

## **INDICATORS OF COMPLIANCE WITH STANDARDS FOR BIRTH CENTERS END USER LICENSE AGREEMENT**

PLEASE READ THIS INDICATORS OF COMPLIANCE WITH STANDARDS FOR BIRTH CENTERS REFERENCE EDITION END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE USING THE INDICATORS (AS DEFINED BELOW). THIS EULA IS A BINDING LEGAL AGREEMENT BETWEEN YOU (“YOU” or “END USER”) AND THE COMMISSION FOR THE ACCREDITATION OF BIRTH CENTERS, INC. (“CABC”). BY USING THE INDICATORS, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA AND ALL OTHER APPLICABLE CABC RULES AND POLICIES (COLLECTIVELY, THE “AGREEMENT”). IF YOU DO NOT AGREE TO THE TERMS OF THE AGREEMENT, DO NOT ACCESS OR USE THE INDICATORS.

For purposes of the Agreement, the term “Indicators” shall mean CABC’s “Indicators of Compliance with Standards for Birth Centers” relating to the accreditation, regulation or certification of birth centers, updated from time to time within CABC’s sole discretion, and accessible at: <https://www.birthcenteraccreditation.org/go/get-cabc-indicators/?lp-variation-id=0>.

### **1. LICENSE GRANT**

Subject to the terms of the Agreement and until the Agreement is terminated as provided below, CABC grants to you a limited, revocable, personal, non-commercial, non-exclusive, non-assignable, non-sublicensable license to access and use the Indicators solely as reasonably necessary to review them for the purpose of examining, evaluating, or becoming accredited by CABC or whether you would like to purchase a commercial license to use the Indicators, e.g., in connection with your regulation, accreditation, or certification of birth centers.

**For the avoidance of doubt, this Agreement does not permit End User to use the Indicators in connection with any commercial purpose, including End User’s regulation, accreditation, or certification of birth centers. A separate commercial license from CABC is available and required for such use.**

### **2. LICENSE RESTRICTIONS**

- (a) The Indicators contain copyrighted material and other proprietary material of CABC and its licensors. Except as expressly provided in the Agreement, you shall not copy, license, sublicense, sell, resell, distribute, rent, or lease the Indicators; permit third parties to do so; or transfer or assign your rights under this Agreement. You shall not translate, modify, or create derivative works of the Indicators, or permit any third party to do so, without the prior written consent of CABC, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this provision.
- (b) You shall not remove or alter any copyright notices or other marks or notices that appear in the Indicators.

- (c) In order for you to access and use the Indicators you must provide CABC with your name and email address. CABC uses this information to provide you with updates to the Indicators that CABC may make and publish to End Users from time to time, within its sole discretion and without any obligation to do so. CABC reserves the right to deny access to the Indicators to any individual user or user account for any reason in its sole discretion. CABC reserves the right to deny access on any device associated with an approved or unapproved user account for any reason in its sole discretion.
- (d) You shall use best efforts to ensure that no unauthorized party has access to the Indicators and that no party makes any unauthorized use or copy of the Indicators.
- (e) You shall be solely responsible to CABC for the observance and compliance with all terms and conditions of the Agreement by your employees, contractors, service providers, agents and any other third party whom you have permitted to access the Indicators as a result of your action or inaction, whether or not such party is actually permitted to have such access under the terms of this Agreement.
- (f) The terms of this Agreement will govern any updates provided by CABC that modify, replace, or supplement the original Indicators, unless such update is accompanied by a separate license agreement that expressly supersedes this Agreement.
- (g) None of the following terms and conditions in this Agreement that refer to your access to or use of the Indicators shall be interpreted to broaden the express scope of the license grant provided in Section 1 and limited by this Section 2.

