

RESOLUTION APPROVING AGREEMENT WITH MG MEDICAL PRODUCTS, LLC FOR EKG SOLUTION KIT, ACNH

WHEREAS, George Dubic, ACNRC Administrator, has presented an agreement for the approval of the Board, to-wit:

Scope: One (1) EKG Solution Kit will be provided per Approved Location. The EKG Solution Kit is comprised of: Cardioline HD+ Electrocardiograph transmitter and Cardioline TouchECG software license, EKG cable, Lenovo Tablet, charging cables and connectors, 10 EKG Patches (size Large), 10 EKG Patches (size Medium), and all corresponding documentation.

Provider: MG Medical Products, LLC, 1095 Nimitzview Dr, Suite 101, Cincinnati, OH 45230

Cost: Annual License Fees are not to exceed, \$1,620.00 and are billed at \$135.00 per month per approved location and EKG fee including reader service of \$62.00

Term: Begins upon signing for one year, with automatic renewals; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the agreement noted above is approved in accordance with the copy now on file in this office.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2022-198

April 05, 2022

**RESOLUTION APPROVING AGREEMENT WITH MG MEDICAL PRODUCTS, LLC
FOR EKG SOLUTION KIT, ACNH**

Upon the motion of Casey R. Kozlowski, seconded by Kathryn L. Whittington.

VOTE:

J.P. Ducro IV

Casey R. Kozlowski

Kathryn L. Whittington


Aye

Aye

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.


Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio



MG MEDICAL PRODUCTS USER LICENSE AGREEMENT

Licensor: MG Medical Products, LLC

Licensor Address: 1095 Nimitzview Dr, Suite 101, Cincinnati, Ohio 45230

Licensor Contact: Christopher McGrath

Licensor Email: cmcgrath@mgmedpro.com

Customer: Ashtabula County Nursing & Rehabilitation Center

Customer Address: 5740 Dibble Road, Kingsville, Ohio 44048

Effective Date: 4/1/2022

Approved Locations	
1. Ashtabula County Nursing & Rehabilitation Center	5740 Dibble Road, Kingsville, Ohio 44048

SERVICES

Subject to the terms and conditions of the Agreement, the Licensor will provide to the Customer the following services for the following fees:

- Technology Description:** One (1) EKG Solution Kit will be provided per Approved Location. The EKG Solution Kit is comprised of: Cardioline HD+ Electrocardiograph transmitter and Cardioline TouchECG software license, EKG cable, Lenovo Tablet, charging cables and connectors, 10 EKG Patches (size Large), 10 EKG Patches (size Medium), and all corresponding documentation.
- Term:** The term of this Agreement will begin as of the Effective Date for a term of one (1) year and will renew automatically.
- Initial Fee:** \$300.00 per Approved Location due upon signing of the License Agreement.
- Yearly License Fees:** \$1,620.00 to be billed at \$135.00 per month per Approved Location.
- EKG fee including reader service:** \$62.00
- Maximum Number of Authorized Users:** One Use license per EKG Solution Kit. No limit on number of Authorized Users.

The parties hereby agree to the terms of this User License Agreement and further agree to the MG Medical Products Terms and Conditions, which are attached and incorporated herein and together with all other exhibits and schedules that constitute this User License Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this User License Agreement to be duly executed, sealed and delivered as of the Effective Date above.

LICENSOR:
MG MEDICAL PRODUCTS, LLC

By: Chris McGrath
Title: Chief Operations Officer

CUSTOMER:
ASHTABULA COUNTY NURSING & REHABILITATION CENTER

By:
Title: _____



TERMS AND CONDITIONS

This USER LICENSE and SOFTWARE AS A SERVICE Agreement (the "Agreement") is made as of the date executed above between MG Medical Products, LLC, an Ohio limited liability company ("Licensor") and customer as listed above ("Customer"). For purposes of this Agreement, Customer and Licensor each will be referred to individually as a "Party" and together as the "Parties." The Agreement shall include the specific terms as included by the parties in the User License Agreement, these Terms and Conditions, and any additional agreements, addenda, or exhibits attached hereto and specifically included by reference.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

Authorized Platform. "Authorized Platform" means the Cardioline HD+ Electrocardiograph and Cardioline TouchECG software, ECG reader Software Platform and the Licensed Program.

