

LiveDDM

END USER LICENSE AGREEMENT

This End User License Agreement (this "**Agreement**") constitutes a valid and binding agreement between The Doctor Company Inc. (together with its affiliates, successors and assigns) (hereinafter the "**Supplier**") and you ("you", or "your" or "the Customer") for the use of the LiveDDM Software, Network and Services. You must enter into this Agreement in order to install and use such LiveDDM Software.

BY INSTALLING AND/OR USING THE LiveDDM SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE LiveDDM SOFTWARE.

1. Specific Terms of License

Subject to the terms and conditions of this Agreement, the Supplier grants to the Customer a non-exclusive license to use the Licensed Program (LiveDDM) as defined herein.

Upon execution of this Agreement, the Customer shall pay to the Supplier the Initial Installation Fee plus taxes. The Supplier is registered for goods and services tax as No. 868012469RT0001.

Terms of Payment: The Customer shall pay to the Supplier the Monthly License Fee plus Taxes in advance on the first day of each and every month during the term of this Agreement.

Use of Licensed Program: The Licensed Program (as defined herein) is licensed for use on all personal computers installed solely in the single office of the Customer at one address plus one (1) personal computer remotely connected to the Premises exclusively owned or leased by the Customer or the staff of the Customer (the "**Designated Computers**"). It is expressly understood and agreed that the Customer shall not install or use the Licensed Program on any other computer or at any other office location.

Installation Services Provided: The Supplier shall install the Licensed Program in the Designated Computers. Any installations/deletions required of the Licensed Program to computers added or subtracted by the Customer from the Designated Computers following the expiry of thirty (30) days following the Date of Acceptance (as defined herein) shall be subject to the Supplier's then prevailing hourly rates, plus taxes and such installations/deletions shall be requested in writing by the Customer.

Training Services: The Supplier shall provide training to the Customer for an additional cost to the Customer at the Supplier's then prevailing training rate plus taxes for the Licensed Program. All users to be trained shall be either employed or contracted to the Customer or shall be the Customer personally. Training shall be conducted by one employee of the Supplier qualified to train individuals in use of the Licensed Program. The Customer shall be responsible for providing a suitable training environment with a sufficient number of personal computers. **The foregoing shall be subject to the availability of the Supplier's training personnel.**

Technical Support: During the term of this Agreement and provided the Customer is not in default hereunder, the Supplier shall provide the following technical support without further charge:

- (a) The Customer may contact the Supplier via telephone and speak to a qualified Licensed Program technician with regards to any faults in the program;
- (b) The Customer may contact the Supplier via email at the following address: support@liveddm.com

Additional technical support, including on-site software technical support, may be requested by the Customer and shall be subject to the Supplier's then prevailing hourly rates plus taxes.

2. **Definitions**

The following terms are used in this Agreement, as defined in this paragraph:

- (a) "**Designated Computers**" shall have the meaning ascribed thereto in paragraph 1 herein;
- (b) "**Fees**" shall have the meaning ascribed thereto at paragraph 8 herein;
- (c) "**Functional Specifications**" shall mean a written description of the functions of the Licensed Program, which Functional Specifications shall be delivered to the Customer by the Supplier via a "help file or User Manual" upon delivery of the Licensed Program;
- (d) "**Licensed Program**" shall mean a set of computer programs in object code, together with all upgrades and updates thereto, referred to as the LiveDDM Software, owned and marketed by the Supplier and developed for purposes of assisting dentists in administrating and operating dental offices;
- (e) "**Licensed Materials**" shall mean user manuals, fee guides, Functional Specifications, the Program Key, the database and all contents therein unless accessed through the Licensed Program, and any other documentation as may be provided by the Supplier to the Customer for use with Licensed Program;
- (f) "**Licensed Program and Materials**" shall mean both the Licensed Program and Licensed Materials as defined above;
- (g) "**Program Key**" shall mean the alphanumeric string received by the Customer's Internet connection (Update Wizard); and
- (h) "**Taxes**" means any and all federal, provincial (or combined federal and provincial) sales or other Taxes applicable on supplies and services provided by the Supplier as such Taxes may be imposed from time to time.

3. **Grant of License**

- (a) Subject to the terms and conditions of this Agreement, the Supplier grants to the Customer a non-exclusive license to use the Licensed Program on the Designated Computers. During the term of this Agreement and provided the Customer is not in default hereunder, all minor or "point" updates (ie. 6.1 , 6.2, 6.3 etc.) to the Licensed Program and specific separate modules shall be made available to the Customer by the

Supplier via the internet without additional payment. Major upgrades (ie. Upgrade from Version 6.x to version 7.0) are subject to additional payment by the Customer.

