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## ecPACS Contract & License Agreement

### Terms and Conditions

This agreement is between

**ifa united i-tech Inc. Miami, FL.**

(The Licensor)

and

\_\_\_\_\_ (The Licensee).

For the sum of USD \_\_\_\_\_ paid under the terms outlined in this agreement, The Licensor agrees to deliver to The Licensee software and services as specifically outlined in the ecPACS order template.

**License Agreement** - This license governs use by the Licensee organization of the ifa Software. By entering into the purchase order, installing or executing the Licensed Work, or making any other use thereof, the Licensee acknowledge the Licenseer acceptance of the terms of this license agreement.

#### 1. Scope of Rights

ifa ("Licensor") hereby grants the Licensee the personal, nontransferable, and nonexclusive right and license to take the following actions in accordance with the terms of the Purchase Order and subject to any limitations contained therein:

1. Install the Licensed Work on computer systems owned, leased, or otherwise controlled by the Licensee organization in the Licensee own facilities, subject to any seat limitations or use of limitations set forth in the Purchase Order.
2. Use and execute all other portions of the Licensed Work (in executable object- code form only) on such computer systems for the sole purpose of serving the internal needs of the Licenseer business.

Any use, copying, or distribution of the Licensed Work, including all copies and derivative works thereof not authorized by this License Agreement shall automatically terminate the Licenseer right and license hereunder. This grant shall be limited to use of the Licensed Work with the equipment for which the Licensed Work is certified in Licensor's published specifications (e.g. hardware requirements). Use of the Licensed Work on processors accessible through communications networks through terminals

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and devices not on premises owned or controlled by the Licensee is prohibited unless otherwise agreed to in writing by Licensor.

## **2. Title to Licensed Work**

Title to the Licensed Work, including all copies and derivative works thereof prepared by the Licensee organization, shall be in and remain with Licensor. The Licensee hereby assign to Licensor ownership of all such copies and derivative works.

The Licensed Work contains substantial trade secrets of Licensor, and the Licensee agree that the Licensee organization shall employ reasonable security precautions to maintain the confidentiality of such trade secrets. As to any source code or system information furnished to the Licensee, the Licensee agree that the Licensee organization shall at all times prevent disclosure or dissemination of trade secrets embodied therein to any person, firm, organization, or employee, except as necessary to exercise the rights granted to the Licensee hereunder. The Licensee agree not to unlock, decompile, or reverse assemble the binary or object code portions or versions of the Licensed Work, as the terms are generally used in the trade.

The Licensor claims and reserves all rights and benefits afforded under federal and international copyright law in all programming and documentation comprising the Licensed Work as copyrighted works. The Licensee shall reproduce and include in all copies prepared by the Licensee organization the copyright notice(s) and proprietary legend(s) of Licensor as they appear in the Licensed Work supplied hereunder.

## **3. Fees and Payments**

Fees for the use of the Licensed Work are paid in two 50% installments. The first 50% installment is paid with the signed Sales Agreement and is non-refundable. The second 50% installment is due and payable at the end of the first installation . The fees for the use of the Licensed Work consist of initial concurrent license fees (or floating licenses) are based on simultaneous users regardless from which workstations they are accessing the software (ecPACS) plus an annual license renewal fee (runtime licenses) as outlined in the order form. In the event the Licensee wish to increase the number of workstations on which the Licensed Work is to operate beyond the quantities corresponding to the initial license fee, the Licensee agree to notify the Licensor prior to such expanded use and to pay an adjustment corresponding to the new level of usage. The dollar amount of such fees and the terms of payment are specified in the product invoice separately furnished to the Licensee by the Licensor. The Licensee hereby agree to pay such fees to Licensor promptly as they come due for so long as the Licensed Work is installed or executed on the Licensee system or the Licensee otherwise make any use of the Licensed Work.

