

COMPUTER BASED TRAINING LICENCE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN YOU, THE EMPLOYEE, THE INDIVIDUAL, OR THE ENTITY IDENTIFIED AS “CUSTOMER” (AS DEFINED HEREINAFTER) AND PATHWISE, INC. THIS AGREEMENT STATES THE TERMS AND CONDITIONS UNDER WHICH CUSTOMER MAY USE THE COMPUTER BASED TRAINING. BY CLICKING ON THE ACCEPT BUTTON, INSTALLING, HAVING COMPUTER BASED TRAINING INSTALLED ON CUSTOMER’S BEHALF, COPYING, HAVING COMPUTER BASED TRAINING COPIED ON CUSTOMER’S BEHALF, VIEWING OR HAVING COMPUTER BASED TRAINING VIEWED ON CUSTOMER’S BEHALF, CUSTOMER INDICATES THAT CUSTOMER HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO BE BOUND BY THE TERMS SET FORTH IN THIS AGREEMENT. IF “COMPUTER BASED TRAINING” IS INSTALLED, COPIED OR VIEWED ON BEHALF OF CUSTOMER, THE TERMS SET FORTH IN THIS AGREEMENT SHALL APPLY TO CUSTOMER AS WELL AS TO THE INDIVIDUAL OR ENTITY INSTALLING, COPYING OR VIEWING “COMPUTER BASED TRAINING” ON BEHALF OF CUSTOMER. THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE EARLIER OF THE DATE THE COMPUTER BASED TRAINING IS DOWNLOADED OR THE DATE THAT THE SALES AGREEMENT IS EXECUTED BETWEEN PATHWISE, INC. AND CUSTOMER. ANY REFUNDS (IF APPLICABLE) SHALL BE SUBJECT TO PATHWISE INC. STANDARD REFUND POLICY IN EFFECT, LESS ANY APPLICABLE FEES.

COMPUTER BASED TRAINING AGREEMENT

This COMPUTER BASED TRAINING Agreement (“Agreement”) is made as of the Effective Date by and between PATHWISE, INC. (“PATHWISE”), incorporated in the state of Utah, and the individual or entity identified on the Sales Agreement as customer (“Customer”).

WITNESSETH:

WHEREAS, PATHWISE owns the certain COMPUTER BASED TRAINING media entitled COMPUTER BASED TRAINING; and

WHEREAS, Customer has independently determined that the COMPUTER BASED TRAINING will meet the needs of Customer; and

WHEREAS, Customer desires to receive a license to view the COMPUTER BASED TRAINING.

NOW THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, PATHWISE and Customer hereby agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS

Section 1.01 -- Recitals: The above recitals and identification of parties are true and correct.

Section 1.02 -- Definitions: The following definitions shall apply:

- (1) Access: The term “Access” and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) COMPUTER BASED TRAINING: The term “COMPUTER BASED TRAINING” shall mean any viewable, written or audio media that enables a user to view, read or listen to the production or application titled COMPUTER BASED TRAINING.
- (3) Associate: The term “Associate” shall mean an employee of PATHWISE or an independent contractor hired by PATHWISE.
- (4) Authorized Person: The term “Authorized Person” shall mean Customer or employees of Customer who agree in writing to maintain the confidentiality of Confidential Information and individuals or organizations who are authorized in writing by PATHWISE to receive Confidential Information and who agree in writing to maintain the confidentiality of such Confidential Information.
- (5) Cancellation Notice: The term “Cancellation Notice” shall mean that written notice sent by PATHWISE to Customer seeking to cancel this Agreement because of breach of this Agreement by Customer.

