

ICCBBA
VENDOR LICENSE AGREEMENT

This Agreement is made and entered into as of (*enter date here*) _____ ("Effective Date"), by and between

_____, whose principal place of business is

_____ ("The Vendor"),

and ICCBBA, whose principal place of business is P.O. Box 11309, San Bernardino, CA 92423-1309 USA ("ICCBBA").

WHEREAS, The Vendor desires to utilize the *ISBT 128* standard in order to read, store, interpret, transfer, print or otherwise manipulate *ISBT 128* data structures;

WHEREAS, ICCBBA desires to provide The Vendor with access to certain electronic databases and documents related to *ISBT 128*, including without limitation ICCBBA's Facility Identification Database and Product Code Database; and

WHEREAS, The Vendor is willing to accept such documentation and access, and to limit use of such documentation and access, pursuant to the terms and conditions herein.

NOW, THEREFORE, based on the foregoing facts and in consideration of the mutual covenants and conditions contained in this Agreement, ICCBBA and The Vendor hereby agree as follows:

1. **Definitions.**

- 1.1. "Affiliate" means, with respect to each party, any corporation or other form of business organization, which directly or indirectly owns, controls, is controlled by, or is under common control with, such party. An entity shall be regarded as being in control of another entity if the former entity has the direct or indirect power to order or cause the direction of the policies of the other entity through the ownership of more than fifty percent (50%) of the outstanding voting securities (or other comparable ownership interest for a business organization other than a corporation) of that entity.
- 1.2. "*ISBT 128*" is an international information standard for transfusion and transplantation and the documentation and databases that define said standard, including without limitation any updates and extensions thereof. *ISBT 128* is owned by ICCBBA and is protected by copyright.
- 1.3. "ICCBBA Web Site" means the Internet web site operated and maintained by ICCBBA located at www.iccbba.com, through which The Vendor shall have password controlled access to, among other things, ICCBBA's electronic databases related to *ISBT 128*, including without limitation ICCBBA's Facility Identification Database and Product Code Database.
- 1.4. "Initial Term" has the meaning ascribed in Section 6.1.
- 1.5. "Renewal Term" has the meaning ascribed in Section 6.2.
- 1.6. "Term" has the meaning ascribed in Section 6.2.

2. **Services.**

- 2.1. **Delivery of *ISBT 128* documentation, updates and extensions.** ICCBBA shall (i) grant The Vendor access to documentation pertaining to *ISBT 128*, including without limitation all updates and extensions related to *ISBT 128*, as they become available through the ICCBBA Web Site; (ii) provide updates and extensions of *ISBT 128* through the ICCBBA Web Site, and (iii) enable The Vendor to self-select a password (via the on-line request page) to gain access to the "Licensees Only" section of the ICCBBA Web Site.
- 2.2. **Corrections to *ISBT 128*.** ICCBBA shall use its best efforts to ensure that *ISBT 128*, including without limitation all data in any databases pertaining to *ISBT 128*, is complete, accurate and current. ICCBBA shall immediately publish on the ICCBBA Web Site any corrections related to *ISBT 128*, including without limitation all corrections to inaccurate or incomplete data in any databases pertaining to *ISBT 128*, provided that data contained in the Facility Identification Database and Product Code Database can only be as accurate as the most recent information provided to ICCBBA.
- 2.3. **Maintenance of ICCBBA Web Site.** ICCBBA shall use its best efforts to ensure that the ICCBBA Web Site is active and accessible to The Vendor during normal business hours throughout the Term.
- 2.4. **Warranty.** ICCBBA provides no warranty that the use of *ISBT 128* is suitable for any particular purpose and the selection, use, efficiency and suitability of *ISBT 128* is the sole responsibility of The Vendor. Under no circumstances shall ICCBBA's liability exceed the current annual license fee, and ICCBBA will in no circumstances be liable for any damages whatsoever, including without limitation damages for loss of data, business or goodwill or any other consequential losses of any nature arising from the use of *ISBT 128*, except for the indemnity provided for in Section 8.2.