#### **4. Runtime licenses**

The runtime licenses are covering a complex support and service catalogue:

- Software maintenance with 2 updates per year
- First and second line support (24/7) mail and phone with first line support from the headquarter in Fort Lauderdale and offices in Oklahoma, California and Kentucky.
- Access to an online support ticket system with timely follow up of tickets according to priority policies
- Access to an online knowledge base for all relevant support questions
- Training of team members (ongoing) on new features (training and work sessions (TWS)e.g. in Ft. Lauderdale training center ifa academy)
- Connectivity guarantee (e.g. for new equipment)
- Top level consulting by ifa senior experts (with on site analysis one time per year included)
- Conversion of required clinical catalogues (like ICD, SNOMED, CPT codes etc.)

#### **5. Warranty**

Licensor warrants that the Licensed Work will, for an unlimited period, and as long the annual fees are paid, be in good working order and will conform in all material respects to the Licensor's published specifications. Licensor does not warrant that the operation of the Licensed Work will be uninterrupted or error free, or that the Licensed Work functions will meet the Licensee individualized requirements. Licensor, shall as its exclusive remedy for any nonconformity in the Licensed Work of which it is given notice during the applicable warranty period, repair or replace (at its option) the Licensed Work with a conforming version thereof.

The Licensor warrants that the Licensed Work will operate as demonstrated. All licensed modules will be functional to the extent that they will enable The Licensee to enter, capture and recall ophthalmic medical record information inclusive of SOAP notes, ophthalmic diagnostic instrument data, drawings, images and scanned documents. Proper and conscientious use of the system is required of the Licensee for proper operation. The Licensor also agrees to support and maintain the installed Licensed Work and to provide updates to the purchased modules for as long as the Licensee pays the annual license, support and maintenance fees.

The forgoing warranty does not cover repair for damages, malfunctions, or service failures caused by (1) actions of any non-Licensor personnel, (2) failure to follow

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Licensors' installation, operation or maintenance instructions, (3) attachments to or incorporation in the Licensed Work of non-Licensors' products not supported by Licensors, or (4) or any factor beyond Licensors' control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, transportation facilities, fuel or energy shortages, or acts of omissions of communications carriers.

EXCEPT AS STATED IN THIS SECTION, LICENSOR AND ITS AFFILIATES, SUBCONTRACTORS, AND REPRESENTATIVES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE LICENSEE AGREES, THAT THE LICENSEE'S SOLE REMEDY AGAINST LICENSOR AND ITS AFFILIATES, SUBCONTRACTORS, AND REPRESENTATIVES FOR LOSS OR DAMAGE CAUSED BY ANY DEFECT OR FAILURE OF THE LICENSED WORK, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE (1) THE REPAIR OR REPLACEMENT OF THE LICENSED WORK, PROVIDED THAT SUCH LICENSED WORK IS RETURNED IN ACCORDANCE WITH THE CONDITIONS PROVIDED HEREIN OR (2) IF SUCH REPAIR CANNOT BE MADE OR AN EQUIVALENT REPLACEMENT CANNOT BE PROVIDED, THE REFUND OF AMOUNTS PREVIOUSLY PAID BY THE LICENSEE FOR THIS LICENSE.

## **6. Limitations on Liability**

Negligence in the use of the Licensed Work or incomplete or inappropriate use of the Licensed Work by the Licensee does not constitute any breach of contract or non-execution of contract by the Licensor. The Licensor bears no responsibility for damages incurred by The Licensee due to incorrect or incomplete use of the Licensed Work. The Licensor makes no claims or warranties regarding the appropriateness or legality of any medical record created by The Licensee using the Licensed Work. It is the responsibility of the Licensee to be aware of any requirements or parameters for documentation of a medical encounter by any Payer or Insurer or government and to use the Licensed Work's documentation capability to comply as comprehensively as possible with the guidelines of any Payer or Insurer or government. The Licensor makes no other claims or warranties regarding the Licensed Work or its use other than what are contained in this agreement. The Licensee must operate the system along the guidelines provided in the training sessions conducted by The Licensor. The Licensor is not liable for any damages incurred by the Licensee relating to the appropriate maintenance of a legal

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medical record. The Licensee is solely responsible for the proper operation of the system.

IN NO EVENT SHALL LICENSOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND, OR FOR LOST DATA OR DOWNTIME, REGARDLESS OF WHETHER LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE CUMULATIVE LIABILITY OF LICENSOR TO THE LICENSEE ORGANIZATION FOR ALL CLAIMS RELATING TO THE LICENSED WORK OR THIS LICENSE AGREEMENT, REGARDLESS OF THE FORM OR ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO LICENSEE HEREUNDER.

