiver. This Agreement hereto comprises the sole and entire agreement between the parties pertaining to the subject matter hereof and supersede all prior communications, representations, understandings or agreements, written or oral, between the parties. This Agreement may not be modified except by written instrument signed by each party and referring to the particular provisions to be modified. The terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Licensee, and any different or additional terms contained in such purchase order shall have no force or effect. No express or implied waiver by either party of any breach hereunder shall in any way be, or be construed as, a waiver of any future or subsequent breach.

5.1 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the internal laws of the State of California, without regard to its conflicts-of-law provisions. Any suit or other proceeding to enforce or interpret this Agreement shall be brought in, and Licensee hereby consents to the jurisdiction and venue of, the courts of the State of California, United States of America or of any federal court located in such state.

5.2 Assignment; Subcontracting. This Agreement will inure to the benefit of and be binding upon the parties, and their permitted successors and assigns. Neither party may assign this Agreement or any rights or obligations hereunder to any third party without the prior written consent of the other party; provided however, either party may assign this Agreement to a party controlling, controlled by or under common control with such party or in connection with a merger, acquisition or sale of all or substantially all of the assets of such entity. Any assigned in violation of this provision shall be void and of no effect. Notwithstanding anything to the contrary herein, Licensee acknowledges and agrees that AACN may use third party service providers in the performance of certain of its obligations hereunder. AACN shall remain responsible hereunder for the acts of its third party service providers.

5.3 Attorney's Fees. The prevailing party in disputes concerning this Agreement shall be entitled to the costs of collections and enforcement, including but not limited to reasonable attorney's fees, court cost and all necessary expenses, regardless of whether litigation is commenced.

5.4 Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered by hand or by confirmed facsimile; (ii) upon the fifth day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested or (iii) upon the date of the courier's verification of delivery at the specified address if sent by a nationally recognized overnight express courier.

5.5 Force Majeure. Neither party shall be liable for any damages or penalty for any delay in performance of, or failure to perform, any obligation hereunder (excluding payment obligations) or for failure to give the other party prior notice thereof when such delay or failure is due to the elements, acts of God, civil commotion, strikes, labor disputes, Internet service interruptions or slowdown, vandalism or "hacker" attacks, delays in transportation, supply failures, acts of governmental or regulatory agencies or authorities, delays in delivery by vendors or any other causes beyond that party's reasonable control.

5.6 Relationship of Parties. AACN and Licensee will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venture with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

5.7 No Third Party Beneficiaries. This Agreement is for the benefit of Licensee and AACN and not for any other person.

5.8 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6.0 WARRANTIES AND DISCLAIMERS

6.1 Excluded Provider Warranty. AACN hereby represents and warrants that as of the date of execution of this Agreement, AACN is not currently and at no time has been, excluded from participation in any Federal health care program, including Medicare and Medicaid. AACN hereby agrees to promptly notify Client if, at any time during the Term of this Agreement, it is excluded from any Federal health care program, including Medicare and Medicaid. AACN further represents and warrants that it has no knowledge that its employees now or at any time have been excluded from participation in any Federal health care program, including Medicare and Medicaid. In the event that AACN is excluded from

participation in any Federal health care program during the term of this Agreement, this Agreement shall, as of the effective date of such exclusion, terminate immediately upon the non-excluded party's written request.