- (6) Confidential Information: The term “Confidential Information” shall mean all information concerning this Agreement and the COMPUTER BASED TRAINING which is disclosed by PATHWISE to Customer or learned by Customer.
- (7) Delivery Date: The term “Delivery Date” shall mean the date COMPUTER BASED TRAINING is downloaded by Customer (as applicable).
- (8) Effective Date: The term “Effective Date” shall mean the earlier of the date that the Sales Agreement is executed by PATHWISE and Customer or the date COMPUTER BASED TRAINING is downloaded or viewed.
- (9) Implement: The term “Implement” and variants thereof (including, but not limited to, the terms “implementation”, “implementing” and “implemented”) shall mean to load.
- (10) Price: The term “Price” shall mean the total price to be paid by Customer to PATHWISE for licensing COMPUTER BASED TRAINING.
- (11) Restatements: The term “Restatements” shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, Section 1 of the Uniform Trade Secrets Act, and Section 1839 of Title 18 of the United States Code (18 U.S.C. § 1839).
- (12) Term: The term “Term” shall mean a period of time commencing on the Effective Date and continuing until this Agreement is terminated or canceled under Article IV.
- (13) Third Party Technology: The term “Third Party Technology” shall mean third party software, computer, hardware, peripherals, components, devices, equipment and technology used in connection with or related to the COMPUTER BASED TRAINING.
- (14) Unauthorized User: The term “Unauthorized User” shall mean any individual who views the COMPUTER BASED TRAINING except for: employees of Customer authorized by Customer to view COMPUTER BASED TRAINING within the scope of the Sales Agreement, who agree to maintain the confidentiality of Confidential Information and who are authorized under the Sales Agreement.

ARTICLE II: COMPUTER BASED TRAINING

Section 2.01 -- Grant of License: PATHWISE hereby grants to Customer a non-exclusive and non-transferable license to use the COMPUTER BASED TRAINING for the License Term, subject to the terms and provisions of this Agreement.

Section 2.02 -- Delivery: Customer hereby acknowledges PATHWISE shall deliver the COMPUTER BASED TRAINING to the Customer.

Section 2.03 -- Implementation: Customer shall implement and download the COMPUTER BASED TRAINING.

Section 2.04 -- Acceptance: The COMPUTER BASED TRAINING shall be deemed accepted by Customer after the Delivery unless Defect Notice is received by PATHWISE. Upon receiving Defect Notice from Customer, PATHWISE shall review the asserted Defect to determine if the Defect is valid. If, in the reasonable professional judgment of PATHWISE the asserted Defect is valid, PATHWISE shall correct the Defect and resubmit COMPUTER BASED TRAINING for acceptance by Customer. If, in the reasonable professional judgment of PATHWISE the asserted Defect is not valid, PATHWISE shall submit to Customer a written explanation of the reasons why such asserted Defect is not valid. The written explanation of PATHWISE set forth herein shall be deemed accepted by Customer after receipt by Customer of such written explanation unless PATHWISE receives from Customer written notice rejecting such explanation and terminating this Agreement. Upon receipt of Defect Notice from Customer by PATHWISE as set forth above, COMPUTER BASED TRAINING shall be deemed accepted by Customer except as to the asserted Defects specified in the Defect Notice.

Section 2.05 -- Authorized Use: Customer shall prevent Unauthorized Users from viewing the COMPUTER BASED TRAINING. Customer shall promptly inform PATHWISE of any and all Unauthorized viewing (or suspected Unauthorized viewing) and Unauthorized Users (or suspected Unauthorized Users) of which Customer has knowledge or suspicion.

Section 2.06 -- End Use: Customer hereby represents and warrants that the COMPUTER BASED TRAINING is being licensed by Customer for its own use and not for rental, leasing, resale, sublicensing, distribution, outsourcing, or offering service bureau services.

ARTICLE III: PAYMENT

Section 3.01 -- Price: Customer shall pay the Price identified in the Sales Agreement on or before the Effective Date.

ARTICLE IV: TERMINATION

Section 4.01 -- Termination Limitations: This Agreement shall only be terminated or canceled as provided under this Article IV.

Section 4.02 -- Term: This Agreement shall be valid for the Term.

Section 4.03 -- Termination: Customer may terminate this Agreement for convenience upon providing ten (10) days written notice of termination to PATHWISE, subject to the terms and provisions of this Agreement.

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Section 4.04 -- Cancellation for Cause: If Customer violates its obligations under this Agreement, PATHWISE may cancel this Agreement by sending Cancellation Notice describing the noncompliance to Customer. Upon receiving Cancellation Notice, Customer shall have ten (10) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required ten (10) day period, PATHWISE shall have the right to cancel this Agreement as of the eleventh day after the date of the Cancellation Notice.

ARTICLE V: WARRANTY

Section 5.01 -- Warranty: PATHWISE represents and warrants that the COMPUTER BASED TRAINING shall perform substantially as represented by PATHWISE. Customer's exclusive remedy for breach of warranty shall be modification or replacement of the COMPUTER BASED TRAINING, as determined by PATHWISE.

