

# END-USER LICENSE AGREEMENT

## IMPORTANT PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY

### TERMS AND CONDITIONS

By opening, installing, copying or otherwise using the attached RIPE Calculator you agree to the following:

#### I. DEFINITIONS

- A. "Documentation" means all materials in written, computer readable or other form containing information about the Licensed Software that accompany the Licensed Software, that NJHA may provide during the term of this Agreement.
- B. "Licensed Software" means the RIPE Calculator for which Licensee is granted a license under this Agreement.
- C. "Licensee" means recipient. Licensee has permission to share the RIPE Calculator with other staff only as necessary to complete the calculation of the penalties.
- D. "NJHA" means the New Jersey Hospital Association.
- E. "RIPE Calculator" means Reform Insurance Penalty Estimator a calculator developed by NJHA to assist employers in determining any potential penalties they may face associated with the Patient Protection and Affordable Care Act.

#### II. GRANT OF LICENSE

On the terms and conditions of this Agreement, and upon payment of all applicable license fees, NJHA grants to Licensee and Licensee accepts the non-exclusive licenses and the restrictions set forth below:

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- C. Limitation on Use. Licensee understands and acknowledges that Licensee may install and use only the number of copies of the RIPE Calculator specifically provided to Licensee by NJHA. Licensee may install an unlimited number of copies of the RIPE Calculator for use by Licensee, provided Licensee does not receive any direct payment for doing so. If Licensee wishes to increase the scope of its licensed use of the Licensed Software, Licensee must purchase additional software from NJHA.
- D. Backup Copies. Licensee is permitted to make copies of the RIPE Calculator only to the extent as it may be necessary for backup and archival purposes.

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- C. Trade Secrets.** Licensee acknowledges that the Licensed Software contains valuable trade secrets belonging to NJHA. Licensee may not reverse engineer, unencrypt, decompile, disassemble or otherwise translate the Licensed Software, or allow anyone else to do so.
- D. Support Services.** NJHA may provide Licensee with support services related to the RIPE Calculator ("Support Services"), including but not limited to any product updates. Any supplemental versions provided to you as part of the Support Services shall be considered part of the RIPE Calculator and Documentation and is subject to the terms and conditions of this EULA.

#### **IV. NO WARRANTIES**

NJHA is providing the Licensed Software and the Documentation "as is" and, to the maximum extent permitted by law, NJHA specifically disclaims any and all warranties, including but not limited to warranties of merchantability, non-infringement or fitness of a particular purpose (whether or not NJHA knows, has reason to know, has been advised or is otherwise in fact aware of any such purpose) or conditions. NJHA does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the RIPE Calculator. NJHA 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.

#### **V. LIMITATION OF LIABILITY**

In no event shall NJHA be liable for any damages (including, without limitation, lost profits, business interruption, or lost information) rising out of the Licensee's use of or inability to use the RIPE Calculator, even if NJHA has been advised of the possibility of such damages. In no event will NJHA be liable for loss of data or for indirect, special, incidental, consequential (including lost profit), or other damages based in contract, tort or otherwise. NJHA shall have no liability with respect to the content of the RIPE Calculator or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, privacy, trademark rights, business interruption, personal injury, loss of privacy, moral rights or the disclosure of confidential information.

#### **VI. TERMINATION**

Without prejudice to any other rights, NJHA may terminate this Agreement if Licensee fails to comply with the terms and conditions of this Agreement. In such event, Licensee must destroy all copies of the Licensed Software and Documentation in whatever form they exist, including all back-up copies and certify, in writing, to NJHA that all copies have been destroyed.

#### **VII. GENERAL TERMS**

- A. Alternate Dispute Resolution.** Any controversy, dispute or disagreement arising out of or relating to this Agreement, or the breach thereof, shall be settled by a conciliation process in which the Parties' respective CEOs discuss the dispute directly in a face-to-face or teleconference meeting. If the conciliation process does not resolve the issue, the dispute will go to voluntary mediation and, if unsuccessful, binding arbitration, which shall be conducted in Princeton, New Jersey before one (1) neutral arbitrator in accordance with the rules of the American Arbitration Association, and judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction there.
- B. Governing Law and Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. Licensee consents to exclusive jurisdiction and venue of the federal and state courts in Mercer County, New Jersey for resolution of any disputes concerning this Agreement.

- C. Complete Understanding.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding its subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by duly authorized representatives of both NJHA and Licensee.
- D. Disclaimer of Agency.** NJHA and Licensee each acknowledge that the parties to this Agreement are independent. Neither party is authorized or empowered to act as agent or legal representative for the other for any purpose and shall not, on behalf of the other entity, enter into any contract, warranty or representation as to any matter. Neither party shall be bound by the acts or conduct of the other. Nothing herein shall be construed as creating a partnership or joint venture.
- E. No Waiver.** The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that provision or any other available right or remedy.
- F. Severability.** In the event that any provision of this Agreement is found to be invalid, illegal or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- G. Headings.** The section headings used in this Agreement are intended for convenience only and shall not be deemed to modify, limit or supersede any provision.

I agree to the Terms and Conditions of the Above Agreement

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Facility Name