

CERTIFICATION MARK LICENSE AGREEMENT

This Certification Mark License Agreement (“**Agreement**”) by and between Continua Health Alliance, an Oregon nonprofit mutual benefit corporation (the “**Alliance**”), and _____, a _____ [entity type] (the “**Licensee**”), is entered into as of the day on which the latter of Parties’ signature has been executed (the “**Effective Date**”).

RECITALS

- A. WHEREAS, Alliance is a nonprofit corporation formed as provided by its Bylaws, for the purpose of providing its members with support for aligning, enabling and developing interoperability in personal health devices to offer consumers a broad set of complementary products and services;
- B. WHEREAS, Alliance has developed certification marks as set forth in Exhibit A and is willing to license such marks to licensees that have tested a product in accordance with the Continua Health Alliance Test and Certification Program (the “**Certification Program**”), which provides independent third-party review and testing of products for conformance with Alliance’s specification(s) as set forth in Continua Health Alliance’s Certification Specification Document (the “**Certification Specification Document**”);
- C. WHEREAS, Licensee’s product has been tested and found to conform with the specifications outlined in the Certification Specification Document (the “**Certified Product(s)**”) and Alliance wishes to enter into a license to allow Licensee certain limited rights to use the Mark (defined below), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.**

- 1.1 “**Bylaws**” means Alliance Bylaws as may be amended from time to time by Alliance.
- 1.2 “**Confidential Information**” means various trade secrets and confidential information of the parties, including without limitation, marketing plans, technical information, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, and processes.
- 1.3 “**Mark**” means one or more of Alliance’s CONTINUA CERTIFIED certification marks, as set forth more specifically in Exhibit A.
- 1.4 “**Member**” shall mean a general reference to all Promoters and Contributors (as such terms are defined in the Bylaws) who have so qualified for such classifications pursuant to the provisions of the Bylaws.

1.5 All other capitalized terms used in this Agreement shall have the same meaning as they are defined in this Agreement or as given in the Bylaws.

2. **Mark License.**

2.1 **License Grant.** Subject to and conditioned upon Licensee's compliance with this Agreement, Alliance grants to Licensee, and Licensee accepts, a limited, worldwide, non-exclusive, non-transferable, sublicensable (but only as expressly set forth in Section 2.2), non-assignable, royalty-free, revocable license to use the Mark on its Certified Product for purposes of placing the Mark on Licensee's Certified Product and/or on packaging and marketing materials related to the Certified Product; and on Licensee's website related to the Certified Product. No other right, title, or license is granted hereunder.

2.2 **Sublicense.**

2.2.1 Licensee acknowledges and agrees that its right to grant sublicenses hereunder is limited to sublicensing the use of the Mark to third parties for advertising and promotional purposes pursuant to the form of license agreement ("Advertising/Promotional License") attached hereto as Exhibit C, unless otherwise authorized by Alliance in writing. Alliance shall not enter into any license or sublicense agreement with any third party on terms different than those set forth in the Advertising/Promotional License, or otherwise permit or authorize any third party to use the Mark other than as expressly set forth herein. Licensor is solely responsible for the third party's use of the Mark and is liable for any misuse of the Mark by the third party.

2.2.2 Upon entering into a Advertising/Promotional License with a third party, Licensee shall submit the following information in writing to Alliance: (i) the party's company name, full address, and company email; (ii) the contact names and title for the representative signing the Advertising/Promotional License on behalf of the party; and (iii) a copy of the fully executed Advertising/Promotional License.

2.3 **No Challenge of Ownership Interests.** Licensee acknowledges Alliance's exclusive rights to the Mark and all goodwill associated therewith, and acknowledges that any and all use of the Mark inures to the sole benefit of Alliance. Licensee shall not challenge Alliance's exclusive ownership rights in and to the Mark, nor take action inconsistent with Alliance's rights in such trademarks. Licensee shall not adopt, use, apply to register and/or register as its own trademark(s) any word(s) or design(s) confusingly similar to or that dilute(s) the Mark, or other Alliance trademarks, service marks, or certification marks for any product and/or service. If at any time Licensee acquires any rights in, or registration(s) or application(s) for the Mark or other Alliance marks by operation of law or otherwise, Licensee hereby immediately and at no expense to Alliance assigns such rights, registrations, and/or applications to Alliance, along with any and all associated goodwill.