- (b) The license granted in this Agreement is restricted to use by the Customer solely for its own internal operation to process its own data and not for processing the data of others for hire or otherwise. The Customer shall have the right to merge its existing database in to the Licensed Program. The Customer shall also have the right to use the Licensed Materials to instruct its staff in the operation of the Licensed Program, but the Customer shall not have the right to copy the Licensed Materials.
- (c) The Customer is authorized to use the Licensed Program on a back-up computer when any one of the Designated Computers is inoperable, until operable status is restored and processing on the back-up computer is completed.
- (d) In the event that the Customer desires to transfer the use of the Licensed Program to a newly-designated computer from a Designated Computer set forth in this Agreement (the "**Previously Designated Computer**"), the Customer shall request prior written permission from the Supplier, which permission shall not be unreasonably withheld. Upon receipt of this permission, the Customer may transfer the use of the Licensed Program to the newly-designated computer. This transfer may involve the Supplier for the re-installation of the Licensed Program and shall be subject to additional payment by the Customer for the work effort. The Customer shall destroy all copies or records of the Licensed Program in the Previously Designated Computer or shall transfer all of these copies or records to the newly-designated computer, and shall, if required by the Supplier promptly certify in writing that no copies or record of the Licensed Program exist outside the newly-designated computer or the Designated Computers (excluding the Previously Designated Computer).
- (e) The Customer shall have no right to sublicense under this Agreement, and the Customer shall not assign its license, whether voluntarily or by the operation of law or otherwise.
- (f) The Program Key (Update Wizard) must be used by the Customer not less than once every thirty days during the term of this Agreement, failing which the Licensed Program shall thereafter operate in a "Read Only" mode, which will not permit the Customer to make new entries. The Customer shall pay the sum of \$500 dollars plus Taxes to the Supplier as a reconnection fee.
- (g) Should the Customer misplace the Licensed Program and/or Licensed Materials in the Customer's possession, the Customer hereby indemnifies the Supplier for any costs, damages and expenses suffered by the Supplier as a result of same. A replacement copy of the Licensed Program and/or Licensed Materials may be requested by the Customer upon payment of the sum of \$200.00 dollars plus Taxes to the Supplier as a replacement fee.
- (h) **The Customer shall have no right to communicate the Licensed Program and/or Database structures and/or Database backups to any persons affiliated with the Supplier's competitors or acting on behalf of said competitors without the express written permission of the Supplier. Customer Data may be exported from the Licensed Program using the tools within the Licensed Program.**

- (i) The Supplier reserves all rights not expressly granted to the Customer in this EULA. The software is protected by copyright and other intellectual property laws and treaties. The Supplier owns the title, copyright, and other intellectual property rights in the software. The software is licensed, not sold. This EULA does not grant the customer any rights to trademarks or service marks of the Supplier.

4. Copies of Licensed Materials

Upon payment by the Customer of the fees plus taxes specified in paragraph 1 of this Agreement, the Supplier shall make available to the Customer one copy of the Licensed Materials with the exception of the Licensed Program. Any additional copies of the Licensed Materials as are reasonably necessary for the use of the Licensed Program by the Customer shall be provided by the Supplier to the Customer at the Supplier's then-current charges plus Taxes.

5. Obligations of Customer

- (a) The Customer acknowledges that the Supplier has provided the Customer with specifications for data formats for use with the Licensed Program.
- (b) The Customer shall be responsible for providing an adequate operating environment in which the Licensed Program shall be used. The Customer shall adequately maintain the computer hardware in which the Licensed Program is stored and used.
- (c) The Customer shall provide adequate back-up of the Licensed Program and database incorporated into the Licensed Program.
- (d) The Customer shall ensure that only competent operators operate the Licensed Program.
- (e) The Customer must provide a viable internet connection at the Customer's expense at the above noted location before installation of the Licensed Program is undertaken by the Supplier.
- (f) The Customer shall ensure adequate protection in the operating environment against computer viruses, worms and Trojan horses through the use of commonly available antivirus software, software firewalls, and hardware firewalls. The customer shall also be responsible for ensuring adequate protection against electrical power spikes and brownouts through the use of Uninterrupted Power Supplies, which may affect or corrupt the Customer's data or the Licensed Program.