Authorized Site. "Authorized Site" Cardioline Touch ECG or any related website or URL operated by Licensor for the purpose of running the Platform, including private labeled or other customized landing pages or interior pages.

Authorized User. "Authorized User" shall mean Customer's employees and independent contractors working for Customer in the ordinary course of Customer's business who: (i) agree to be bound by the terms of this Agreement; (ii) are specifically authorized by Customer to access the Service; and (iii) who are licensed healthcare professionals or who are otherwise authorized to perform ECG readings in the state in which the Authorized User is located and where ECG readings are being performed.

Device. "Device" means the Cardioline HD+ Electrocardiograph and Cardioline TouchECG software, ECG reader hardware which interfaces with the Authorized Platform, the Licensed Program, and the Authorized Site.

Documentation. "Documentation" means all user manuals and other written material to be created by Licensor pursuant to this Agreement that describe the functionality or assist in the use of the Software, as further described in the Technical Specifications, if any.

ECG. "ECG" means electrocardiograph and is the function provided by the Device as measured and displayed by the Software on the Authorized Platform.

Healthcare Reader. "Healthcare Reader" means Customer's designated licensed physician or other healthcare professional licensed and qualified to interpret, confirm, or provide diagnoses based off the ECG Readings.

HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules of the Health Insurance Portability & Accountability Act at 45 CFR Part 160 and Part 164.

Licensed Program. "Licensed Program" means the software application as a service for which a License is granted by this Agreement. The Licensed Program includes the Authorized Platform and Device firmware.

Purchase Order. "Scope of Work" means the document that describes the features, functions, and specifications of the Software, contents of the Documentation, and other information necessary to define the work to be performed pursuant to this Agreement. The Technical Specifications, if any, shall be attached to the Scope of Work and shall become a part thereto.

Readings. "Readings" means the ECG data produced by the Device and Licensed Program.

Reader Services. "Reader Services" means over-reader services provided by Rely Radiology licensed physicians of the readings (and distinct from the Healthcare Reader).



Software. In the License Agreement, "Software" means the Firmware and the Platform operating to form the "Licensed Program."

Services. "Services" as used in the License Agreement means all of the Software, Application, Authorized Site, customer support, documentation that Licensor shall provide to Customer as a part of the scope of its services under this Agreement.

II. USE LICENSE

1. **Grant.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Customer a nonexclusive, royalty-bearing, nontransferable license in the Software, to use and reproduce the Software exclusively for the Intended Use on the Authorized Platform and at the Authorized Site and to use the Documentation solely in connection with Customer's use of the Software.
2. **License Restrictions.** Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software, Documentation, or any related materials to Customer or any third party. Customer shall reproduce, install, and render the Software operational only on the Authorized Platform at the Authorized Site. Customer shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Customer shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.
3. **Use.** Licensor grants Customer full access to use Licensor's software and the Application for the term set forth in the Purchase Order in conjunction with the Device. Customer shall have full permission and rights to use Licensor's Software and the Application to facilitate ECG readings with its current and future patient base.
4. **Authorized-User License.** In addition to the grant of the Use License in Section 1 above, Licensor hereby grants to Customer's Authorized Users a nonexclusive, royalty-bearing, nontransferable license in the Software, to use Licensed Program exclusively as an end-user for the Intended Use on the Authorized Platform and at the Authorized Site. Specifically, Authorized Users may use the Device, Software, and Authorized Platform in conjunction with rendering services to patients; however, patients shall not be granted any license hereunder. Authorized Users sub-licensed by Customer shall commence on the Effective Date and run during the term of this Agreement. The number of Authorized-User licenses shall be limited to the number of Authorized Users.
5. **Healthcare Reader License.** If listed under Services on page 1, in addition to the grant of the Use License in Section 1 above and the Authorized User License in Section 4 above, Licensor hereby grants to Customer's Healthcare Reader a nonexclusive, royalty-bearing, nontransferable license in the Software, to use Licensed Program exclusively as an healthcare provider to provide healthcare or diagnostic interpretations, confirmations, or other healthcare uses on the Authorized Platform and at the Authorized Site. Authorized Users sub-licensed by Customer shall commence on the Effective Date and run during the term of this Agreement. The number of Healthcare Reader licenses shall be limited to 1 designated Healthcare Reader per Device and Use License.
6. **Reader Services.**
 - a. The Parties agree to over-reader services performed by Rely Radiology licensed physicians confirming the ECG readings by agreement in the Services on page 1. Reader Services shall be made in conjunction with this Agreement.
 - b. **Compliance with HIPAA.** Reader Services shall be made in compliance with HIPAA.
 - c. **Disclaimer.** In the State of Michigan, this confirmed ECG is provided to the treating physician solely as information for the diagnosis and treatment of the tested patient. This result is not a diagnosis of any medical condition and does not create a physician/patient relationship. It is the responsibility of the treating physician or other healthcare provider to make all medical, diagnostic, treatment, therapeutic, or patient care decisions. Please consult with the patient's physician or healthcare provider regarding treatment.
7. **Fees and Payment:**



