



LICENSE AGREEMENT

THIS AGREEMENT is dated the _____ of _____, 2014.

BETWEEN:

POINT IN TIME, CENTRE FOR CHILDREN, YOUTH AND PARENTS, a not-for-profit corporation incorporated pursuant to the *Corporations Act* (Ontario) (the "Licensor")

- and -

[NAME OF AGENCY/SCHOOL/CENTRE], a not-for-profit corporation incorporated pursuant to the *Corporations Act* (Ontario) (the "Licensee")

WHEREAS:

- A. The Licensor has developed a web-based application for the purpose of evaluating clients in accordance with the Child and Adolescent Needs and Strengths (CANS), a multi-purpose tool developed for children's services to support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes of services (the "PInT CANS Application").
- B. The Licensee wishes to obtain from the Licensor a license to use the PInT CANS Application.
- C. The Licensor and Licensee wish to enter into this Agreement to establish the terms and conditions upon which the Licensor will grant a license to the Licensee to use the PInT CANS Application.

NOW THEREFORE in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 RECITALS

- 1.1 **Recitals.** The recitals are incorporated into and form part of this Agreement. Each party acknowledges and confirms the accuracy of the recitals.

2.0 DOCUMENTATION AND INTERPRETATION

- 2.1 **Interpretation.** Interpretation of this Agreement shall be subject to the following:
 - (a) **Authorized User.** Authorized User means an individual who is employee or contractor of the Licensee who is acting within the scope of an employment or agency relationship and who agrees to be bound by the terms of this Agreement.

- (b) **Gender.** Unless the context requires otherwise, words importing gender include all genders.
- (c) **Include, Etc.** Whenever the words “include”, “includes” or “including” (or similar terms) are used they are deemed to be followed by the words “without limitation”.
- (d) **Number.** Unless the context requires otherwise, words importing the singular include the plural and vice versa.
- (e) **Statute References.** Any reference to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time
- (f) **Time.** Any reference to a time shall be Toronto, Ontario time.

3.0 OWNERSHIP

- 3.1 **PinT CANS Application.** The PinT CANS Application consists of a native Apple IPAD application, a Rails web server and a MySQL database.
- 3.2 **Title.** The Licensor shall retain all right, title and interest (including all copyrights, patents, service marks, trademarks and other intellectual property rights) in and to the PinT CANS Application, including any and all updates, enhancements, customizations, revisions, modifications, further releases and any other changes thereto, and all related information, material and documentation, etc. Except for the license granted pursuant to this Agreement, the Licensee and its Authorized Users shall not acquire any interest in the PinT CANS Application or any other services or materials provide by Licensor pursuant to this Agreement.

4.0 GRANT OF LICENSE

- 4.1 **Non-Exclusive Use License.** Subject to the terms and conditions of this Agreement, the Licensor grants to the Licensee and its Authorized Users a non-exclusive, non-transferable license to use the PinT CANS Application (the "License") on a web-server hosted and controlled by the Licensor.

5.0 TERM AND TERMINATION

- 5.1 **Term.** The term of this Agreement shall continue indefinitely until terminated pursuant to the terms of this Agreement.
- 5.2 **Termination.** This Agreement may be terminated as follows:
 - (a) **No Cause.** By either party upon giving ninety (90) days written notice to the other for any reason or no reason whatsoever.
 - (b) **Cause.** Immediately upon giving notice:

- (i) **Government Directive.** By either party in the event the party receives a directive, order or such other communication from a Ministry to which the party is, in part or in whole, accountable requiring the party to cease its participation in the Agreement and/or the use of the License.
- (ii) **Material Default.** By either party in the event the other is in default of a material obligation under this Agreement.
- (iii) **Repeated Immaterial Default.** By either party in the event the other is in repeated default (three (3) or more times) in the performance of any of its obligations (whether the same or different obligations) under this Agreement which obligations are not alone considered material.
- (iv) **Bankrupt or Insolvent.** By either party in the event the other becomes bankrupt, insolvent, or a receiving order is made against it.
- (v) **Ceases Business.** By either party in the event the other ceases to operate.