6. Installation, Training and Technical Support

- (a) Upon delivery of the Licensed Program to the Customer, the Supplier shall install the Licensed Program in the Designated Computers particularly specified in paragraph 1 of this Agreement. The Supplier shall assist the Customer to convert the Customer's database to be compatible with the Licensed Program at a fee to be determined separately upon inspection of the Customer's current data by a representative of the Supplier. The Supplier shall also deliver a Program Key for use by the Customer to access the Licensed Program, once installed. Following installation, the Supplier shall demonstrate to the Customer that the Licensed Program has been installed in the

Designated Computers. For purposes of this Agreement, the "**Date of Acceptance**" shall be that date upon which the Supplier has successfully demonstrated to the Customer that the Licensed Program installed in the Designated Computers.

- (b) The Supplier will provide operator training for the period and for the persons as more particularly specified in paragraph 1 of this Agreement.
- (c) The Supplier shall provide technical support to the Customer for the periods more particularly described in paragraph 1 of this Agreement.
- (d) Any written request by the Customer for services must be signed by the Customer or by a person to whom the Customer has delegated authority in writing.

7. Term

The term of the license granted pursuant to this Agreement shall commence upon acceptance by the Customer of this Agreement as evidenced by the installation and use by the Customer and shall continue until terminated as provided by this Agreement. Either party may terminate this Agreement upon ninety (90) days' prior written notice to the other party. For Customers that have signed a 3 year term license, either party may terminate this Agreement with no less than ninety (90) days written notice to the other party prior to the end of the Term.

8. Licence Fees

- (a) In consideration of the license granted by the Supplier to the Customer, the Customer shall pay to the Supplier as a license fee the initial installation fee and monthly license fee (the "**Fees**") more particularly specified under "Fees" in paragraph 1 of this Agreement, plus Taxes, in lawful money of Canada.
- (b) The initial license/installation fee and the monthly license fee for the first month of the term of this Agreement plus Taxes shall be payable forthwith following execution of this Agreement by the parties. The monthly license fee shall be pro-rated if the first month or last month of the term of this Agreement is less than a whole month. The Customer shall thereafter pay the monthly license fee plus Taxes, in advance, on the first day of each and every month during the term of this Agreement, commencing the second month following the commencement date of this Agreement.
- (c) In the event the Customer fails or neglects to make any payment for the Licensed Program when due, the Supplier may at its option and in addition to any other right which it has under this Agreement or at law:
 - i. delay delivery of any part of the Licensed Program or any upgrades or updates to the Licensed Program until payment is made; or
 - ii. delay or deny any customer technical support until payment is made.

9. Delivery

The Supplier shall use its best efforts to meet its proposed delivery date but the Supplier does not represent or warrant that this delivery date will be met.

Fees shall be delivered by the Customer to the Supplier prior to the Customer's commencement of use of the Licensed Program. The Fees shall include any initial Deposit, Balance due on Installation, Training Sessions, Hardware Fees if any, and the first month's subscription license fees; technical support fees and software upgrade fees plus Taxes.

10. Warranty

- (a) The Supplier warrants that the Licensed Program will perform in accordance with the Functional Specifications for a period of ninety (90) days following the Date of Acceptance, if the Licensed Program is properly used as set forth in the Licensed Materials and the Customer complies with its obligations as more particularly set forth herein. This warranty is void if the Customer or any third party changes or modifies the Licensed Program or its installation. The liability of the Supplier under this paragraph is limited to the correction of any error or malfunction and shall not include liability for loss of data, loss of computer time, any direct damages or any indirect or consequential damages as more specifically set out in paragraph 11 of this Agreement. This warranty only extends to those failures to perform communicated to the Supplier in writing within the ninety (90) days following the Date of Acceptance.
- (b) In the event the Customer calls upon the Supplier under this paragraph to correct an error and the Supplier determines after investigation that the Licensed Program is performing as described in the Functional Specifications, the Customer shall reimburse the Supplier for time expended by the Supplier personnel at the Supplier's then current hourly rate for maintenance plus Taxes, as well as the reasonable travel and other out-of-pocket costs incurred by the Supplier's employees.
- (c) This warranty is in lieu of all other warranties or conditions express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose. No other warranties express or implied, are given. The Supplier specifically does not warrant that the Licensed Program will meet all the Customer's requirements, or will operate in all the combinations which may be selected for use by the Customer, or that the operation of the licensed program will be error free or uninterrupted, or that the program and or updates will be free from viruses, or that all program defects will be corrected.
- (d) The Supplier also specifically does not warrant that any Data Conversion from another dental practice management software program to the Licensed Program will meet all of the Customer's requirements, be accurate, or will provide data to the Licensed Program in a form that is recognized by the Licensed Program.
- (e) Speech/Handwriting Recognition. If this software includes speech and/or handwriting recognition components, the Customer understands that speech and handwriting recognition are inherently statistical processes; that recognition errors are inherent in the processes; that it is the customer's responsibility to provide for the handling of such

errors and to monitor the recognition processes and correct any errors. The Supplier shall not be liable for any damages arising out of errors in the speech and handwriting recognition processes.