3. **Responsibility of The Vendor.**

- 3.1. **Password Security.** The Vendor shall ensure that passwords to the ICCBBA Web Site are securely maintained and only made available to The Vendors employees. The Vendor shall ensure that the password is changed when employees with password access leave The Vendors employment, or if the password is otherwise divulged outside of the Vendors control.
- 3.2. **Version Control.** The Vendor shall ensure that copies of ICCBBA documentation and databases made by The Vendor are controlled and reviewed to ensure that they are updated to the most recent versions in a timely manner.
- 3.3. **License Control.** Where The Vendor utilizes copies of ICCBBA databases within their own software products The Vendor shall acknowledge ICCBBA copyright and shall ensure that license agreements are in place with their customers which ensure that: the customer maintains appropriate ICCBBA registration; database updates are performed at appropriate intervals; and the provisions of this agreement are maintained.

4. **Grant of License.**

- 4.1. **Use of *ISBT 128*.** ICCBBA grants to The Vendor a worldwide, non-exclusive license to access, download, reproduce, use and make back-up and archival copies of *ISBT 128* databases and documents for its business purposes, including without limitation to develop software, instrumentation or other products which access, download, or use *ISBT 128* databases or portions thereof.

5. **Payment.**

- 5.1. **Initial Term Annual Fee.** The Vendor shall pay ICCBBA Five Thousand Dollars (US \$5,000) per calendar year ("Initial Term Annual Fee") during the Initial Term. ICCBBA shall invoice The Vendor for payment of the Initial Term Annual Fee upon the Effective Date and in March of each successive year after the Effective Date during the Initial Term.
- 5.2. **Renewal Term Annual Fee.** ICCBBA shall be entitled to increase the annual fee in any Renewal Term by a rate not to exceed the rate of inflation in the USA, as measured by the Producer Price Index (PPI) for the medical diagnostics industry, over the annual fee in the prior term (each, a "Renewal Term Annual Fee"). ICCBBA shall invoice The Vendor for payment of the Renewal Term Annual Fee in March of each year.
- 5.3. **Payment of Annual Fees.** The Vendor shall pay ICCBBA pursuant to this Section 5 within thirty (30) days after receipt of each invoice.

6. **Term and Termination.**

- 6.1. **Initial Term.** This Agreement shall commence on the Effective Date and shall expire one (1) year after the Effective Date ("Initial Term").
- 6.2. **Renewal Term.** After the Initial Term, this Agreement shall automatically renew for additional one (1) year terms (each, a "Renewal Term"; the Initial Term and Renewal Term are collectively referred to herein as the "Term") upon the same terms and conditions set forth herein, unless The Vendor provides ICCBBA with thirty (30) days written notice of The Vendor's intent not to renew this Agreement prior to the commencement of a Renewal Term.
- 6.3. **Termination.** The Vendor may terminate this Agreement without cause upon thirty (30) days prior written notice to ICCBBA. Either party may terminate this Agreement upon written notice if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the breach. Upon termination The Vendor shall return or destroy all copies of ICCBBA databases and documents in its possession, and cease to use the *ISBT 128* standard in its products.

7. **Confidentiality.**

- 7.1. For purposes of this Agreement, the term "Recipient" shall mean The Vendor with respect to Confidential Information (as defined below) supplied hereunder by ICCBBA, and ICCBBA with respect to Confidential Information supplied hereunder by The Vendor. "Confidential Information" means any information, technical data or know-how which (i) has been marked as confidential or proprietary, (ii) is identified as confidential at the time of disclosure either orally or in writing, or (iii) which due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information, to the extent practical, shall be disclosed in documentary or tangible form marked "Confidential".
- 7.2. Confidential Information shall not include information which (i) Recipient can demonstrate was in its possession before receipt, (ii) is or subsequently becomes publicly available without Recipient's breach of any obligation owed the disclosing party, (iii) is disclosed to Recipient without restriction on disclosure by a third party who had the right to disclose such information, (iv) Recipient can demonstrate was independently developed without reliance on any Confidential Information or (v) is required by law to be publicly disclosed.
- 7.3. If the Recipient is required to disclose confidential information pursuant to applicable legislation, Recipient must use commercially reasonable efforts to give ICCBBA prior notice thereof and

grant ICCBBA the opportunity to make representations to the relevant authority with respect to the confidential nature of the information.

