

APPROPRIATE USE CRITERIA LICENSE AGREEMENT

THIS APPROPRIATE USE CRITERIA AGREEMENT (the “Agreement”) is entered into and made effective this ____ day of _____ 20__ (“Effective Date”), by and between the American College of Cardiology Foundation, a non-profit District of Columbia corporation located at 2400 N Street NW Washington DC 20037 (“ACCF”) and _____ located at _____ (“Licensee”). ACCF and Licensee shall be referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, ACCF has developed the Appropriate Use Criteria (“AUC”);

WHEREAS, Licensee desires to utilize the AUC for the purposes of delivering the AUC within the _____ (the “Program”) to Licensee’s clients; and

WHEREAS, ACCF wishes to grant such license to Licensee to use the AUC in the Program, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by ACCF and Licensee, the Parties hereby agree to the following terms and conditions:

- 1. ACCF License Grant.** ACCF grants Licensee a limited, enterprise wide, revocable, non-exclusive, non-sub-licensable license to use the AUC as described in this Agreement for the sole purposes of operating the Program pursuant to the terms outlined in this Agreement and as expressly set forth in the Scope of Use attached hereto as Exhibit A, and hereby made a part of this Agreement. ACCF agrees to notify Licensee of any updates or releases of the AUC during the term of this Agreement and Licensee shall use the current release of the AUC in the operation of the Program. AUC shall be delivered to Licensee via secure email.
- 2. License Fee.** Licensee shall pay an annual license fee based on the payment schedule outlined in the Licensing Fees attached as Exhibit B.
- 3. Books and Records; Audit.** Licensee shall maintain complete and accurate records to support and document the charges for licenses granted, and related activities performed under this Agreement, in accordance with the requirements of this Agreement and otherwise in accordance with generally accepted accounting principles consistently applied with respect to prior periods for the purposes of review and audit. Licensee shall also provide reasonable assistance to ACCF or its designated agent to conduct such review and audit. Any such audit will be conducted upon reasonable notice and during regular business hours, and shall be at ACCF’s expense, unless such audit reveals a discrepancy of more than five percent (5%) in the total applicable amount reported by Licensee, in which event Licensee shall pay for, or

reimburse ACCF the cost of, such audit in addition to submitting payment for the discrepancy amount.

4. **Intellectual Property.** Licensee agrees and understands that the AUC and all intellectual property rights and title in and to the AUC, including without limitation rights and title to any software, materials and the compilation of the same including without limitation all copyrights, patent rights, trademarks, trade secret rights, and any other rights and interest in any of the foregoing (collectively, the “ACCF Intellectual Property”), shall be and remain at all times the sole and exclusive property of the ACCF.
5. **Representation.** ACCF represents that it has the rights to provide the AUC to Licensee, under the terms of this Agreement, and that the provision of such ACCF Intellectual Property will not knowingly infringe any patent, copyright or other intellectual property right of any third party. The AUC and other materials delivered to Licensee by ACCF under this Agreement are provided “as is” without any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose.
6. **Use of Names and Logos.** Neither Party shall use the word or symbol, trademarks or service marks of, or make any reference to, the other Party in its advertising, letterhead, symbol or logo, or in any other manner, including the press, without the express written consent of the other Party.
7. **Confidential Information.** For the purposes of this Agreement, “Confidential Information” means any software, material, data or business, financial, operational, and other information disclosed by one Party to the other and not generally known by or disclosed to the public or known to the receiving Party solely by reason of the negotiation or performance of this Agreement, and shall include, without limitation, the terms of this Agreement. Each Party shall maintain all of the other Party’s Confidential Information in strict confidence and will protect such information with the same degree of care that such Party exercises with its own Confidential Information, but in no event with less than a reasonable degree of care. Except as provided in this Agreement, a Party shall not use or disclose any Confidential Information of the other Party in any manner without the express prior written consent of such other Party. Access to and use of any Confidential Information shall be restricted to those employees and persons within a Party’s organization with known discretion and with a need to use the information to perform such Party’s obligations under this Agreement. A Party’s consultants and subcontractors may be included within the meaning of “persons within a Party’s organization,” provided that such consultants and subcontractors have executed a non-disclosure or confidentiality agreement with provisions no less stringent than those applicable to such Party under this Agreement, and such Party shall make such signed agreements available to the other Party upon request. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (a) already known to or otherwise in the possession of a Party at the time of receipt from the other Party and that was not known or received as the result of violation of any obligation of confidentiality; (b) publicly available or otherwise in the public domain prior to disclosure by a Party; (c) rightfully obtained by a Party from any third Party having a right to disclose such information without restriction and without breach of any confidentiality obligation by such third Party; (d) developed by a Party independent of any disclosure hereunder, as evidenced by written records; or (e) disclosed pursuant to the order of a court or administrative body of