5.3 **Fees; Return of Materials.** In the event of termination of this Agreement, all fees due and payable to the Licensor by the Licensee must be paid in full, and all material, whether original or photocopy, provided to the Licensee pursuant to this Agreement must be returned to the Licensor.

6.0 LICENCE FEES

6.1 **Licence Fees.** The Licensee shall make payment to the Licensor for use of the License pursuant to the terms set forth in Appendix A, attached hereto.

7.0 USE OF LICENCE

7.1 **Purpose.** The License shall be used by the Licensee to access the PInT CANS Application in order to evaluating clients in accordance with CANS, support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes of services.

7.2 **Performance Obligations of the Licensor.** The Licensor will:

- (a) provide activation support for the PInT CANS Application, including the provision of institutional usernames and initial passwords. Licensor will offer reasonable levels of continued support to assist Licensee and Authorized Users in the use of the License. Licensor will make certain of its personnel available by email, phone or fax during its normal business operations, for feedback, problem-solving or general questions.
- (b) provide appropriate training to Licensee staff relating to the use of the License and any Licensor materials.
- (c) provide and maintain help files and other appropriate user documentation.

- (d) use reasonable efforts to ensure the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of comparable to current standard in the on-line information provision industry in the Licensor's locale.
- (d) maintain the confidentiality of any data relating to the usage of the License by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the License and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.
- (e) co-operate with the Licensee in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

7.3 Performance Obligations of the Licensee. The Licensee will:

- (a) make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the License is granted under this Agreement including, in particular, any limitations on access or use of the License as set forth in this Agreement.
- (b) use reasonable efforts to inform Authorized Users of the restrictions on use of the License. In the event of any unauthorized use of the License by an Authorized User, (i) Licensor may terminate such Authorized User's access to the License, (ii) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee may terminate such Authorized User's access to the License upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing reasonable notice to Licensee (in no event less than 30 days) and cooperating with the Licensee to avoid recurrence of any unauthorized use.
- (c) where access to the License is to be controlled by use of passwords, shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.
- (d) maintain the confidentiality of any data relating to the usage of the License by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the License and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.
- (e) co-operate with the Licensor in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

7.4 Covenants of the Licensee. The Licensee covenants and agrees to:

- (a) pay the license fee and all other moneys in accordance with the terms of this Agreement;
- (b) comply with the terms and conditions of this Agreement;

7.5 Compliance with Laws.

- (a) The Licensee shall, at the Licensee's sole expense, comply with all laws, orders, ordinances and regulations of federal, provincial, state or municipal authorities, and with any direction made pursuant to law or by any public officer or officers, which relate to the Licensee's business including all personal information, personal health information and privacy legislation and requirements (collectively, the "Laws").
- (b) If at any time during the term of this Agreement or any renewal thereof, either party receives notice that the use of the License by the Licensee fails to comply with any Laws, the Licensee shall immediately take steps to correct any deficiencies, at the Licensee's sole expense, provided the Licensor shall first have approved such steps, acting reasonably.

8.0 INDEMNITY

- 8.1 **Indemnity.** Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

9.0 LIMITATION OF LIABILITY

- 9.1 **Limitation of Liability.** Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss or theft of data, identification theft, business interruption, negative client outcomes or loss of profits, arising out of the use of or the inability to use the License.
- 9.2 **No representations.** Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the License and its content, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
- 9.3 **As is Basis.** Except for the express warranties stated herein, the License, and materials provide by the Licensor are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the License, the materials, or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

10.0 COMMUNICATIONS

10.1 **Notices.** Unless otherwise expressly provided, all notices, requests, demands or other communications required or permitted to be given by one party to another shall be given in writing by personal delivery, by mailing the same by prepaid mail, or sent by facsimile or email as follows:

