

## DOLPHIN SOFTWARE LICENSE AGREEMENT

**1 CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE INSTALLING OR USING THIS SOFTWARE PRODUCT (THE "DOLPHIN SOFTWARE"). BY CLICKING "Yes" BELOW AND INSTALLING OR USING THE DOLPHIN SOFTWARE, YOU ("CUSTOMER") AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHETHER OR NOT YOU HAVE READ THEM. IF YOU DO NOT AGREE TO THESE TERMS, CLICK "No" BELOW AND DO NOT INSTALL OR USE THE DOLPHIN SOFTWARE; IF APPLICABLE YOU MAY CONTACT DOLPHIN TO ARRANGE THE RETURN OF THE DOLPHIN SOFTWARE AND A REFUND OF APPLICABLE LICENSE FEES PAID.**

**2 Software License; Acceptance.** Subject to the terms and conditions of this Agreement, Patterson Dental Supply, Inc., a Minnesota corporation ("Licensor"), grants Customer a limited, revocable, nonexclusive license to use the Dolphin Software. Customer is purchasing a license to use the Dolphin Software. Customer is not purchasing the Dolphin Software. The Dolphin Software licensed under this Agreement is Dolphin Imaging Software (including Aquarium™), Dolphin Management Software, or Dolphin Update Service ("DUS"). Licensor has acquired its rights to license the Dolphin Software from its subsidiaries, Dolphin Imaging Software, LLC, and Dolphin Practice Management, LLC, who do business as Dolphin Imaging & Management Solutions and are referred to in this Agreement individually and collectively as "Dolphin."

**3 Restrictions on Use of the Dolphin Software.** Except as provided in this Section 3 and in Section 4, Customer may not copy, distribute, adapt or prepare derivative works from, reverse engineer, disassemble, decompile, rent, lend, lease, sell, or otherwise transfer or disclose the Dolphin Software or make the Dolphin Software available to third parties. For backup purposes Customer may make one copy of the Dolphin Software. Except as permitted in Section 18, use of the Dolphin Software by any person or legal entity other than Customer is a breach of this Agreement. Customer will use its best efforts to protect the Dolphin Software from unauthorized reproduction or use.

Customer may use the Dolphin Software on a single computer, or on a network server system supporting multiple workstations for use by up to a designated number of concurrent users, upon payment of the applicable license fees for each module. To use Imaging Software at more than one site, Customer must purchase a separate license for each site.

In addition, with respect to Aquarium™, Customer, for Customer's internal patient treatment purposes only, is permitted to provide copies of Aquarium™ content ("Content") solely to Customer's patients or prospective patients to support the diagnosis, treatment or education of Customer's patients or prospective patients. Customer shall notify all patients and prospective patients to whom Customer provides the Content that the Content may not be redistributed by such patient or prospective patient to any third party. In the event, subject to the limitations above, Customer desires to provide the Content to Customer's patients or prospective patients by uploading such Content to online content-sharing websites or similar services, Customer agrees that such Content shall be uploaded in a manner that (i) restricts the persons who may view the Content to those persons who have a specific Customer-provided link or reference to access the Content, (ii) prevents the Content from being publicly searchable, (iii) neither transfers nor is deemed to transfer any rights, title or interest in or to the Content, including any intellectual property rights, and (iv) permits Customer to remove the Content upon Customer's demand. Licensor reserves the right, in its sole discretion, to require Customer to remove the Content from any online content-sharing website or similar service.

**4 Restrictions on Transfer of the Dolphin Software.** Customer may not sublicense, assign, or transfer any of its rights to use the Dolphin Software without the prior written consent of Licensor and payment of applicable fees.

**5 Ownership.** Customer acknowledges and agrees that Licensor and its licensors are the sole owners of all right, title, and interest in and to the Dolphin Software, including all intellectual property rights; this Agreement confers on Customer no ownership interest or intellectual property rights in the Dolphin Software; the Dolphin Software is protected under United States, Canadian and other applicable copyright and intellectual property laws and international treaty provisions; and the Dolphin Software has been developed at considerable time and expense to Licensor and its licensors and contains confidential and proprietary information not generally known. Customer acknowledges that any misuse of the Dolphin Software or other breach of Section 3 or 4 of this Agreement will cause irreparable harm to Licensor for which Licensor cannot be adequately compensated by damages. Consequently, Customer agrees that in addition to any other remedies available to Licensor, Licensor shall be entitled to seek injunctive or other equitable relief to prevent such breach or further breaches of this Agreement. Customer shall not remove any copyright, trademark, or confidentiality notice from the Dolphin Software.

**6 Updates.** Updates to the Dolphin Software may be made available to Customer from time to time. Unless accompanied by or expressly made subject to another license agreement, such updates are "Dolphin Software" subject to the terms of this Agreement.

