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- 9.14 Apple Computer's Minimum Terms of Developer's End-User License Agreement. Notwithstanding any other provisions to the contrary, nothing in this EULA shall be construed to be inconsistent with the Apple's Minimum Terms of Developer's End-User

License Agreement, which is incorporated by reference, and in the event of any conflict, the terms of the latter shall prevail. That Agreement is included as a reference herewith.

10. ADDITIONAL TERMS

10.1 Definitions.

(1) "Computing Device" means (i) a single electronic device with a maximum of four (4) CPUs (regardless of the number of cores in each CPU) and/or four (4) GPUs (regardless of the number of cores in each GPU), each CPU having one or more microprocessor, that accept information in digital or similar form and manipulates the information for a specific result based on a sequence of instructions, or (ii) a software implementation of such a device (or so-called virtual machine).

10.2 Licensee agrees to defend, indemnify and hold harmless Nurse Tech and its affiliates from and against any and all damages, costs, losses, liabilities, expenses and settlement amounts incurred in connection with any suit, claim or action by any third party alleging that the Licensed Materials or Nurse Tech were any responsible for any bodily injury to any third party.

Exhibit A

Definitions

1. "Access" or "Accessible" means, with respect to a computer program or other materials, (a) to use or execute the computer program or other materials or (b) to use or otherwise benefit from the features or functionality of the computer program or other materials.
2. "Agreement" means this License and Services Agreement, including all exhibits and schedules thereto, as the License and Services Agreement may be amended from time to time in accordance with the terms thereof.
3. "Authorized User" means any individual person who Installs or Accesses, or is authorized to Install or Access, any of the Licensed Materials.
4. "Nurse Tech" means Nurse Tech, Inc., a Delaware corporation
5. "Nurse Tech Materials" means any materials distributed or made available by Nurse Tech, directly or indirectly, including Software, Supplemental Materials, User Documentation and Excluded Materials (whether or not licensed to Licensee).
6. "Computer" means (i) a single electronic device, with one or more central processing units (CPUs), that accepts information in digital or similar form and manipulates the information for a specific result based on a sequence of instructions, or (ii) a software implementation of such a device (or so-called virtual machine).
7. "Evaluation Purposes" means purposes of evaluation and demonstration of the capabilities of the Software or Supplemental Materials but excludes competitive analysis and any commercial, professional, or other for-profit purposes.
8. "Excluded Materials" means any materials, including Software, Supplemental Materials or User Documentation (and including, without limitation, any computer programs, modules or components of a computer program, functionality or features of a computer program, explanatory printed or electronic materials, content or other materials, if any), that may be provided or become available to Licensee, by any means, or that are on any media delivered to Licensee, for which Licensee has not paid (and continued to pay) the applicable fees. Licensee acknowledges that Excluded Materials are included on media or via download for convenience of the licensing mechanism used by Nurse Tech, and inclusion does not in any way authorize, expressly or impliedly, a right to use such Excluded Materials.

9. “Install” and “Installation” means, with respect to a computer program or other materials, to copy the program or other materials onto a hard disk or other storage medium.
10. “Licensed Materials” means Software, Supplemental Materials and User Documentation (a) downloaded by clicking on the “I accept” button or other button or mechanism associated with this Agreement or by otherwise indicating assent to this Agreement, (b) delivered prepackaged with this Agreement, or (c) otherwise accompanied by this Agreement, provided that (i) in the case of Software, the Software is identified in an applicable License Identification, and (ii) Licensee has paid (and continues to pay) the applicable fees. Licensed Materials also includes Supplemental Materials and User Documentation that Nurse Tech provides or makes available to Licensee for use with Software licensed under this Agreement if there are no separate terms for such materials specified by Nurse Tech. Licensed Materials includes, without limitation, any error corrections, patches, service packs, updates and upgrades to, and new versions of, the Licensed Materials that Nurse Tech provides or makes available to Licensee under Licensee’s then-current license. Licensee acknowledges that availability of Upgrades and new versions may be subject to additional fees and the Subscription Program Terms. In addition, Licensed Materials includes, without limitation, any Previous Versions and other Nurse Tech Materials that Licensee receives or retains pursuant to the Subscription Program Terms, but only for so long as and to the extent expressly authorized by the Subscription Program Terms. Notwithstanding the foregoing (or any other provision of this Agreement), Licensed Materials in all cases excludes Excluded Materials.
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12. “Personal Learning Purposes” means (i) personal learning as a Student or (ii) in the case of a non-Student, personal learning, excluding (a) in-person or online classroom learning in any degree-granting or certificate granting program, and (b) learning related to any commercial, professional or other for-profit purposes.
13. “Previous Versions” means, as to any then-current release of Licensed Materials, a prior release of the Licensed Materials as to which such then-current release is a successor or substitute (as determined by Nurse Tech).
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16. “Services Terms” means the terms for Services set forth at a location where a user may order or register for, or that is displayed in connection with ordering or registering for, such Services (e.g., a web page) or, if there are no such terms, at <http://legal.nursemind.com/termsfuse/> or any successor or supplemental web page of Nurse Tech.
17. “Software” means a computer program, or a module or component of a computer program, distributed or made available by Nurse Tech. The term “Software” may also refer to functions and features of a computer program.
18. “Stand-alone Basis” means (i) the Licensed Materials are Installed on a single Computer and (ii) the Licensed Materials cannot be Installed on, or operated, viewed or otherwise Accessed from or through, any other Computer (e.g., through a network connection of any kind).
19. “Student” means an individual person who is, (i) at the time of Installation of Licensed Materials, enrolled (a) at a recognized degree-granting or certificate-granting educational institution for three (3) or more credit hours in a degree-granting or certificate granting education program or (b) in a nine (9) month or longer certificate program and (ii) upon request by Nurse Tech is able to provide proof of such enrollment.