To the Licensor: Point in Time Centre for Children, Youth and Parents
69 Eastern Avenue
Box 1306
Haliburton, Ontario K0M 1S0

Attention: Executive Director
Facsimile: (705) 457-3492

To the Licensee: [Name of Licensee]

[address and contact information for the Licensee]

Attention: Executive Director
Facsimile:

or at such other address as may be given by any one of them to the other in writing as aforesaid from time to time, and such notices, requests, demands, acceptances and other communications shall be deemed to have been given and received as follows:

- (i) if made by personal delivery, when delivered;
- (ii) if sent by prepaid mail, on the fourth (4th) business day following the date of mailing;
- (iii) if transmitted by facsimile, one (1) day after the time of sending; or
- (iv) if transmitted by email, one (1) day after the time of sending.

In the event of disruption of normal postal service, notice may be made by delivery, facsimile or email only.

11.0 STORAGE OF DATA IN CANADA

11.1 **Consent.** The Licensee acknowledges that that all data collected and stored by the Licensor with respect to the use of PInT CANS Application by the Licensee will be stored in Canada and the Licensee, notwithstanding its location, agrees to the storage of such data in Canada.

12.0 MISCELLANEOUS

12.1 **Amendment.** No modification or amendment to this Agreement may be made unless agreed to by each of the parties in writing.

12.2 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other

agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Agreement.

- 12.3 **Dispute Resolution.** In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.
- 12.4 **Force Majeure.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- 12.5 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 12.6 **Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
- 12.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 12.8 **Successors and Assigns.** The Agreement may not be assigned by the Licensee without the consent of the Licensor. This Agreement shall enure to the benefit of, and be binding on, the parties and their respective successors and permitted assigns.
- 12.9 **Further Assurances.** The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 12.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Remainder of page intentionally left blank; signature block to follow]

IN THE WITNESS WHEREOF this Agreement has been executed as of the date first above written.

) **POINT IN TIME CENTRE FOR CHILDREN, YOUTH AND**
) **PARENTS**

)
)
) Per: _____

) I have authority to bind the corporation.

) **[NAME OF LICENSEE]**

) Per: _____

) Per: _____

) I have authority to bind the corporation.

APPENDIX A – LICENSE FEES

FOR AGENCIES WITH:

- 10 STAFF MEMBERS AND UNDER: \$39.99 PER MONTH
- 11 TO 20 STAFF MEMBERS: \$59.99 PER MONTH
- 20 TO 50 STAFF MEMBERS: \$89.99 PER MONTH
- 50 TO 60 STAFF MEMBERS: \$99.99 PER MONTH
(PLUS \$1 PER MONTH PER EACH ADDITIONAL STAFF MEMBER WHEN MORE THAN 60 STAFF)

TERMS AND CONDITIONS:

1. ALL SUBSCRIPTIONS INCLUDE: 24 HOUR ACCESS TO THE PINT CANS; AND A ONE-HOUR ONLINE GET STARTED WITH PINT CANS TRAIN-THE-TRAINER SEMINAR THAT MAY BE ATTENDED BY UP TO TWO STAFF MEMBERS PER AGENCY
2. SUBSCRIPTIONS ARE RENEWED ANNUALLY WITH MONTHLY BILLING
3. ADDITIONAL TECHNICAL SUPPORT IS AVAILABLE FOR AN ADDITIONAL COST. PLEASE CONTACT POINT IN TIME, CENTRE FOR CHILDREN, YOUTH AND PARENTS FOR MORE DETAILS AT: GETSTARTED@CANSAPP.CA
4. PLEASE SEE THE USER AGREEMENT AND LICENSE AGREEMENT FOR FULL DETAILS AND LEGAL USE
5. ALL PRICES LISTED ARE IN CANADIAN DOLLARS
6. INTRODUCTORY PRICING WILL BE IN EFFECT UNTIL JANUARY 1, 2015