8. **Representations, Warranties, and Indemnity.**

8.1. Representations and Warranties. ICCBBA represents and warrants that (i) it has all rights and authority to enter into this Agreement; (ii) it has all rights and authority to license and provide access to *ISBT 128* pursuant to the terms of this Agreement; and (iii) neither *ISBT 128*, nor The Vendors use of ISBT as permitted under this Agreement, shall infringe any patent, copyright, trademark, trade secret or other right of any third party.

8.2. Indemnity. ICCBBA shall indemnify, defend and hold The Vendor and its subsidiaries, affiliates, and their respective directors, officers, agents, representatives, contractors, employees, successors and assigns harmless from and against any and all costs, liabilities and expenses, including without limitation, reasonable attorneys' fees, associated with the defense or settlement of any claim that *ISBT 128* infringes a patent, copyright, trademark, trade secret or other intellectual property right and shall pay any judgments or settlements based thereon. These obligations shall extend beyond the termination or expiration of this Agreement.

9. **General Provisions.**

9.1. Notices. All notices, accountings, payments, etc., which either party desires or is required to give to the other shall be given in writing by personal delivery, overnight courier, or sent by United States mail postage prepaid, return receipt requested or facsimile transmission acknowledged as received followed by personal or mail delivery addressed as follows:

To The Vendor:

To ICCBBA: ICCBBA
Attn: Executive Director
P.O. Box 11309
San Bernardino, CA 92423-1309 USA

All such notices shall be effective upon receipt or refusal thereof. Either party may change its notice address by a notice given to the other in the manner provided for in this Section.

9.2. Governing Law. The laws of the Commonwealth of Virginia, USA, in which state ICCBBA is incorporated, shall be applicable to the interpretation of this Agreement without regard to conflicts of law principles thereof. All claims arising out of or relating to this Agreement shall be brought solely in the state and federal courts located in the Commonwealth of Virginia, USA.

9.3. Assignment. Neither party may grant, assign, sublicense or otherwise convey any rights granted to it or delegate any duty or obligation owed by it under this Agreement without the prior written consent of the other party, except that The Vendor may, upon notice to ICCBBA, assign this Agreement and/or any rights or interests hereunder, or delegate any of its obligations hereunder,

to a successor pursuant to a merger, consolidation or sale, to an entity which acquires that portion of The Vendor's business to which this Agreement pertains, or to an Affiliate of The Vendor.

- 9.4. Mediation/Arbitration. Any controversy arising out of this license agreement shall be settled by non-binding arbitration in the first instance and, should that prove non-satisfactory, by arbitration in the Commonwealth of Virginia, in which state ICCBBA is incorporated, in accordance with the rules of the American Arbitration Association.
- 9.5. Waiver. The waiver of any of the terms or provisions of this Agreement in any one or more instances shall not be deemed a permanent waiver thereof or a waiver of this entire Agreement. No waiver shall be effective unless in writing signed by the waiving party.
- 9.6. Severability. In the event that any provision of this Agreement shall be held illegal or otherwise unenforceable, such provision shall be severed and the entire Agreement shall not fail on account thereof and the balance of this Agreement shall continue in full force and effect.
- 9.7. Headings. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define the scope or content of this Agreement or the construction of any provision hereof or of any document or instrument referred to herein.
- 9.8. Compliance with Law. In performing their obligations under this Agreement, ICCBBA and The Vendor shall comply with all applicable federal, state and local laws, rules and regulations.
- 9.9. Assignment. Neither party may assign or transfer this Agreement or any of its rights or duties under this Agreement and any such attempt to transfer will be deemed null and void.
- 9.10. Entire Agreement/Modification. This Agreement constitutes the entire agreement between ICCBBA and The Vendor relating to the transactions contemplated hereby. This Agreement may not be modified or amended except by a written agreement signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

(Vendor Name)

ICCBBA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____