**7 Limited Warranty.**

- (a) Media. Licensor warrants to Customer that, for a period of 30 days following the date of the invoice for the Dolphin Software, the media containing the Dolphin Software shall be free from material defects in materials and workmanship under normal use. If a material defect in such media appears during such period, Customer's sole and exclusive remedy and Licensor's sole liability under this warranty is the replacement of defective media. To receive a replacement, during the 30 day period Customer must contact Dolphin, 9200 Oakdale Avenue Suite 500, Chatsworth, CA 91311 (800-548-7241).
- (b) Software: Customer Satisfaction. If Customer is not satisfied with the Dolphin Software and returns it to Dolphin (9200 Oakdale Avenue Suite 500, Chatsworth, CA 91311) within 120 days after either delivery of the Dolphin Software to Customer or completion of initial training purchased with the Dolphin Software, Dolphin will refund all license fees paid by Customer for the returned Dolphin Software. Customer remains obligated to pay all charges for training, installation, and other services performed.

**8 Disclaimer of Warranty.** THE EXPRESS, LIMITED WARRANTIES PROVIDED IN THE FOREGOING SECTION 7 OF THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY LICENSOR. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, OTHER THAN THE EXPRESS WARRANTIES IN SECTION 7 OF THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE DOLPHIN SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPUTER CODE.

**9 Disclaimer of Liability.** IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY: (A) LOSS OF PROFITS OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, HOWEVER CAUSED, AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; OR (B) CLAIMS MADE AGAINST LICENSOR MORE THAN TWO YEARS AFTER THE RELATED CAUSE OF ACTION AROSE. WITHOUT LIMITATION OF THE FOREGOING, LICENSOR SHALL HAVE NO LIABILITY FOR LOSS OF DATA HOWEVER CAUSED AND LICENSOR SHALL HAVE NO LIABILITY FOR DAMAGE

CAUSED BY MALICIOUS SOFTWARE, AND WHETHER OR NOT PREVENTED OR PREVENTABLE BY ANTI-VIRUS OR INTRUSION PROTECTION SOFTWARE ACQUIRED FROM LICENSOR.

**10 Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT EXCEPT SECTION 11, LICENSOR'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION IN RESPECT OF THE DOLPHIN SOFTWARE OR THE PERFORMANCE OR NON-PERFORMANCE OF OR INABILITY TO USE THE DOLPHIN SOFTWARE, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID BY CUSTOMER FOR THE DOLPHIN SOFTWARE.

**11 Indemnification.**

- (a) Third Party Infringement Claims. Licensor will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Dolphin Software directly infringes any United States copyright or misappropriates any trade secret recognized as such under the Minnesota Uniform Trade Secrets Act, and Licensor will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.
- (b) Conditions. Licensor's obligations under the preceding paragraph with respect to an action are conditioned on (i) Customer notifying Licensor promptly in writing of such action, (ii) Customer giving Licensor sole control of the defense thereof and any related settlement negotiations, and (iii) Customer cooperating with Licensor in such defense (including, without limitation, by making available to Licensor all documents and information in Customer's possession or control that are relevant to the infringement or misappropriation claims, and by making Customer's personnel available to testify or consult with Licensor or its attorneys in connection with such defense).
- (c) Licensor's Options. If the Dolphin Software becomes, or in Licensor's opinion is likely to become, the subject of an infringement or misappropriation claim, Licensor may, at its option and expense, either (i) procure for Customer the right to continue using the Dolphin Software, (ii) replace or modify the Dolphin Software so that it becomes non-infringing, or (iii) terminate Customer's right to use the Dolphin Software and give Customer a refund or credit for the license fees actually paid by Customer to Licensor for the infringing components of the Dolphin Software less a reasonable allowance for the period of time Customer has used the Dolphin Software.
- (d) Exclusions. Notwithstanding the foregoing, Licensor will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon (i) any use of the Dolphin Software not in accordance with this Agreement or any documentation for the Dolphin Software, or for purposes not intended by Licensor; (ii) any use of the Dolphin Software in combination with other products, equipment, software or data not supplied by Licensor; (iii) any use of any release of the Dolphin Software other than the most current release made available to Customer; or (iv) any modification of the Dolphin Software made by any person other than Licensor.
- (e) Entire Liability. This section states Licensor's entire liability and Customer's sole exclusive remedy for infringement and misappropriation claims and actions.

**12 Term and Termination.** The license granted under this Agreement is effective until terminated. Customer may terminate the license at any time by discontinuing use of the Dolphin Software. Licensor may terminate the license EFFECTIVE IMMEDIATELY if Customer fails to pay any license fee or other amounts owing to Licensor or Dolphin in respect of the Dolphin Software or fails to comply with any term of this Agreement. Upon termination of the license for any reason, Customer shall return all copies of the

Dolphin Software to Licensor upon its request, remove all copies of any Dolphin Software from its computers and demonstrate or certify to Licensor's satisfaction that it has done so, and immediately pay in full any owing and unpaid portion of the license and other fees. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, and Licensor's proprietary rights, shall survive termination of the license.

**13 Government License Rights.** The Dolphin Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government licensees and end users acquire the Dolphin Software with only those rights set forth herein. Contractor/manufacturer is Dolphin.