competent jurisdiction or a government agency, provided that the Party receiving such order shall notify the other prior to such disclosure and shall cooperate with the other Party in the event such Party elects to legally contest, request confidential treatment, or otherwise avoid such disclosure. Except as otherwise provided herein, all of a Party's Confidential Information disclosed to the other Party, and all copies thereof, shall be and remain the property of the disclosing Party. All such Confidential Information and any and all copies and reproductions thereof shall, upon the expiration or termination of this Agreement for any reason, or within fifteen (15) days of written request by the disclosing Party, be promptly returned to it, or destroyed, at the disclosing Party's direction. In the event of such requested destruction, the Party receiving such request shall provide to the other Party written certification of compliance therewith within fifteen (15) days of such written request.

8. **Publication.** If Licensee desires to publish or otherwise publicly distribute any data or reports produced in connection with the AUC, Licensee must first submit the proposed publication to ACCF for review and approval, which approval will not be withheld unreasonably. ACCF shall provide a response to the proposed publication within ten (10) business days from receipt. Subsequent renderings of the proposed publication may be required and are at the full discretion of the ACCF. Written permission must be obtained from the ACCF prior to any publication.
9. **Term.** This Agreement shall be effective as of the Effective Date until December 31, 2017 and auto-renew for additional one (1) year terms, unless either Party provides written notice of intent to terminate this Agreement no less than sixty (60) days prior to the expiration of the current term.
10. **Termination for Breach.** A Party may terminate this Agreement upon the other Party's material breach of this Agreement by providing the breaching Party with at least thirty (30) days' written notice of its intent to terminate for a material breach. The breaching Party shall have thirty (30) days from the date of such notice to cure the breach. If, after thirty (30) days of such notification, the breach is not cured, the non-breaching Party will have the option to immediately terminate the Agreement.
11. **Termination Without Cause.** Either Party may terminate this Agreement for any reason by providing the other Party thirty (30) days' advance written notice.
12. **Effect of Termination.** Upon termination of this Agreement, (i) all licenses and rights granted to Licensee hereunder shall terminate and Licensee shall cease to use all ACCF Intellectual Property, and (ii) each Party shall return the other Party's Confidential Information. Termination shall not affect obligations that accrued prior to the effective date of termination. All rights and obligations of the Parties, which by their nature must survive the expiration or termination of this Agreement to give effect to their intent, will continue until fully performed, including without limitation, the provisions of Sections 3 (Books and Records; Audit), 4 (Intellectual Property), 7 (Confidentiality), 12 (Effect of Termination), 13 and 14 (Indemnification), 15 (Limitation of Liability), 16 (Insurance), 17 (Governing Law) and 18 (General Provisions).
13. **Licensee Indemnification.** Licensee shall indemnify and hold harmless ACCF from any and all actions, suits, liabilities, costs and expenses, including but not limited to reasonable legal

costs and fees, caused by the negligent acts or omissions or willful misconduct of, or breach of this Agreement by, Licensee in connection with the performance of its obligations under this Agreement.