### **3. OWNERSHIP OF INDICATORS**

All right, title, interest, ownership, and patent rights, trademark rights, copyrights, trade secret rights, and all other intellectual property rights in and to the Indicators and all copies, modifications, enhancements, and derivative works of the Indicators vest in and belong to CABC and/or its suppliers. This Agreement is not a “sale” of the Indicators and confers no title or ownership in the Indicators, any intellectual property rights in the Indicators, or any copies, modifications, enhancements, or derivative works of the Indicators. All rights not expressly granted to you under this Agreement, including all intellectual property rights, are reserved to CABC and its licensors.

### **4. TERMINATION**

- (a) Term. This Agreement is effective from the time you first install, access, use, or display the Indicators until terminated by either you or CABC pursuant to the following terms.
- (b) Termination. You may terminate this Agreement at any time by (i) discontinuing all access, use, copying, and display of the Indicators, and (ii) deleting all copies of the Indicators licensed under this Agreement. This

Agreement will terminate immediately without notice from CABC if you fail to comply with any provision of this Agreement.

- (c) Effect of Termination. Upon termination, you must delete all copies and installations of the Indicators licensed under this Agreement. All rights and licenses to the Indicators granted under this Agreement shall terminate immediately upon termination of this Agreement.
- (d) Survival. Any terms of this Agreement that by their nature extend beyond the termination of this Agreement shall remain in effect and shall apply to respective permitted successors and assignees, including, without limitation, Sections 3, 4(c) and (d), 5, 6, 7, and 8.

## **5. DISCLAIMER OF WARRANTIES**

- (a) General Disclaimer of Warranties. CABC DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CABC SHALL CREATE A WARRANTY AND YOU MAY NOT RELY UPON SUCH INFORMATION OR ADVICE. CABC DOES NOT WARRANT THAT ANY INDICATORS PROVIDED BY CABC WILL MEET YOUR REQUIREMENTS, OR THAT DEFECTS IN INDICATORS WILL BE CORRECTED. FURTHERMORE, CABC DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE INDICATORS. ALL INDICATORS ARE PROVIDED BY CABC “AS IS.” THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE INDICATORS SHALL BE WITH YOU.
- (b) Responsible Use in Healthcare Setting. The Indicators are intended to be used in the context of certain healthcare settings, including use for birth centers. When used in such settings, you are ultimately responsible for following all applicable clinical protocols and policies and for any medical care and healthcare services rendered to patients. Any guidance provided or suggested by CABC, through the Indicators or otherwise, that may be interpreted as relating to clinical protocols and policies or the medical care or healthcare services rendered to patients is purely advisory in nature and should not be substituted for a healthcare provider’s professional judgment. CABC DISCLAIMS, AND YOU RELEASE CABC FROM, ANY AND ALL LIABILITY RELATING TO PERSONAL INJURY, MEDICAL MALPRACTICE, OR OTHER CLAIMS RELATING TO ADHERENCE TO APPLICABLE CLINICAL PROTOCOLS AND POLICIES AND MEDICAL CARE AND HEALTHCARE SERVICES RENDERED TO PATIENTS.

- (c) Disclaimers Applicable to CABC Licensors and Suppliers. THE DISCLAIMERS AND LIMITATIONS OF LIABILITY DESCRIBED IN THIS AGREEMENT SHALL APPLY TO ALL THIRD-PARTY LICENSORS AND SUPPLIERS TO CABC.
- (d) Inapplicability of Disclaimers in Some Jurisdictions. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