- a. **Fees.** Fees shall be as indicated on the Purchase Order and are based on published pricing information. The License fee is set up using one of the following payment structures:
 - (i) **Device Purchase and yearly License Fee.** In this case the yearly License Fee shall be billed monthly.
 - (ii) **Monthly Subscription.** In this case the Device was provided at no charge to Customer and Customer pays a monthly subscription via automatic payment or ACH.
 - (iii) **EKG Fees** shall be based upon either the Professional License, which includes one User License, unlimited Authorized User Licenses, and reader services by Rely Radiology unless Healthcare Reader License is selected.
 - b. **Invoicing and Payment.** Payments are due monthly with the first month's payment due 30 days after the device has been delivered. Payment may be by wire transfer, ACH, or other accepted payment.
 - c. **Overdue Charges.** If any charges are not received from Customer by the due date, then at Licensor's discretion Licensor may condition future subscription renewals and Implementation Request Forms on payment terms shorter than those specified in Invoicing and Payment Section.
 - d. **No Updates.** If any charges are not received from Customer by the due date, then Licensor shall not be required to provide firmware updates to any of Customer's Devices.
 - e. **Payment Disputes.** Licensor shall not exercise its rights under Overdue Charges above if Customer disputes the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
 - f. **Taxes.** Unless otherwise stated, the fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer purchases hereunder. If Licensor has the legal obligation to pay or collect Taxes for which Customer are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Licensor with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Licensor is solely responsible for taxes assessable against itself based on its income, property, and employees.
- 8. Term and Termination.**
- a. **Term.** This Agreement shall commence on the Effective Date in the User License Agreement and continues for the term of one (1) year and will renew automatically. After the initial term, the Customer may terminate this Agreement upon thirty (30) days written notice.
 - b. **Early Termination.** Notwithstanding subsection c. below, if Customer terminates this Agreement early, then all amounts due under this Agreement for the full Term will become immediately payable in full to Licensor.
 - c. **Termination for Cause.** A party may terminate this Agreement for cause:
 - (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or
 - (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
 - d. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by them. All other notices to Customer or vice versa will be addressed to mutually agreed upon representatives of each party.
 - e. **Refund or Payment upon Termination.** Upon any termination for cause by Licensor due to Customer's breach, Customer shall forfeit any and all prepaid or pro rata fees paid by Customer to Licensor. Upon any termination for cause by Customer



due to Licensor's breach, Licensor shall refund Customer any prepaid fees, at a pro-rated value, covering the remainder of the term of all subscriptions after the effective date of termination.

- 9. Licensor Obligations.** Licensor shall be obligated to provide the following:
- a. **Services.** Licensor shall make the Software and applicable services and support available to Customer in accordance with this Agreement and in accordance with the customer support standard operating procedure.
 - b. **Availability.** Licensor shall use commercially reasonable efforts to make the ongoing Software available 24 hours a day, 7 days a week, except for: (a) planned downtime or outages, or (b) any unavailability caused by circumstances beyond Licensor's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays, denial of service attacks, or hacking attacks or infiltration by a third-party of any kind.
 - c. **Customer Support.** Tier 2 Customer Support will be provided to the Customer in multiple forms including:
 - Customer support via phone and email 24 hours a day, 7 days a week;
 - Additional training aids (FAQs, tutorial videos, written instructional manual);
 - Technical support and continual feature development/improvement; and
 - Management support at administrator level.