3. **Proper Usage of the Mark.**

3.1 **Usage Manual.** Licensee's use of the Mark shall be in strict accordance with the Certification Logo Usage Manual provisions for the certification marks (the "Usage Guidelines"), which is attached as Exhibit B, and may be updated from time to time by Alliance in its sole

discretion. Alliance will notify Licensee of any updates to the Usage Guidelines and Licensee shall comply with the updated Usage Guidelines within 60 days of receiving notice of such updates.

3.2 Identification of Certified Device Classes. In conjunction with the use of the Mark in association with the sale and distribution of the Certified Product, Licensee shall identify in literature included as part of the Certified Product's packaging which Alliance Certified Device Classes, as set forth in the Continua Health Alliance Certification Design Guidelines, the Certified Product supports.

3.3 Positive Usage. Licensee shall display the Mark only in a positive manner. Licensee will not use the Mark or any other Alliance trademarks in any way that disparages Alliance, its products or services, or in any manner which would diminish or otherwise damage Alliance's goodwill, including, but not limited to, uses which could be deemed to be obscene, pornographic, excessively violent, or otherwise in poor taste or unlawful, or which purpose is to encourage unlawful activities.

3.4 Attribution. Licensee shall attribute to Alliance ownership of the Mark as set forth in the Usage Guidelines.

3.5 No Alteration or Modification. Licensee may not alter or modify the Mark or any other trademark owned by Alliance or allow others to do so, except that Licensee may proportionally resize the Mark in accordance with the Usage Guidelines. The license rights granted herein are applicable only to the Mark depicted in Exhibit A; use of any artwork or graphic files from any other source is prohibited.

4. Quality Control and Right to Review and Inspect.

4.1 Manufacturing Processes.

4.1.1 Use of Mark on Certified Products. The Certified Products that Licensee produces that are marked with the Mark under this Agreement shall be substantially identical to the Certified Product that was approved and registered pursuant to the Certification Program. Further, Licensee covenants, represents and warrants that the Certified Products meet the requirements set forth in Alliance's Certification Specification Document.

4.1.2 Modification of Certified Products. The Certification Specification Document provides specific instructions to Licensee in event Licensee modifies a Certified Product that was previously approved and registered pursuant to the Certification Program, including, the re-certification of a Certified Product depending on the nature of the modification. In the event Licensee makes modifications or changes to the Certified Product, Licensee shall consult and comply with relevant provisions of the Certification Specification Document. In the event Licensee is required to re-certify a modified Certified Product under the terms of the Certification Specification Document, Licensee shall immediately cease all use of the Mark in association with the modified Certified Product until such time as the modified Certified Product is approved and registered pursuant to the Certification Program.

4.2 Review and Inspection.

4.2.1 Alliance's Right to Inspect and Review Certified Products and Promotional Materials. To ensure compliance with Licensee's obligations hereunder, Alliance has the right to review and inspect Licensee's promotional material and Certified Products to ensure compliance with the terms of this Agreement, in Alliance's sole discretion. Licensee shall cooperate fully in providing Alliance access to or assisting Alliance in gaining access to Licensee's documents, materials and Certified Products, including providing Alliance with up to two (2) commercially available samples of a Certified Product to Alliance upon request. Licensee shall also allow Alliance to inspect and review upon Alliance's written request Licensee's internal test lab records, in whatever form, pertaining to the Certified Product. If following review and inspection, Alliance determines that Licensee's promotional materials and/or Certified Products violate the terms of this Agreement, Alliance shall promptly notify Licensee in writing of the violation. Licensee may respond to Alliance's finding in writing within five (5) business days following receipt of the notice. Alliance shall notify Licensee in writing of its final determination regarding a violation within five (5) business days following receipt of Licensee's response.

