

# **ORDER AGREEMENT FOR 3M™ Enhanced Ambulatory Patient Grouping Systems Definitions Manual Version 3.1**

THIS Agreement is entered into between 3M Health Information Systems ("3M"), a Delaware corporation with a principal place of business 575 W. Murray Boulevard, Murray Utah 84123 and CUSTOMER whose name and address appears at the foot of this AGREEMENT.

1. 3M grants to CUSTOMER and CUSTOMER accepts, subject to these terms and conditions, the non-transferable, non-exclusive right to use one or more copies of the Enhanced Ambulatory Patient Groups Definitions Manual (hereafter referred to as the Manual) solely for its own internal purposes.
2. CUSTOMER acknowledges that the Manual contains confidential and proprietary information of 3M. CUSTOMER will treat the Manual and its contents as the confidential, proprietary information of 3M. CUSTOMER will immediately notify 3M if CUSTOMER has knowledge that any unauthorized party is in possession of any portion of the Manual (or any copy) or gives evidence of unauthorized use of its contents.
3. CUSTOMER will not:
  - (a) sell, lease, license or otherwise transfer the right to use any portion of the Manual;
  - (b) copy or reproduce any portion of the Manual;
  - (c) store any portion of the Manual in a retrieval system or transmit any portion of the Manual;
  - (d) permit any portion of the Manual or any information derived from the Manual to be disclosed to any third party (including but not limited to any agent or supplier); or
  - (e) use any information contained in or derived from the Manual to develop software or any other product having capabilities generally described in the Manual.
4. If CUSTOMER or any of its employees shall disclose, use, dispose or duplicate any part of the Manual in a manner contrary to the terms of this Agreement, 3M shall have the right, in addition to other remedies which may be available to 3M, to obtain injunctive relief against such acts or threatened acts, without prejudice to any other remedies which may be available to 3M, it being acknowledged that legal remedies are inadequate.
5. 3M does not warrant that the functions or information contained in the Manual will meet CUSTOMER's requirements or that the Manual will be error free. OTHER THAN AS SET FORTH ABOVE, 3M DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE MANUAL (INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR CUSTOMER'S BUSINESS NEEDS OR ANY OTHER PARTICULAR PURPOSE), EITHER EXPRESS OR IMPLIED.
6. 3M SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE MANUAL OR ITS USE, EVEN IF 3M HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
7. This Agreement shall become effective upon execution of this Agreement by both parties and shall remain in force in perpetuity unless terminated earlier as provided in this Agreement.
8. CUSTOMER shall pay a fee of \$400 to 3M for delivery of each copy of the Manual. Such sum is, in all counts, non-refundable and shall entitle CUSTOMER to the use of the Manual as authorized in this Agreement. The \$400 fee shall also entitle CUSTOMER to receive periodic corrections to the Manual originally delivered to CUSTOMER, as made available by 3M. The \$400 fee does not entitle CUSTOMER to any later publications of the Manual as may be produced by 3M. In that case, another fee would be charged to obtain a later copy of the Manual.
9. Failure by 3M or CUSTOMER to comply with any term or condition of this Agreement shall entitle the other party to give the party in default written notice requiring it to make good such default provided that if CUSTOMER violates any of the conditions of Section 3, this Agreement shall immediately terminate. If the party in default has not cured such default within thirty (30) days after receipt of notice, the notifying party shall be entitled, in addition to any other rights it may have under this Agreement or otherwise under law, to terminate this Agreement by giving notice to take effect immediately. Sections 2, 3, 4, 10, 11 and 12 shall survive any termination of this agreement.
10. Upon termination of this Agreement, CUSTOMER shall return the Manual to 3M and shall certify that it has not retained any elements of the Manual.
11. The validity, construction and interpretation of this Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.
12. Regardless of the form or theory of any legal or equitable action brought against 3M by CUSTOMER, CUSTOMER's exclusive remedy and recovery shall be limited to general money damages (and no other relief) in a total amount not to exceed the amount of the fees paid under Section 8. This amount includes any and all claims combined, including any costs and/or attorneys' fees awarded CUSTOMER, and the foregoing shall constitute CUSTOMER's exclusive remedy.

Note that the Manual is primarily a reference guide and educational tool, and is not designed to facilitate the assignment of EAPG's for large volumes of patients. Individuals primarily concerned with this task should obtain 3M's Enhanced Ambulatory Patient Grouping Enhanced Ambulatory Patient Grouping Systems Definitions Manual Revised 03/06/08