Licensor will use commercially reasonable efforts to make ongoing call support service available 24 hours a day, 7 days a week. Support emails will be responded to in a reasonable time frame, and management will make every effort to keep information on the site current and relevant.

- 10. Customer Obligations.** Customer shall be obligated to perform the following:
- a. **Compliance with Agreement.** Customer, its employees, agents, and End-Users, shall be responsible for compliance with the terms of this License.
 - b. **Intended Use.** This License, the Authorized Platform, Licensed Program, and other Documentation are intended to be used solely in connection with the Device, which has been purchased by Customer pursuant to a separate Device Order from Licensor or through a distributor and pursuant to the terms and conditions and warranties contained with the purchase of the Device therein. Device is intended to be used by licensed and authorized healthcare professionals only for the purpose of providing electrocardiograph readings and related healthcare services in the context of a healthcare, physician patient relationship. Any use other than as expressly stated herein shall be a material breach of this Agreement, the License shall be voidable, and any and all warranties shall be voided. Licensor disclaims all liability in connection with unintended use.
 - c. **Unauthorized Use.** Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Software and the Authorized Site and shall notify Licensor promptly of any such unauthorized access or use.
 - d. **Compliance with Applicable Laws.** Customer shall use the Software and Services only in accordance with applicable laws and government regulations (including without limitation those pertaining to unsolicited email), be responsible, along with any agent or designated representative from its client companies, for ensuring sessions are conducted in safe and secure environments and are in accordance with state/federal law.
 - e. **Compliance with HIPAA.** Customer agrees at all times to use the Authorized Platform in compliance and in accordance with HIPAA. Customer agrees at all times to maintain current and executed HIPAA compliance Business Associate Agreements ("BAA") with Licensor and any and all third parties that may have access to information derived from the Software and Device.

11. Data.



- a. **Customer Content.** All Customer Content submitted by Customer to Licensor, whether posted, uploaded or provided by Customer or by Users, will remain the sole property of Customer, the patients, or such Users to the full extent provided by law, including HIPAA and HITECH. As between Customer and Licensor, Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright permissions for all Customer Content. Licensor will not use the Customer Content for any purpose other than to provide the Service to Customer or Customer's Users and for statistical reporting purposes. That said, Licensor may aggregate anonymous statistical data regarding use and functioning of its system by its various Customers and/or Users. Such aggregated statistical data shall not contain any personal identity information will be the sole property of Licensor. Licensor will use the same or superior level of security measures as Customer to protect Customer Content against unauthorized disclosure or use, as if said information was its own confidential information.
- b. **Limited License to Customer Content.** Subject to the terms and conditions of this Agreement, Customer grants to Licensor a non-exclusive license to use, copy, store, transmit and display Customer Content to the extent reasonably necessary to provide and maintain the Service, in accordance with the law.
- c. **Licensor Content.** Licensor retain all rights in the Service and Licensor Content. This Agreement grants no ownership rights to Customer. No license is granted to Customer except as to use of the Service as expressly stated herein. The Crowds name, the Crowds logo, and the product names associated with the Service are trademarks of Licensor or third parties, and they may not be used without Licensor' prior written consent. No other use of the Licensor Content is permitted. For purposes of this Agreement, "Licensor Content" shall mean all content, text, audio, video, graphics and other information and data received and/or made available by means of the Software, Authorized Platform, and Authorized Site, excluding Customer Content.
- d. **Limited License to Licensor Content.** Subject to the terms and conditions of this Agreement, Licensor grants to Customer a non-exclusive license to use, print, store, transmit and display the Licensor Content for the limited purpose of providing the Service to Customer's Users, for the Users' internal use only. Except as to Customer's Users, Customer may not sublicense, resell, supply or otherwise commercialize the Licensor Content for use in or for the benefit of any other organization, entity, business, or enterprise without Licensor' prior written consent. Customer agrees to take reasonable measures to ensure that its Users do not sublicense, resell, supply or otherwise commercialize the Licensor Content for use in or for the benefit of any other organization, entity, business, or enterprise without Licensor' prior written consent. Should Customer fail to ensure that its Users do not sublicense, resell, supply or otherwise commercialize the Licensor Content for use in or for the benefit of any other organization, entity, business, or enterprise without first obtaining Licensor' prior written consent, the parties agree that this would result in irreparable harm to Licensor and Licensor shall be entitled to obtain injunctive relief from a court of law, and Licensor shall be entitled to attorneys' fees, expenses, and costs in bringing an action for injunctive relief. Further, in addition to all the remedies at law or in equity available to Licensor under this Agreement, Customer shall pay to Licensor, as liquidated damages, the sum of Fifty Thousand Dollars (\$50,000), in addition to actual provable damages.
- e. **Access to Licensor Content.** Users shall be granted access to User-specific Licensor Content. Customer shall have access to all Licensor Content specific to all of Customer's Users.
- f. **Privacy.** Licensor agrees to implement privacy, encryption, and other security measures to protect Customer and Users while accessing the Service, website, data, licensed Licensor Content, or user-generated content that meet or exceed industry security, encryption, or privacy standards. Licensor reserves the right to modify its privacy and security policies from time to time in its business judgment and as it deems required for compliance with applicable law, as long as such modifications do not result in a lower level of protection to Customer and/ or its users.
- g. **HIPAA Compliance.** Licensor has made every effort to ensure that the Software is compliant with HIPAA Rules. Licensor will make every effort to keep the site secured to HIPAA rules. If there is a breach in security management will follow the Breach Notification Rule as stated in the HIPAA rules. Customer agrees to submit testing and patient information to the Authorized Platform in compliance with HIPAA rules.