## 6. LIMITATION OF LIABILITY

- (a) Limitation on Type of Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CABC OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, OR SUPPLIERS BE LIABLE TO YOU (OR TO ANY OTHER THIRD PARTY PERMITTED ACCESS TO OR USE OF ANY INDICATORS PROVIDED UNDER THIS AGREEMENT) FOR PERSONAL INJURY OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHETHER ARISING IN CONTRACT, EQUITY, TORT, OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE, AND STRICT LIABILITY IN TORT), OR DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, WORK STOPPAGE, LOST PROFITS, LOST REVENUE, LOST SAVINGS (ACTUAL OR ANTICIPATED), ANY ECONOMIC LOSS IN CONNECTION WITH OR ENSUING FROM USE OF THE INDICATORS PROVIDED BY CABC UNDER THIS AGREEMENT, OR ANY INABILITY TO USE ANY INDICATORS PROVIDED BY CABC PURSUANT TO THIS AGREEMENT, EVEN IF CABC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) Limitation on Amount of Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CABC'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT EXCEED FIFTY U.S. DOLLARS (\$50.00). THIS LIMITATION ON THE AMOUNT OF LIABILITY SHALL APPLY WHETHER A CLAIM ARISES IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, INCLUDING BREACH OF WARRANTY OR NEGLIGENCE, AND EVEN IF CABC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES THAT MAY BE PROVIDED IN THIS AGREEMENT.
- (c) Limitation on Time of Action. NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

- (d) Inapplicability of Limitations in Some Jurisdictions. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

## 7. INDEMNIFICATION

You agree to indemnify, defend, and hold harmless CABC and its affiliates and its and their officers, directors, agents, employees, successors, assigns, and contractors from any loss, liability, claims, demands, damages and costs (including, but not limited to direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, made by any third party due to or arising out of (i) your use or misuse of the Indicators; and (ii) your violation or breach of the Agreement.

## 8. GENERAL

- (a) Compliance with Laws. You represent and agree that you will use the Indicators in compliance with all applicable laws, regulations, and tariffs, including, without limitation, all import and export restrictions and, with respect to U.S. law, the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act and their implementing regulations (collectively, "HIPAA"), and the requirements set forth under the Federal Food, Drug, and Cosmetic Act, their implementing regulations, and applicable U.S. Food and Drug Administration and similar international regulations applicable to clinical research. CABC reserves the right to take all actions that it believes are necessary, in its sole discretion, to comply with applicable laws, regulations, and tariffs. You agree to discontinue any improper use of the Indicators promptly after receipt of written notice from CABC as is reasonably feasible under the circumstances.
- (b) Governing Law and Choice of Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any conflicts of laws principles. The Parties specifically disclaim applicability of the UN Convention on Contracts for the International Sale of Goods. For any dispute arising out of this Agreement, you submit to the exclusive personal jurisdiction and venue of the courts with subject matter jurisdiction over the dispute located in the Commonwealth of Pennsylvania and you expressly waive any objection to the jurisdiction or venue of any other court for such a dispute.
- (c) Class Action Waiver. You and CABC agree that any proceedings to resolve or litigate any dispute, whether through a court of law or arbitration, shall be solely conducted on an individual basis. You agree that you will not seek to have any dispute heard as a class action, representative action, collective action, private attorney general action, or similar action.

- (d) Non-waiver. CABC's failure to enforce any right or provision in the Agreement shall not constitute a waiver of such right or provision.
- (e) Severability. If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provisions shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.
- (f) Modification. This Agreement may be modified from time to time by CABC. CABC will make best commercial efforts to notify you of any modification to this Agreement, such as, by e-mail or by posting on the CABC's website. Your continued use of the Indicators following any notification or posting of a modification to the Agreement shall mean you accept such modification. If you do not agree to any modification to the Agreement, do not use the Indicators.
- (g) Assignment. You shall not assign, transfer, or novate this Agreement, nor assign any right nor delegate any duty under this Agreement, to any third party. Any purported assignment, transfer, novation, or delegation by you shall be void. CABC may assign, transfer, or novate this Agreement, or assign any right or delegate any duty under this Agreement, to any third party. CABC will use reasonable commercial efforts to notify you of any such assignment, transfer, novation, or delegation by CABC. Any attempted assignment, transfer, or novation that is in contravention of the above provision shall be void and ineffective.
- (h) Entire Agreement. This is the entire agreement between the parties relating to the subject matter herein and supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the subject matter herein.
- (i) Headings. The headings used in this Agreement are included solely for the purpose of convenience, and shall not be used in any way to construe, modify, explain, enlarge or restrict any of the provisions hereof.