4.2.2 Cessation of Sales. Should Alliance maintain its determination that Licensee's promotional materials and/or Certified Products violate this Agreement pursuant to Section 4.2.1, Licensee shall cease all use of the offending promotional materials and all sales of the offending Certified Product as follows: (i) if the violation relates to software, Licensee shall cease all sales of the Certified Product within two (2) months following Licensee's receipt of Alliance's final determination under Section 4.2.1; (ii) if the violation relates to hardware, Licensee shall cease all sales of the Certified Product within three (3) months following Licensee's receipt of Alliance's final determination under Section 4.2.1; (iii) if the violation relates to Licensee's promotional materials regarding a Certified Product, Licensee shall cease all use of the offending promotional materials within one (1) month following Licensee's receipt of Alliance's final determination under Section 4.2.1.

4.2.3 Licensee's Obligations Regarding Previously Sold Products. If a Certified Product found to be in violation of the terms of this Agreement under Section 4.2.1 has previously been sold to consumers, retailers, distributors, or others in the marketplace, Licensee shall take reasonable steps under the circumstances to bring the previously sold Certified Product into compliance with the terms of this Agreement as follows: (i) if the violation relates to software, Licensee shall fully remediate the violation within six (6) months following Licensee's receipt of Alliance's final determination under Section 4.2.1; (ii) if the violation relates to hardware, Licensee shall fully remediate the violation within twelve (12) months following Licensee's receipt of Alliance's final determination under Section 4.2.1. The determination of whether Licensee has fully and adequately remediated its violation(s) regarding previously sold products shall be solely within the discretion of Alliance.

4.2.4 Failure to Comply With Timelines. Licensee's failure to comply with the timelines set forth in this Section 4 shall result in the termination of Licensee's rights under this Agreement; provided however, Licensee may request in writing that Alliance extend any timeline for good cause shown.

4.3 **Compliance with Laws.** Licensee shall comply with all applicable laws and regulations in its advertising, promotion, display and use of the Mark.

5. **Confidentiality.**

5.1 **Use Restrictions and Non-Disclosure Obligations.** During the term of this Agreement, Alliance and Licensee may have access to and become acquainted with Confidential Information of each other. Except as otherwise provided for herein, neither party shall: (i) use Confidential Information for any purpose without the prior written authorization of the other; or (ii) disclose Confidential Information to any other person or entity without the prior written authorization of the other.

5.2 **Exceptions.** The following use or disclosure of Confidential Information shall not be a violation of Section 5.1: (i) information that is generally known when received or hereafter becomes lawfully obtainable from other sources; or (ii) information disclosed in accordance with a judicial or other governmental order, or as may otherwise be required by law.

5.3 **Return of Materials.** Upon either party's request, or upon the termination of this Agreement, all materials containing Confidential Information shall be returned to the disclosing party. The obligations concerning Confidential Information set forth herein shall survive the termination of this Agreement.

6. **Protection of Interest.**

6.1 **Notification of Unauthorized Use.** In the event Licensee (i) becomes aware of any unauthorized use of the Mark by a third party or a third-party licensee or (ii) has an objectively reasonable belief that the use of the Mark by a third-party licensee is noncomplying, Licensee shall promptly notify Alliance in writing, and shall provide reasonable cooperation, at Alliance's expense, in any enforcement of Alliance's rights against such third party or a third-party licensee. The right to enforce Alliance's rights in the Mark rests entirely with Alliance and shall be exercised in Alliance's sole discretion. Licensee shall not commence any action or claim to enforce Alliance's rights in the Mark.

6.2 **Third Party Challenge.** In the event that a third party that has not been licensed to use the Mark by Alliance challenges Licensee's use of the Mark, Licensee shall immediately notify Alliance in writing. Alliance shall undertake and conduct the defense of such a challenge and Licensee shall not enter into any discussions, negotiations, or settlements, or any other action pertaining to said challenge without the express written consent of Alliance. Alliance shall not be obligated to undertake the defense of a third party challenge between co-licensees of Alliance. Alliance or Licensee may immediately terminate this Agreement in the event that a challenge to the Mark is brought against Licensee and Licensee agrees to cooperate fully with Alliance, at Alliance's expense, in the event such a challenge is brought.