- (f) The Customer hereby indemnifies the Supplier from any claim by a third party arising out of or related to the Customer's use of the Licensed Program and Materials.
- (g) The Supplier is not responsible for the contents of any third party sites or services, any links contained in any third-party sites or services, or any changes to third-party sites or services. The supplier is providing these links, bridges, and access to third-party sites and services to the Customer as a convenience, and the inclusion of any link, bridge, or access does not imply an endorsement by the Supplier of the third party site or service.

11. Limitation of Remedies

The Supplier's entire liability and the Customer's exclusive remedy shall be as follows:

- (a) With respect to any claim concerning performance or non-performance by the Supplier pursuant to, or in any other way related to the subject matter of this Agreement, or with respect to any claim of non-conformance of the Licensed Program to the terms of this Agreement, or any claim for breach or default by the Supplier, the Customer's exclusive remedy shall be the recovery of its direct damages but only to the limit set forth in this paragraph. This limitation shall apply whether or not the alleged breach by the Supplier is a breach of a condition or a fundamental term, or a fundamental breach.
- (b) The Supplier's liability for damages to the Customer for any cause, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the Customer's direct damages and shall not exceed the amounts paid by the Customer for the Initial Installation Fee, plus Taxes.
- (c) In no event will the Supplier be liable for or will the Customer have a remedy for the recovery of:
 - (i) any special, direct, indirect or consequential damages even if the Supplier has been advised of the possibility of them including, but not limited to, business interruption, personal injury, loss of privacy, lost profits, lost revenues, loss of confidential or other information, failure to meet any duty including of good faith or of reasonable care, negligence, monies paid to third parties, including, but not limited to, accountants, bookkeepers and third party hardware vendor / networking vendors and failure to realize expected savings, or other commercial or economic losses of any kind whatsoever;
 - (ii) any damages caused by the Customer's failure to meet the Customer's responsibilities;
 - (iii) any training, monthly license or data transfer fees paid to the Supplier; or
 - (iv) any hardware fees paid to the Supplier

12. Ownership of Licensed Program and Confidentiality

- (a) The Customer acknowledges that the Licensed Program and Materials are the property of the Supplier and that the only rights which the Customer obtains to the Licensed Program and Materials is the right of use in accordance with the terms of this Agreement.
- (b) The Customer will ensure that copyright, proprietary and trade secret notices of the Supplier will remain on the Licensed Program in machine-readable form and on all Licensed Materials. The use of a copyright notice on the Licensed Program and Materials shall not be taken to indicate that they have been published.
- (c) The Customer acknowledges that the Licensed Program and Materials including database and structures contain proprietary and confidential information of the Supplier. The Customer will take the same care to safeguard the Licensed Program and Materials as it takes to safeguard its own confidential information and this care shall not be any less than would be taken by a reasonable person to safeguard its information. Without limiting the generality of the foregoing, the Licensed Program shall be accessible only to those employees with a need for access to perform their duties, and Licensed Materials other than operator's manuals shall be stored in a locked place and shall be accessible only to those employees with a need for access in order to perform their duties. Employees having this access shall be specifically advised in writing of the confidentiality of Licensed Program and Materials. Operator's manuals shall prominently display a legend stating that they are the property of the Supplier and that they contain confidential information and operators shall not be permitted to take them from their workstations.
- (d) No copies of any portions of the Licensed Program or Licensed Materials including database and structures shall be made by the Customer or the Customer's employees. The Customer will not derive, modify or attempt to duplicate, or permit or help others to derive, modify or duplicate, the source code relating to the Licensed Program or Licensed Materials.
- (e) In order to assist the Supplier in the protection of its proprietary rights with respect to the Licensed Program, Materials, database and structures, the Customer shall permit the Supplier to inspect during normal business hours the facility at which the Licensed Program is used and any facility at which the Licensed Program or Licensed Materials are stored. The Customer shall advise the Supplier on demand of all locations where the Licensed Program or any Licensed Materials, or both, are stored, and shall provide the Supplier with access to the Licensed Program and Materials, including any copies of them.
- (f) Any custom developed modules developed by the Supplier to the Licensed Program for the Customer shall be the exclusive property of the Supplier, provided that the data generated by such modules shall be the property of the Customer and freely exported in part by the Customer or as a whole by the Supplier.
- (g) All of the data entered into the system by the Customer is the sole property of the Customer and may be exported into industry accepted formats by the Customer at any time using the EXPORT function built into the Licensed Program.