12. **Export Controls.** The Software, the Documentation, and all underlying information or technology may not be exported or reexported into any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Customer shall not export the Software or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Customer represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls.
13. **Restricted Rights.** The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1) of the Commercial Computer Software — Restricted Rights clause at FAR 52.227-19, subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (d) of the Commercial Computer Software — Licensing at NASA FAR supplement 1652.227-86, or their equivalent, as applicable.
14. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Licensor reserves all rights, title and interest in and to the Software and Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
15. **Restrictions.** Customer shall not (i) permit any third party to access the Services, except as expressly permitted herein or in an Implementation Request Form, (ii) create derivative works based on the software, program code or user interfaces comprising the Software or Services, (iii) copy, frame or mirror the online Software, Services, or Authorized Site other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (iv) reverse engineer the Software, (v) systematically access the Software using "bots" or "spiders", or any automated system that calls to the Software more frequently than may reasonably be performed by a human user using a standard web browser, or attempt to gain unauthorized access to Software or their related systems or networks, or (vi) access the Software in order to (A) build a competitive data-related commercial product or service, or (B) copy any features, functions or graphics of the Software. Licensor may, without limiting its other rights and remedies, immediately suspend Software or Services if Customer is in violation of the above.
16. **Confidentiality.**
 - a. Customer acknowledges that the Software, Documentation, and Services and all information relating to the business and operations of the Licensor that Customer learns or has learned during or prior to the term of this Agreement, may be the valuable, confidential, and proprietary information of the Licensor. During the period this Agreement is in effect, and at all times afterwards, Customer, and its employees, contractors, consultants, and agents, will (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor. In the event that Licensor shall receive any confidential and proprietary information of Licensee during or prior to the term of this Agreement, Licensor, and its employees, contractors, consultants, and agents shall have the same obligation to protect such information as apply to the Licensee as provided in the previous sentence.
 - b. Licensor acknowledges that certain information that may be disclosed to Licensor by Customer or that Licensor may have access to by way of its providing Services, including customer or client lists, product development, trade secrets, or other information, may be confidential information. Licensor, and its employees, contractors, consultants, and agents, will (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement and as contained in the Ownership of Intellectual Property; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Customer
 - c. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure,



the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

17. **WARRANTIES.** Licensor hereby warrants to Customer that (a) Licensor is the owner of the Software and the Documentation or has the right to grant to Customer the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party. Licensor further warrants that the functionality of the Software or Services will not be materially decreased during a subscription term. With respect to all subject matter, Licensor warrants that the services provided hereunder will be performed in a workmanlike manner, with professional diligence and skill, and in accordance with reasonable commercial standards. Licensor does not provide any warranty or support under this Agreement for any non-Licensor Solutions Services products or services.