14. **ACCF Indemnification.** ACCF shall indemnify and hold harmless Licensee from any and all actions, suits, liabilities, costs and expenses, including but not limited to reasonable legal costs and fees, caused by the negligent acts or omissions or willful misconduct of, or breach of this Agreement by, ACCF in connection with the performance of its obligations under this Agreement. ACCF further agrees to indemnify, defend and hold harmless Licensee, its officers, directors, employees, agents and representatives from and against all costs, damages, expenses, and liabilities, including reasonable attorneys' fees, arising out of all claims of any nature or kind brought against Licensee, based on any claim that the ACCF Intellectual Property or any portion thereof, or any use by Licensee of ACCF Intellectual Property or portion thereof, infringes or misappropriates any patent, copyright, trademark or other proprietary right of any third party; provided, however, that ACCF shall not be responsible for matters relating to or arising from (a) modification or combination of AUC with any hardware, software, data, or other materials not approved by ACCF; (b) Licensee's failure to comply with the instructions or requirements specified in documentation provided by ACCF; (c) Licensee's compliance with AUC's specifications, design or requirements; or (d) Licensee's use or deployment of AUC for any illegal, unlawful or unauthorized purpose.
15. **Limitation of Liability.** Under no circumstances shall either Party be liable for any indirect, incidental, special, or consequential damages with respect to this Agreement, including lost profits, regardless of whether such damages could have been foreseen or prevented by either Party.
16. **Insurance.** The Parties agree to obtain and maintain in force and effect liability insurance to insure themselves and their respective personnel for liability arising out of activities to be performed under, or in any manner related to, this Agreement. Each Party agrees to provide and maintain comprehensive liability insurance in the minimum amount of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. Upon request, the Parties agree to furnish to each other appropriate certificates of insurance.
17. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the District of Columbia, without regard to any conflicts of law principles applied in that jurisdiction. The Parties agree that United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any suit or proceeding relating to this Agreement shall be brought only in the District of Columbia.
18. **General Provisions.**
 - a. All notices required to be given under this Agreement shall be in writing and shall be hand delivered or sent by overnight delivery or facsimile to the recipient Party at its principal office address. E-mail and facsimile communications may be used to provide informal notice between the Parties.
 - b. This Agreement constitutes the entire agreement and understanding between the Parties. No waiver, amendment or modification of any provision or section of this Agreement

shall be effective unless in writing and signed by the Party against whom such waiver, amendment or modification is sought to be enforced.

- c. No failure by any Party to exercise, and no delay by any Party in exercising, any right, power or remedy with respect to the obligations set forth in this Agreement shall operate as a waiver of any such right, power or remedy.
- d. All provisions of this Agreement are severable. If any provision or portion of this Agreement is determined to be unenforceable by a court of competent jurisdiction, then the rest of the Agreement shall remain in full force and effect, provided that its general purposes remain reasonably capable of being effected.
- e. Neither Party may assign this Agreement without the express written consent of the other Party; provided, however, that ACCF may assign this Agreement and its rights and obligations to a parent or an entity controlled by or under common control of the ACCF or a venture or entity in which ACCF has a majority ownership interest or upon a change of control of ACCF without the consent of the Licensee.
- f. Neither Party shall have any authority to bind the other Party in any other transactions between the two Parties or with a third party except pursuant to this Agreement.
- g. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
- h. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements, oral or written, between the Parties relating to the subject matter hereof.
- i. Licensee represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, ineligible or voluntarily excluded from covered transactions by any federal department or agency and have not, within a three (3) year period, been convicted of or had a civil judgment against them for committing fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; have not been convicted of or had a civil judgment against them for violating a Federal or State antitrust statute; embezzlement, theft, bribery, falsification, or destruction of records, or making false statement or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated above; and have not within a three (3) year period preceding this Agreement had any public transaction (Federal, State, or local) terminated for cause of default.

IN WITNESS WHEREOF, each of the Parties have executed this Agreement, by its duly authorized representative.