THIS LIABILITY SHALL ONLY EXIST IN THE ABSENCE OF THE LICENSOR'S ABILITY OR WILLINGNESS TO REPAIR OR REPLACE THE LICENSED WORK IN SUCH A FORM THAT THE LICENSED WORK CONFORMS WITH ANY FUNCTIONALITY PUBLISHED BY THE LICENSOR THAT IS PROVED TO BE ABSENT IN THE ORIGINALLY LICENSED VERSION.

THESE PROVISIONS ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE LICENSEE ORGANIZATION AND THE LICENSOR AND ARE AN INTRINSIC PART OF THE BARGAIN BETWEEN THE PARTIES. THE LICENSE FEE PAID REFLECTS THIS ALLOCATION OF RISKS AND THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN.

## **7. Miscellaneous**

The terms and conditions of this Agreement shall remain in effect for so long as the Licensee install and execute the Licensed Work on the Licensee system or otherwise make any use of the Licensed Work. Thereafter, the provisions of Sections 2-5 hereof shall continue to apply in accordance with their terms, notwithstanding the termination of the Licensee license.

This Agreement shall inure to the benefit of and be binding on, the Licensee organization and Licensor, and their respective successors and assigns. The Licensee may not assign this Agreement except to a successor to all or substantially all of the business and properties of the Licensee organization dealing with the Licensed Work. References to "the Licensee organization" or "the Licensee" herein, for purpose of establishing the permitted use of the Licensed Work, shall include the operations of any direct or indirect parent or subsidiary company or of any direct or indirect subsidiary company of any such parent company.

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This License Agreement and the rights and obligations of the parties with respect to the Licensed Work shall be governed by US Law, as it applies to a contract negotiated, executed and performed in that state, and without reference to conflicts of law provisions.

The parties agree that Fort Lauderdale, FL, USA, is the proper venue for any dispute relating to the creation, operation and enforcement of this Agreement, except that either party may bring an action in equity in any court of appropriate jurisdiction.

### **8. System Consultation and Design**

The customization of the system is done with specific input from the Licensee. Customization refers to the user interface (GUI/Patient Manager) and any database additions required by The Licensee. Both parties will review a Pre-Installation Checklist outlining the required pre-install responsibilities for The Licensee and The Licensor at the first pre-installation site visit. The Licensor will provide The Licensee a digital copy of the existing databases on request. The Licensee must then let The Licensor know what additions or changes need to be made to the databases including staff members, referring physicians, letters, prescription forms, work flows, pick lists etc. This must be done in a timely fashion prior to the installation (minimum of 30 days prior) in order to maintain the schedule set for the installation. The Pre-Installation checklist will be reviewed and signed off by The Licensor and The Licensee indicating the pre-installation condition of the databases. If the required changes/additions have not been made available in the aforementioned time frame, additional charges can be incurred by The Licensee not to exceed (see price list) per hour.

### **9. Licensed Work Updates/Upgrades**

The Licensor will update Licensed modules (ecPACS complete)purchased from Licensor two times a year or as developed by the Licensor as long as the runtime licenses are paid according to this agreement (see runtime licenses). This agreement does not include third party Software purchased by or linked to the Licensor's Software. The annual support fee price increases are based on the consumer price index in the USA. And charged in US\$

### **10. On Site Training**

The Licensor will provide on site training on the operation of all Licensed Work purchased from The Licensor in the number of days stated in the enclosed quote. Changes or additions to the proposed system may affect the training time required. The Licensee will designate a "Key Operator" (super user) who will be the focal point of the training period and the liaison with Customer Support of The Licensor. This "Key

Operator” should be knowledgeable regarding standard software and have reasonable computer literacy (booting up and shutting down systems in a Windows environment,. The Licensor will advise the Licensee of additional training requirements based upon any changes made to the system specification prior to installation. Additional training, other than what is outlined in the signed contract, will be billed to The Licensee at (see price list) per day. The Licensor will give The Licensee a Training Schedule prior to installation.