6.2 Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROGRAM, INCLUDING ALL CONTENT, IS PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AACN AND ITS THIRD-PARTY SUPPLIERS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SYSTEM INTEGRATION, DATA ACCURACY, AND NON-INFRINGEMENT. THE CONTENT AND OTHER MATERIALS PROVIDED AS PART OF THE PROGRAM ARE FOR GENERAL, INFORMATION PURPOSES ONLY AND ARE NOT TAILORED TO SPECIFIC FACTUAL CIRCUMSTANCES. WHILE AACN USES REASONABLE EFFORTS TO INCLUDE ACCURATE AND UP-TO-DATE CONTENT AND INFORMATION AS PART OF THE PROGRAM, AACN MAKES NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY CONTENT OR OTHER INFORMATION AVAILABLE AS PART OF THE PROGRAM. CLIENT IS RESPONSIBLE FOR VERIFYING THAT THE GENERAL CONTENT AND INFORMATION PROVIDED IS APPROPRIATE FOR ANY SPECIFIC FACTUAL SITUATION BEFORE RELYING ON IT. AACN MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE PROGRAM WILL BE ERROR-FREE, OR COMPLETELY SECURE. AACN IS NOT LIABLE FOR DAMAGES INCURRED BY CLIENT IF CLIENT FAILS TO TAKE ALL NECESSARY PRECAUTIONS TO ENSURE THAT ANY CONTENT OR OTHER MATERIAL OBTAINED FROM THE PROGRAM IS FREE OF VIRUSES AND OTHER POTENTIALLY HARMFUL DEVICES. IN ADDITION TO THE FOREGOING, AACN AND ITS LICENSORS EXPRESSLY DISCLAIM ANY WARRANTIES: (i) REGARDING THE TIMELINESS AND PERFORMANCE OF THE PROGRAM; (ii) REGARDING THE GOODS, SERVICES, ADVICE, INFORMATION OR LINKS PROVIDED BY ANY THIRD PARTY; (iii) THAT PROGRAM WILL MEET YOUR REQUIREMENTS; OR (iv) THAT PROGRAM WILL BE ERROR-FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CLIENT OR END USER FROM AACN OR FROM CLIENT'S OR END USER'S USE OF PROGRAM, SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

7.0 LIMITATION OF LIABILITY

7.1 EXCEPT AS STATED HEREIN AND OTHER THAN FOR CLAIMS ARISING DIRECTLY OR INDIRECTLY OUT OF THE WILFUL MISCONDUCT OR NEGLIGENT ACTS OR OMISSIONS OF AACN OR A BREACH OF ANY OF SECTION 8 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID FOR THE PROGRAM. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER PECUNIARY LOSS), IN CONNECTION WITH THIS AGREEMENT OR USE OF PROGRAM, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION

SHALL APPLY EVEN IF A LIMITED REMEDY PROVIDED HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE.

8.0 ASSIGNMENT AND SUBCONTRACT

THIS SECTION STATES AACN'S ENTIRE LIABILITY AND LICENSEE'S SOLE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

Neither party may assign or subcontract any of its obligations or rights under this Agreement without the other party's prior, express, written consent, which consent shall not be unreasonably withheld.

8.1 Infringement Claim. In the event of a claim that the Program or Licensee's use of the Program in accordance with the terms of this Agreement infringes any proprietary right of any third party, AACN shall have the option, at its own expense, to (a) obtain for Licensee the right to continue using the infringing item, (b) replace the infringing item or modify it so that it becomes noninfringing, or (c) terminate the licensed rights granted herein.

8.2 Indemnification by AACN. AACN shall indemnify, defend and hold Licensee harmless from and against any and all liability, damages, losses or expenses (including reasonable fees of attorneys and other professionals) arising from any claim, demand, action or proceeding initiated by any third party based upon infringement of a patent, copyright, trade secret or other proprietary right as a result of Licensee's use of the Software.

8.3 Exclusions. AACN shall not be liable for any alleged infringement based upon modification of the Program by anyone other than AACN, use of the Program in violation of the terms of this Agreement or use of the Program in combination with other products or services if such claim would have been avoided but for such modification or combination.

8.4 Indemnification by Licensee. Licensee shall indemnify, defend and hold AACN harmless from and against any and all liability, damages, losses or expenses (including reasonable fees of attorneys and other professionals) arising from any claim, demand, action or proceeding initiated by any third party based upon any claim that a Licensee or an End User has failed to use the Program in accordance with the terms and conditions of this Agreement or has otherwise failed to comply with the terms of this Agreement.

Each party shall promptly notify the other party in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth herein may apply and shall assist the other party, at such other party's request and expense, in the defense or settlement of the matter. Notwithstanding anything to the contrary, in no event shall Licensee enter into a non-monetary settlement of any claim hereunder without obtaining AACN's prior written consent, which consent shall not be unreasonably delayed or withheld.