SECTION 5.02 -- DISCLAIMER: THE WARRANTIES SET FORTH IN SECTION 5.01 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND PATHWISE HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 5.03 -- Express Warranties: Customer hereby acknowledges and agrees that PATHWISE (including PATHWISE officers, employees, agents, directors, independent contractors, affiliates, distributors and successors) has not made or granted any express warranties concerning the COMPUTER BASED TRAINING except as expressly set forth in Section 5.01 of this Agreement.

Section 5.04 -- Remedies: The exclusive remedy of Customer for any reason and for any cause of action whatsoever in connection with or relating to this Agreement or the COMPUTER BASED TRAINING, regardless of the form of action, whether in contract or in tort, including negligence and breach of warranty, shall be limited to repair or replacement of the COMPUTER BASED TRAINING as determined by PATHWISE.

Section 5.05 -- Limitation of Damages: PATHWISE shall not be liable to Customer in connection with or relating to this Agreement, the COMPUTER BASED TRAINING and any transactions involving the COMPUTER BASED TRAINING for any direct, indirect, lost profits, consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including breach of warranty and negligence, regardless of whether PATHWISE has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. Notwithstanding anything to the contrary, the liability of PATHWISE for any reason and for any cause of action whatsoever in connection with or relating to this Agreement, the COMPUTER BASED TRAINING and any transactions involving the COMPUTER BASED TRAINING shall be limited to the license fee for the COMPUTER BASED TRAINING.

ARTICLE VI: INTELLECTUAL PROPERTY

Section 6.01 -- Ownership and Title: Title to the COMPUTER BASED TRAINING, including all ownership rights to patents, copyrights, trademarks and trade secrets therein or in connection therewith shall be the exclusive property of PATHWISE. Customer hereby assigns, transfers and conveys to PATHWISE any and all rights, title and interests Customer may have or accrue in the COMPUTER BASED TRAINING, including (without limitation) any and all ownership rights to patents, copyrights, trademarks and trade secrets therein or in connection therewith.

Section 6.02 -- Confidential Information: The COMPUTER BASED TRAINING shall be deemed Confidential Information of PATHWISE. Customer shall maintain the Confidential Information in strict confidence. Customer shall not disclose Confidential Information except to Authorized Persons. Customer shall not access, duplicate or use the Confidential Information except as otherwise permitted under this Agreement.

Section 6.03 -- Copies: Customer shall not copy the COMPUTER BASED TRAINING and shall not allow the COMPUTER BASED TRAINING to be copied without the prior written consent of PATHWISE.

Section 6.04 -- No Contest: Customer shall not contest or aid in contesting the ownership or validity of the trademarks, service marks, trade secrets, or copyrights of PATHWISE.

Section 6.05 -- Proprietary Notices: Customer shall not remove, alter or obscure any copyright notices or other proprietary legends displayed by or used by PATHWISE in connection with or related to the COMPUTER BASED TRAINING.

Section 6.06 -- Trademarks: PATHWISE trademarks, trade dress, logos, tradenames or insignia ("PATHWISE Marks"), are owned exclusively by PATHWISE. PATHWISE shall retain all rights, title and ownership interests in PATHWISE Marks. Customer shall not (directly or indirectly) use any trademark, tradename, trade dress, insignia or logo that is similar to or a colorable imitation of any PATHWISE Marks.

Section 6.07 -- Continuation: The terms and conditions of this Article VI shall survive termination and cancellation of this Agreement.

ARTICLE VII: MISCELLANEOUS

Section 7.01 -- Entire Agreement: This Agreement and the Sales Agreement contain the entire understanding of the parties and supersede previous verbal and written agreements between the parties concerning the COMPUTER BASED TRAINING. In the event of a conflict between the terms of this Agreement and the terms of the Sales Agreement, the terms of this Agreement shall prevail.

Section 7.02 -- Severability: If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 7.03 -- Governing Law: This Agreement shall be governed by the laws of the State of Utah without regard to any rules of conflict or choice of laws which require the application of laws of another jurisdiction and venue shall be in Salt Lake City, Utah.

Section 7.04 -- Notice: Notices shall be in writing and shall be deemed delivered when delivered by commercial overnight delivery service, by courier, Certified or Registered Mail with Return Receipt Requested or by hand to the address set forth below for PATHWISE and to the address set forth on the Sales Agreement for Customer. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt.

Address: PATHWISE
1411 North 910 East American Fork, UT 84003

Section 7.05 -- Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other under this Agreement are true, correct and accurate as of the Effective Date to the best of their knowledge.