20. “Subscription” is the program offered generally by Nurse Tech under which Nurse Tech provides (among other things) updates and upgrades to, new versions of, and certain other support, services and training relating to Nurse Tech Materials.
21. “Supplemental Materials” means materials, other than Software and related User Documentation, that are distributed or made available by Nurse Tech for use with Software. Supplemental Materials include, without limitation, content such as task, protocol, and shift definitions.
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23. “Uninstall” means to remove or disable a copy of Nurse Tech Materials from a hard drive or other storage medium through any means or otherwise to destroy or make unusable a copy of the Nurse Tech Materials.
24. “Upgrade” means a full commercial version of Licensed Materials (a) which is a successor to or substitute for a prior release of such Licensed Materials (and may incorporate error corrections, patches, service packs and updates and upgrades to, and may enhance or add to the features or functionality of, the prior release), (b) is provided to a Licensee who has previously licensed the applicable prior release from Nurse Tech and (c) for which Nurse Tech generally charges a separate fee or makes available solely to customers under Subscription. An Upgrade does not include Nurse Tech Material that Nurse Tech treats as a separate product. Whether Nurse Tech Materials are an Upgrade is determined by Nurse Tech.
25. “User Documentation” means the explanatory or instructional materials for Software or Supplemental Materials (including materials regarding use of the Software or Supplemental Materials), whether in printed or electronic form, that Nurse Tech or a Reseller incorporates in the Software or Supplemental Materials (or the packaging for the Software or Supplemental Materials) or otherwise provides to its customers when or after such customers license, acquire or Install the Software or Supplemental Materials.

1. **Exhibit B**

Minimum Terms of Developer’s End–User License Agreement

1. Acknowledgement: The parties hereby acknowledge that the EULA is concluded between Nurse Tech and the end–user only, and not with Apple, and Nurse Tech, not Apple, is solely responsible for the Licensed Application and the content thereof. The parties acknowledge that they have had the opportunity to review the App Store Terms of Service as of the Effective Date.

2. Scope of License: The license granted to the end–user for the Licensed Application is limited to a non–transferable license to use the Licensed Application on any iPhone or iPod touch that the end–user owns or controls and as permitted by the Usage Rules set forth in the App Store Terms of Service.

3. Maintenance and Support: Nurse Tech shall be solely responsible for providing any maintenance and support services, if any, with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. The parties acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

4. Warranty: Nurse Tech shall be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Nurse Tech's sole responsibility, if any.

5. Product Claims: Nurse Tech and the end-user acknowledge that Nurse Tech, not Apple, is responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Nothing contained herein shall limit Nurse Tech's liability to the end-user beyond what is permitted by applicable law.

6. Intellectual Property Rights: Nurse Tech and the end-user acknowledge that, in the event of any third party claim that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's intellectual property rights, Nurse Tech, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

7. Legal Compliance: The end–user represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

8. Developer Name and Address: any end–user questions, complaints or claims with respect to the Licensed Application should be directed to Nurse Tech, Inc. contact information: (415) 861–4500, legal@nursemind.com

9. Third Party Beneficiary: Nurse Tech and the end–user acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of the EULA, and, upon the end–user’s acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end–user as a third party beneficiary thereof.