**14 Software Support.** Customer may purchase support services for the Dolphin Software from Dolphin. Licensor does not provide support services. If Customer has purchased support, Dolphin will provide reasonable technical support by telephone (800-548-7241) or online during normal business hours, and by telephone outside of normal business hours. If Customer has not contracted for support and requests support, Customer agrees to pay Dolphin's then standard hourly service fees. Hours and other terms of service in effect from time to time are described at [www.dolphinimaging.com](http://www.dolphinimaging.com). Dolphin may modify such terms from time to time without notice. Service calls may be recorded for quality assurance purposes. According to its pricing policies in effect from time to time, Dolphin may make certain software and updates available free of license fees to customers who are continuously enrolled in the Dolphin software support plans for such software. Software and updates are not generally free of license fees for customers not continuously on the Dolphin software support plan.

### **15 Customer Obligations.**

- (a) Back-Up. Customer shall keep up-to-date backup copies of all data for recovery purposes. Licensor shall have no liability for any loss of data arising out of the provision of maintenance and support services to Customer, including losses arising from the installation of upgrades or error corrections provided by Licensor. In all circumstances, Customer and not Licensor is responsible for ensuring that its data is accurately backed up on a daily basis.
- (b) Cooperation. Customer shall provide Licensor all data, information and cooperation Licensor deems necessary for the performance of Licensor's obligations under this Agreement. Licensor shall have no liability for any delay in the performance of Licensor's obligations resulting from Customer's failure to provide data or information or to cooperate.
- (c) Data Security & PCI Standards. Licensor has used commercially reasonable efforts to ensure that the Dolphin Software, if subject to Payment Card Industry Data Security Standards (PCI DSS), complies as of the date of this Agreement with PCI DSS. In its use of the Dolphin Software, Customer shall comply with Customer's obligations under PCI DSS and other applicable data protection standards.
- (d) Compliance with Law. Customer shall comply with all laws and contractual obligations, including requirements of insurers, credit card issuers and other third party service providers, applicable to Customer's use of any product described in the proposal. Such laws and obligations include, but are not limited to, state and federal statutes, rules and regulations governing record retention, billing error resolution, confidentiality, data privacy and security, and claims and payment processing; state Medicaid rules and regulations restricting access to and use of eligibility information; rules and regulations of the federal Department of Health and Human Services; and PCI DSS.
- (e) Use in Accordance with Specifications. Customer shall use the Dolphin Software in accordance with the operator and user guides and other manuals and technical information and specifications, whether in hard copy, electronic or other format, furnished by Licensor to Customer.

(f) **Indemnification.** Licensor shall have no liability for Customer's failure to comply with its obligations under this Section 15. Customer shall defend, indemnify and hold harmless Licensor from and against any loss or damage, including attorneys' fees, resulting from Customer's breach or claimed breach of any such obligation.

**16 No Waiver.** Any representation, affirmation of fact, course of dealing, usage of trade, promise or condition in connection with this Agreement not incorporated herein shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be effective unless in writing and signed by a duly authorized representative of Licensor. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

**17 Miscellaneous.** This Agreement shall be governed by the laws of the state of Minnesota except that the law of any state where Customer is located shall govern the enforceability of the license and other fees if enforceable under such state's law and not under Minnesota law. This Agreement constitutes the entire agreement between the parties as to the subject matter of this Agreement and supersedes all other communications, oral or written. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

**18 Identity of Customer.** If the dentist (or other dental specialist) who signed the proposal for the Dolphin Software (the "signer") operates his or her dental practice or business as a corporation, partnership or other legal entity, "Customer" as used in this Agreement means the legal entity, and the signer shall be deemed to have signed the proposal on behalf of that legal entity with the intention and authority to bind it. In that case, the legal entity, and not the signer in his or her individual capacity, is the licensee of the Dolphin Software. If the signer does not do business as a legal entity, but as a sole proprietor or otherwise, the signer in his or her individual capacity is the Customer (and licensee). In that case, use of the Dolphin Software in the signer's dental practice or business by employees of the signer on the terms agreed to by Customer is not a breach of this Agreement.

**19 Export Control Laws.** Customer shall comply with all laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other terms, such laws prohibit, or require a license for, the export of computer software to specified countries, entities and persons. Customer will indemnify, defend and hold harmless Licensor from and against the consequences of any violation of such laws.

**20 Customer Responsibility for Data Security and Backup.** Customer is solely responsible for the security and backup of its data and for the accuracy and completeness of all data entered by Customer in the process of using the Dolphin Software. Licensor strongly encourages Customer to (a) protect its network from unauthorized access, (b) archive and verify its data on a daily basis, (c) keep all software current with the latest security patches and updates, and (d) employ up-to-date encryption technology or other appropriate means to protect the security of its data while transmitted, electronically or otherwise, to Licensor. Licensor shall have no liability for any unauthorized interception or disclosure of Customer data while transmitted by Customer to Licensor.

**21 Client Consent.** Customer represents and warrants to Licensor that it has obtained and shall obtain all consents required by law or contract from clients of Customer whose health, financial or other personal information may be disclosed to Licensor in the course of Customer's use, or Licensor's installation, maintenance or support of, the Dolphin Software. Customer shall defend, indemnify and hold harmless Licensor from and against any loss or damage resulting from Customer's failure, or claimed failure, to obtain any such consent.