AMERICAN COLLEGE OF CARDIOLOGY FOUNDATION	
Signature: _____	Signature: _____
Name: Lisa M. Hix	Name: _____
Title: General Counsel	Title: _____
Date: _____	Date: _____

EXHIBIT A
SCOPE OF USE

1. Implementation of appropriate use in Licensee's technology for the purposes of provisioning decision support to Licensee's clients.
2. All decision support nodes in the XML must be implemented either through pre-populated values from end user's clinical records or direct end user input. Clinical risk and probability calculations such as Framingham Risk and pre-test probability must be directly calculated by the Licensee's interface based on discrete values from the end user or its clinical system.
3. The clinical logic expressed in the XML file may not be flattened or consolidated in a way that removes a question or variable from the decision logic.
4. Licensee may consolidate data variables in the clinical logic for presentation purposes so long as the same number of data points contribute to the determination of the appropriate use rating.
5. ACCF shall review the implementation of the XML file in the Licensee system to determine whether provisions 2, 3, and 4 in this Exhibit A have been implemented prior to the ACCF content being made available to the Licensee's end customers. ACCF shall have thirty (30) days to review the implementation and fourteen (14) days to review any subsequent revision.
6. Licensee may add or bundle its own rules and criteria covering procedures not addressed by ACCF together with the Intellectual Property; provided, however, that such rules and criteria shall be clearly marked as Licensee's or Licensee client's modifications. Licensee's clients may add or bundle their own rules and criteria together with the Intellectual Property; provided, however, that such rules and criteria shall be clearly marked as Licensee's client's modifications.
7. Licensee may not restrict licensing of ACCF content, directly or indirectly, other than as outlined in this Agreement, including but not limited to avoidance of any restrictions placed on clients or other business contracts for the licensing of non-ACCF content.
8. Licensee may only make ACCF content available with other licensed content sets if such other content licenses contain no restrictions that would prevent Licensee's clients from selecting ACCF content for relevant procedures.
9. Restrictions on Use: ACCF AUC content may not be used in a program, project, or product that denies payment coverage for a service based on the ACCF AUC score provided.

EXHIBIT B
LICENSING FEES

Licensee shall pay the fee equal to the amount designated in the matrix below upon being identified as a Large, Medium, or Small Market Licensee by ACCF using the definitions in the matrix, as further detailed below. In order for ACCF to determine the license fee for a given year, Licensee shall provide ACCF the number of hospitals and healthcare systems that it has contracted for AUC in a given year by January 10th of the following year. Once ACCF determines the license fee a given year based on the numbers provided by Licensee, ACCF shall provide an invoice to Licensee and Licensee shall submit payment within thirty (30) days of receipt of the invoice.

If this Agreement is terminated for any reason, other than for ACCF's breach of Agreement, prior to the end of a given year, Licensee shall provide to ACCF, within ten (10) days of termination, the number of hospitals and healthcare systems that it has contracted for AUC during that year up to the date of termination. ACCF shall use the numbers provided by Licensee to determine the license fee and shall provide an invoice to Licensee for payment. Such payment shall be due within thirty (30) days of receipt of the invoice.

Market			Annual Fee		
	Hospitals	Healthcare Systems	First Year	Second Year	Third Year
Large	150+	20	USD\$100,000.00	USD\$150,000.00	USD\$200,000.00
Medium	50-149	5-19	USD\$50,000.00	USD\$75,000.00	USD\$75,000.00
Small	≤49	≤4	USD\$5,000.00	USD\$15,000.00	USD\$15,000.00

ACCF shall use the matrix to define the Licensee by identifying the highest Market in which the Licensee participates based on either (1) the number of hospitals or (2) the number of healthcare systems the Licensee has contracted for AUC. For clarity, the following scenarios are provided as an example:

1. If Licensee has contracted 49 hospitals and 6 healthcare systems for AUC, Licensee shall be defined as a Medium Market.
2. If Licensee has contracted 151 hospitals and 3 healthcare systems for AUC, Licensee shall be defined as a Large Market.

For purposes of this Agreement, the following definitions apply:

A Hospital is defined as a single facility or practice located in a discrete geographic area that is not part of any health system or is the only facility under a health system to utilize AUC. Excluded are facilities or practices that are not accessible by the general public, such as prison hospitals or college infirmaries.

A Healthcare System is defined by the American Hospital Association as either a multihospital or a diversified single hospital system. A multihospital system is two or more hospitals owned, leased, sponsored, or contract managed by a central organization.