#### **11. Pre-Installation System Configuration and Data Loading**

The Licensor will load all ifa Licensed Work on the system and test for proper operation. The Licensor is not responsible for the maintenance of the code databases and system settings. The Licensee will be instructed by The Licensor in the method of maintenance for these databases and The Licensor does not assume the liability or responsibility for appropriateness of the linkages between these databases set by the Licensee.

#### **12. Hardware/Software Compatibility**

The Licensor warrants the proper operation of all software purchased by the Licensee from the Licensor. The Licensor will advise The Licensee of compatibility between the Licensed Work and the hardware. The Licensee recognizes that performance of the system may be affected by certain hardware configurations not specifically recommended by the Licensor.

#### **13. Hardware**

The Licensor is not responsible for supplying, installing or maintaining any hardware or hardware/software combinations for The Licensee for products not specifically sold by The Licensor or for training on any specific or general hardware functions. The Licensee must acquire and be trained on the use of any devices such as writing tablets, digital cameras, scanners, etc. by the appropriate Licensor prior to installation. Also, all appropriate hardware and network installations required for the proper utilization of the ifa software must be installed and tested for functionality prior to the installation date of the ifa software. Expenses for any extra trips to The Licensee site required because any network or hardware components were not ready will be charged to The Licensee. The actual days included for training and installation as outlined in the order form will still be counted as used in reality.

#### **14. Communications infrastructure**

The Licensor is not responsible for the acquisition, installation, instruction or maintenance of any broadband communications lines or any other WAN devices required to connect remote offices to the main office.

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### **15. Hot Line Support**

The Licensor will provide telephone hotline and e-mail support to the Licensee 24/7.. This service is intended to assist the Licensee in working through any problems or questions concerning the operation of the ifa software. It is not intended to be a training forum. Hot-line support is an unlimited number of minutes per year. The vendor who sold them to The Licensee supports these systems. The Support Agreement does not include on site visits. If an on site visit is required, The Licensee will be billed at a rate per day and also charged for expenses (air fare if required, hotel and meals).

### **16. Support Environment**

The Licensee recognizes that the ability to support the ifa system via remote access is dependent upon the communications hardware and software meeting the minimum specifications as outlined in the Licensor specification.

### **17. System Interface Environment**

In many cases, the ifa system will have some type of data sharing with one or more external programs. Interfaces with billing systems are limited to two (2) components: 1. The ifa import program (a program that resides in a directory accessible to the network and waits for the transmission of a file from the billing system that contains the patient demographics and then takes the data from that file and creates a patient file in the ifa system). 2. The Viewer program (a program that is loaded at the billing clerk(s) workstation(s) a builds a cumulative list of patients seen along with the chosen diagnosis and billing codes so that the clerk(s) may enter them into the billing application). Also, prices outlined for interfaces with other software systems in the price Quote are for each individual software system. If The Licensee changes Hospital Information Systems (HIS) or Practice Management Systems (PMS) and requires a new interface to it, the interface charge applies once again.

### **18. Document of Understanding**

All individual provisions (installation, interface specifications etc.) shall be declared with the corresponding "Document of Understanding" (DoU) as related attachment to this agreement.



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## Terms and Conditions

THE LICENSEE ACKNOWLEDGE THAT THE LICENSEE HAVE READ THIS AGREEMENT AND UNDERSTAND IT, THAT IS PART OF THE ENTIRE SALES AGREEMENT, AND THAT BY ENTERING INTO THE SALES AGREEMENT, INSTALLING OR EXECUTING THE LICENSED WORK, OR MAKING ANY OTHER USE OF IT, THE LICENSEE AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. THE LICENSEE FURTHER AGREE THAT, EXCEPT FOR SEPARATE WRITTEN AGREEMENTS BETWEEN LICENSOR AND THE LICENSEE, THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABLITIES OF THE PARTIES.

### *SIGNATURES & AUTHORIZATIONS*

The undersigned parties are authorized agents of their respective organizations and agree to the system specifications, terms and conditions outlined in this agreement.

For ifa (Licensor)

For

(Licensee)

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

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Date:

### **Attachments:**

- ecPACS order form
- Document of Understanding (DoU)
- Project layout and interface specifications (provided when available)