THE WARRANTIES SET FORTH IN SECTION ABOVE ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (a) ANY WARRANTY THAT THE SOFTWARE IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

18. **Remedies on Breach of Warranty.** In the event of any breach of the warranty set forth in Section 13 above, Customer's exclusive remedy shall be for Licensor to promptly make best efforts to fix, repair, or improve the Software so that it functions in a manner as set forth in this Agreement to the satisfaction of Customer. Breach of the warranty alone shall not be grounds for termination of this Agreement.

Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY OR LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

20. **Indemnification.** Intentionally Omitted.
21. **Publicity and Media.** Licensor shall be allowed, and Customer gives its explicit and written permission, for Licensor to disclose to the public the existence of this contractual relationship, including, at Licensor's sole discretion, the terms of the Agreement, to use, mention, or describe and identify Customer's name likeness, and logo/marks for the purpose of customer or client testimonials, case studies, endorsements, list of representative customers, on all print, broadcast, or electronic media, including newsletters, social media, blogging, printed literature and the like.
22. **Independent Contractor.** Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party shall have the authority to enter into any contracts on behalf of the other party.
21. **Customer's Own Promulgation.** Customer shall be required to bind its End Users under its own terms and conditions for use of the Application on the Platform, which terms are subject to the approval of Licensor.

III. GENERAL PROVISIONS

22. **Choice of Law.** This Agreement and all amendments, modifications, alterations or supplements thereto, and the rights of the parties hereunder shall be deemed to have been executed within the State of Ohio and shall be governed by and construed in accordance with the laws of the State of Ohio. Any action to enforce any of the rights herein shall be brought and adjudicated in a state or federal court located within the State of Ohio.
23. **Force Majeure.** If performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the



extent necessary by such event. The term "Force Majeure" shall include, without limitation, acts of nature, fire, explosion, vandalism, storm, or other similar occurrence; orders or acts of military or civil authority; national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages, or other labor disputes, supplier failures, shortages, breach, or delays. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted or caused by such party, or its employees, officers, agents or affiliates.

- 24. **Severability.** In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.
- 25. **Assignment.** This License Agreement and the licenses granted hereunder cannot be assigned, sublicensed, or otherwise transferred by the Customer without prior written consent from Licensor.
- 26. **Notice.** For the purpose of any and all communications and deliveries between Licensor and Customer with reference to this Agreement, the respective addresses, subject to change upon written notice, will be:

Licensor:
MG Medical Products, LLC.
Attention: Christopher McGrath
1095 Nimitzview Drive
Suite 101
Cincinnati, OH 45230

Customer:
As listed in the Scope of Work

- 27. **Modification or Amendment.** This Agreement may be amended only by mutual agreement of the parties. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.
- 28. **Complete Understanding.** This Agreement constitutes the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof.
- 29. **Counterparts.** This Agreement may be executed in counterparts by the parties and each executed copy shall be considered an original.

FISCAL OFFICER'S CERTIFICATE

5705.41 O.R.C.

The undersigned, County Auditor of Ashtabula County, hereby certifies that the amount required to meet the obligations of the County during the 2020, under the Agreement, has been lawfully appropriated for that purpose, and is in the Treasury of the County or in the process of collection to the credit of **ACNRC contract services 2033.025.100.601** not to exceed \$25,740.00 and free from any previous encumbrances.

Agreement Title: Services Agreement between Ashtabula County Nursing & Rehabilitation Center and MG MEDICAL



David Thomas, Ashtabula County Auditor

Date: 2/3/22



**MG Medical Products User License Agreement for Ashtabula County Nursing and
Rehabilitation Center**

Dated April 1, 2022

Approved as to Legal Form Only:

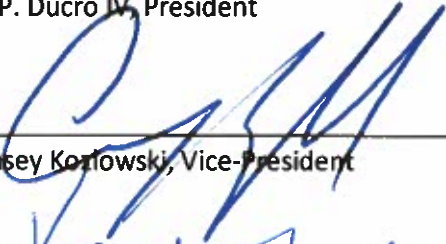
By:  _____

**Collen M. O'Toole
Ashtabula County Prosecutor**

Date: _____



J. P. Ducro IV, President



Casey Korfowski, Vice-President



Kathryn Whittington, Commissioner

Date: 4/5/2022