6.3 **Violation of Agreement.** Except as otherwise provided for herein, should Licensee violate this Agreement, Licensee shall have thirty (30) calendar days to correct such violation upon notice from Alliance. Should Licensee fail to correct such violation within the thirty (30) days' notice, then this Agreement will immediately terminate upon notice from Alliance.

7. Disclaimer by Alliance.

7.1 Mark Disclaimer. THE MARK IS PROVIDED “AS-IS” AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NONINFRINGEMENT OR OF THE VALIDITY OF ALLIANCE’S RIGHTS IN THE MARK, IN ANY COUNTRY, AND ALLIANCE DISCLAIMS ANY AND ALL WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY APPLICABLE LAW.

7.2 Manufacturing Disclaimer. The Mark may be used only in connection with Certified Products. If a Certified Product carries the Mark, it means that Alliance has determined that a representative sample of the Certified Product met Alliance’s Certification Program’s requirements set forth in Alliance’s Certification Specification Document. ALLIANCE MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE CERTIFIED PRODUCTS MEET THE REQUIREMENTS SET FORTH IN ALLIANCE’S CERTIFICATION SPECIFICATION DOCUMENT OR THAT THE USE OF THE CERTIFIED PRODUCTS WILL BE SAFE, ERROR FREE, ACCURATE, OR UNINTERRUPTED. ALLIANCE MAKES NO REPRESENTATIONS NOR ACCEPTS ANY DUTY OR RESPONSIBILITY FOR ANY DESIGN OR TESTING PURSUANT TO THIS AGREEMENT.

8. Licensee’s Covenants, Representations and Warranties and Indemnification.

8.1 Licensee’s Covenants, Representations and Warranties. Licensee covenants, represents and warrants the following:

8.1.1 That Licensee is a Member in good standing of Alliance; and

8.1.2 That Licensee’s Certified Product is substantially identical to the manufactured Certified Product that Licensee will sell or sells to end users or consumers.

8.2 Licensee’s Indemnification of Alliance. Licensee agrees to indemnify Alliance against and from all loss, cost, liability and expense incurred by Alliance that arise out of a claim (a) regarding the inaccuracy or violation of any of the representations, warranties or covenants contained in Section 8.1; (b) concerning Licensee’s use of the Mark not in accordance with the terms of this Agreement; (c) concerning Licensee’s design, manufacture, testing, marketing, advertising, promotion, endorsement or sale of any products and/or platform; or (d) arising out of Licensee’s Certified Product; provided however, Alliance agrees to provide Licensee with prompt notice of any such claims and shall provide Licensee with reasonable assistance (at Licensee’s expense) in the defense or settlement of such claims. In no case shall Licensee be required to indemnify Alliance regarding the validity or noninfringement of the Mark.

8.3 Limitation of Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR

PUNITIVE DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **Term and Termination.**

9.1 **Term.** The term of this Agreement shall extend from the Effective Date until terminated.

9.2 **Termination.** The parties further agree that this Agreement may be terminated:

9.2.1 Immediately upon termination, expiration or cancellation of Licensee's membership in Alliance;

9.2.2 As set forth in Sections 4.1, 4.2, 6.2, or 6.3, respectively; or

9.2.3 Upon ninety (90) days advance written notice by Licensee.

Upon expiration or termination of this Agreement, all rights and the license granted under this Agreement shall immediately and automatically terminate.

9.3 **Effect of Termination.** Upon cancellation, expiration or termination of this Agreement (the "**Termination Date**"), Licensee shall: (i) immediately terminate all current Advertising/Promotional License for the Mark; and (ii) immediately cease all use of the Mark; provided, however, that Licensee will have thirty (30) calendar days from the Termination Date to sell any Certified Products that were manufactured prior to the Termination Date.