- (h) The Supplier shall not release the data of the Customer at any time to any third party without the Customer's prior written consent.
- (i) The foregoing covenants and agreements in this paragraph 12 shall survive and not merge on the termination of this Agreement.

13. Default

- (a) Failure by the Supplier or the Customer to comply with any term or condition of this Agreement shall entitle the other party to give the party in default written notice requiring it to make good the default.
- (b) If the default complained of has not been cured within thirty (30) days following receipt of this notice, the notifying party shall be entitled, in addition to any other rights it may have under this Agreement or otherwise under law, to terminate this Agreement by giving notice to take effect immediately. Without limiting the generality of the foregoing upon thirty (30) days' default by the Customer, the Supplier shall have the right to lock the Program Key, thereby denying the Customer access to the Licensed Program other than in a "Read Only Mode".
- (c) The right of either party to terminate this Agreement under this paragraph shall not be affected by such party's failure to take action with respect to any previous default by the other party.
- (d) The parties acknowledge and agree that the confidentiality of the Licensed Program and Materials is of great and central importance to the business of the Supplier. The parties therefore agree that if the Customer shall breach any term of paragraph 12 of this Agreement, then the Supplier shall have the right, at its election, to terminate this Agreement forthwith without notice. Without limiting the generality of the foregoing, the Supplier shall have the right to lock the Program Key, thereby denying the Customer access to the Licensed Program other than in the "Read Only Mode".
- (e) This Agreement shall terminate immediately and automatically if the Customer enters or is placed into receivership or if the Customer is petitioned into bankruptcy or makes a proposal under The *Bankruptcy and Insolvency Act* (Canada) for the benefit of its creditors, or ceases to carry on business or is wound up.

14. Procedure on Termination

- (a) Upon termination of this Agreement, whether by expiration of its term or by reason of default of a party, the Customer shall return the Licensed Program and Materials and all copies of them to the Supplier and the Customer shall certify, under the hand of a duly authorized officer of the Customer, if the Customer is a corporation or by the Customer directly if the Customer is an individual, that the original and all copies of the Licensed Program and Materials have been delivered to the Supplier, all records or copies of the Licensed Program or Materials in computer memory have been destroyed, and that no copies of any part of the Licensed Program and Materials, in any form, remain in the possession or control of the Customer.

- (b) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.

15. Supervening Events

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party, including, but not limited to acts of God, acts of war, riot, fire, flood, or other disaster, acts of government, strike, lock-out, communication line, internet outages, or power failures, failure, inoperability or destruction of the Designated Computers (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Licensed Program.

16. Governing Law and Enforcement of Agreement

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada. In the event of any dispute under this Agreement, a suit may be brought only in a court of competent jurisdiction of the Province of Ontario, Canada.

17. Assignment

The Customer shall have no right to assign the benefit of this Agreement without the express prior written consent of the Supplier, which consent may be arbitrarily withheld. In the event that the Customer merges with another company or sells or assigns its entire business to another person, the Agreement is terminated on the date of the merger or transfer of the business. A new and separate agreement must be made between the Supplier and the new Customer.

18. Notice

Any notice required or permitted to be sent under this Agreement shall be sent to the addresses specified on the face of this Agreement by prepaid registered mail, return receipt requested or via facsimile. Notice sent by prepaid registered mail will be deemed effective on the third day following mailing except in the case of a mail strike or disruption of postal services. In the case of an actual or apprehended mail strike or disruption of mail services, notice shall be delivered by hand (and shall be signed for by the recipient) or by courier service. Notice sent via facsimile shall be deemed effective on the actual date sent, if sent prior to 4:00 p.m.; if after 4:00 p.m., notice sent via facsimile shall be deemed effective on the next day.

19. Entire Agreement

- (a) This Agreement and any schedule attached to it and initialed or signed by both parties contains the complete and exclusive statement of the Agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind, whether oral or written. No oral or written representation that is not expressly contained in the Agreement is binding on the Supplier.

- (b) If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be severed from the Agreement and the other provisions shall remain in full force.
- (c) A term or condition of this Agreement can be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may invoke any remedy available under the Agreement or by law despite the forbearance or indulgence.
- (d) Title and paragraph headings contained in this Agreement are for the purposes of reference only, and shall not affect the interpretation of this Agreement.

20. Further Assurances

The parties agree to execute any such other documents and to do all such other acts and things as may be necessary or desirable to give effect to the foregoing provisions.

21. Enurement

Subject to paragraph 17 herein, this Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, legal personal representatives, successors and permitted assigns.