10. **Additional Provisions.**

10.1 **Choice of Law and Jurisdiction.** The validity, construction and performance of this Agreement shall be governed by U.S. federal law and the laws of the State of Oregon, without reference to conflict of laws principles. The parties further acknowledge and agree that any non-contractual cause of action that either party may assert, including but not limited to trademark infringement, trademark dilution, passing off, false designation of origin, unfair competition and other non-contractual causes of action, will be governed by U.S. federal law and the law of the State of Oregon. Any dispute arising out of this Agreement shall be brought in, and the parties consent to personal and exclusive jurisdiction of and venue in, the state and federal courts within Multnomah County, Oregon.

10.2 **Equitable Relief.** Licensee recognizes and acknowledges that the breach of any of its covenants, agreements, undertakings, terms or conditions hereunder may cause Alliance irreparable damage, which cannot be readily remedied by monetary damages in an action at law, and may, in addition thereto, constitute a violation of Alliance's trademark rights and rights under the laws of unfair competition. In the event of any default or breach by Licensee, including any action by Licensee that could cause some loss or dilution of Alliance's goodwill, reputation, or rights in the Mark, Alliance shall be entitled to an immediate injunction in addition to any other remedies available, to stop or prevent such irreparable harm, loss, or dilution.

10.3 **Representation as to Authority.** The parties to this Agreement represent and warrant that they have the sole right and exclusive authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any interest, right, claim or demand, or portion thereof, relating to any matter in this Agreement.

10.4 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions. However, if Alliance determines in its discretion that the court's determination causes this Agreement to fail in any of its essential purposes, it may immediately terminate the Agreement.

10.5 **No Waiver.** The failure of any party to enforce at any time one or more of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of any party to enforce each and every such provision thereafter.

10.6 **Relationship of the Parties.** No agency, partnership, joint venture, franchise, or employment is created between the parties as a result of this Agreement. Neither party is authorized to create any obligation, express or implied, on behalf of the other party.

10.7 **No Endorsement.** Licensee shall make no claims or indications that Alliance endorses its products or services.

10.8 **Notices.** All notices, consents, requests and demands to or upon the respective parties hereto must be in writing (including e-mail) and may be delivered to the parties at the below addresses ("Notice"). Such Notice will be effective upon receipt.

If to Alliance:

If to Licensee:

Continua Health Alliance
c/o VTM, Inc.
3855 SW 153rd Drive
Beaverton, Oregon 97006

w/ copy to

Timothy F. Haslach
Schwabe, Williamson & Wyatt, P.C.
1211 SW Fifth Avenue, Suites 1500-2000
Portland, Oregon 97204

10.9 **Entire Agreement.** This Agreement and any Attachments thereto constitute the entire agreement between the parties concerning the subject matter hereof and supersedes all proposals, oral or written, all negotiations, conversations, and/or discussions between the parties relating to the License.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement.

ALLIANCE

Continua Health Alliance

LICENSEE

By:

By:

Title:

Title:

Date:

Date:

EXHIBIT A

Horizontal Version



Vertical Version



EXHIBIT B

The Continua Health Alliance Certification Logo Usage Manual can be found at:
<http://members.continuaalliance.org/apps/org/workgroup/tcwg/download.php/5085/latest>

EXHIBIT C

Advertising/Promotional License Form

EXHIBIT D

The documents referenced herein are as follows:

Title	Location	Version
Continua Health Alliance Certification Specification Document	http://members.continuaalliance.org/apps/org/workgroup/tcwg/download.php/5022/latest	Version 0.9.1
Continua Certified: Logo Guidelines	http://members.continuaalliance.org/apps/org/workgroup/mwg/download.php/2682/latest	
Continua Health Alliance Certification Design Guidelines	http://members.continuaalliance.org/apps/org/workgroup/wg_chairs/download.php/4569/ContinuaV1_DG_HL7_R1-2009-06-18.pdf	
Continua Health Alliance Certification Logo Usage Manual	http://members.continuaalliance.org/apps/org/workgroup/tcwg/download.php/5085/latest	Version 1.01