

Nose Monitor® End User License Agreement

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THE NOSE® MONITOR. THE NOSE® MONITOR IS A MICROPROCESSOR-CONTROLLED, INTELLIGENT DEVICE PROPRIETARY TO PURECHOICE, WHICH REQUIRES THE USE OF PROPRIETARY EMBEDDED SOFTWARE FOR OPERATION. THIS CUSTOM SOFTWARE IS PROTECTED BY APPLICABLE U.S. AND INTERNATIONAL LAW. USE OF THE SOFTWARE EMBEDDED IN THE NOSE® MONITOR REQUIRES THE PURCHASER TO AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT FOR THE EMBEDDED SOFTWARE.

BY SIGNING THE CONFIRMING ORDER, OR BY INSTALLING OR OTHERWISE USING THE SOFTWARE INSTALLED ON THE NOSE® MONITOR, YOU ARE SIGNING THIS AGREEMENT, THEREBY BECOMING BOUND BY ITS TERMS. IF YOU DO NOT AGREE WITH THIS AGREEMENT, THEN RETURN THE NOSE® MONITOR, THE SOFTWARE, AND ACCOMPANYING MATERIALS TO PURECHOICE, INC. ("PURECHOICE") OR THE RESELLER FROM WHOM YOU OBTAINED THE NOSE® MONITOR, AND, IF YOU ARE THE ORIGINAL PURCHASER, YOU WILL BE ISSUED A REFUND OF THE PRICE THAT YOU PAID FOR THE NOSE® MONITOR (OR THE APPLICABLE INVOICE FOR THE NOSE® MONITOR WILL BE CANCELLED) IF YOU RETURN THE NOSE® MONITOR, SOFTWARE, AND ACCOMPANYING MATERIALS WITHIN 30 DAYS FROM THE DATE OF PURCHASE.

As used in this Agreement, "we," "us" and "our" refer to PureChoice, and "you" and "your" refer to the person or entity using the Software in the Nose® Monitor and any of their affiliates. If the Nose® Monitor and/or Software are being installed by a third-party (for example, a reseller, distributor, dealer, consultant, employee or agent), such third-party represents that it has the authority to bind the person or entity for whom the Nose® Monitor and/or Software are being installed, and that its acceptance of this Agreement in the manner set forth above does bind such person or entity.

As used in this Agreement, "Software" means the PureChoice computer software program installed on or embedded in the Nose® Monitor, together with any fixes, updates, modifications and enhancements (if any) as may, from time to time, be provided to you by PureChoice, either with a Nose® Monitor or provided to you separately. The term "Software" also includes any associated user documentation and other written materials which may be provided by PureChoice for your use in connection with the Software.

This Agreement is our offer to license the Software to you solely on the terms set forth in this Agreement, and is subject to the condition that you accept these terms in their entirety. If you have submitted (or hereafter submit) different, additional, or other alternative terms to PureChoice or any reseller, distributor or authorized dealer, whether through a purchase order or otherwise, we object to and reject those terms. Without limiting the generality of the foregoing, any shipment to you of the Software by PureChoice, whether installed on a Nose® Monitor or separately, is not an acceptance of your purchase order, but rather is a counteroffer subject to your acceptance of this Agreement without any objections or modifications by you. No contract may be formed, and we are not willing to proceed, except on the terms of this Agreement. To the extent that we are deemed to have formed a contract with you related to the Software prior to your acceptance of this Agreement, this Agreement shall govern and shall be deemed to be a modification of any prior terms in their entirety, notwithstanding any restrictions on modifications or the methods for effectuating modifications that may have been present in any such prior contract.

- 1. Grant of License.** Subject to the terms and conditions of this Agreement, PureChoice hereby grants you a limited, non-exclusive and non-transferable license to install and use one copy of the Software in object code form installed on a Nose® Monitor in accordance with the terms and conditions of this Agreement.
- 2. Permitted Use.** You may use the Software only (a) in accordance with the applicable documentation, (b) installed on a Nose® Monitor purchased from PureChoice, (c) to communicate with computer equipment which is owned, leased or otherwise controlled by you, and (d) for your own internal use to process data collected by a Nose® Monitor. The Software may not be installed or used on a network or on any other computer or processor, unless you can demonstrate such use was authorized by PureChoice, as shown by dated purchase documentation (e.g., a dated invoice or receipt) for the Software.
- 3. Restrictions on Use.** Except as otherwise expressly authorized in this Agreement, you shall not (a) copy the Software except as reasonably required for backup and archival purposes; (b) prepare derivative works of the Software; (c) distribute, lease, sublicense, rent, lend, give, transfer, assign or

otherwise make all or any portion of the Software available to any third-party, except as expressly authorized in this Agreement; (d) reverse engineer, decompile, disassemble, modify, adapt, alter or translate the Software or cause or allow discovery of the source code or underlying ideas or algorithms of the Software or attempt to do so, and, to the extent permissible by law, you waive any rights that you may have to do any of the foregoing; (e) use the Software to manage or process information or data on behalf of any third-party or use the Software for or in connection with a service bureau, ASP service, subscription service, time-sharing arrangement or any type of commercial venture that generates revenue as a direct result of the Software; (f) remove, obscure or modify any copyright, trademark or other proprietary or intellectual property rights notices contained in or on any Software or any copies thereof; or (g) use the Software separately from a Nose® Monitor.

4. **Ownership.** The Software is licensed to you, not sold. All rights, title and interest in and to the Software and all copyrights, trade secrets, and trademarks related thereto, including U.S. Patent Nos. RE 38,985 E and 6,782,351 titled Environment Monitoring System and Air Quality Monitoring and Space Management System Coupled to a Private Communications Network (hereafter "PureChoice Patents") and other forms of proprietary and intellectual property right are exclusively owned by PureChoice. This Agreement does not convey to you any interest in or to the Software or PureChoice Patents, but only a limited right of use that is revocable in accordance with the terms of this Agreement. You and your affiliates acknowledge and agree that the PureChoice Patents are valid and enforceable and you and your affiliates agree not to take any action inconsistent with such ownership. All rights not expressly granted in this Agreement are reserved by PureChoice and its licensors.

5. **Confidentiality.** You acknowledge and agree that the Software contains confidential and proprietary information of PureChoice and its licensors, including the Software's source code, structure, sequence and organization. Neither you nor your employees or agents shall use (except to the extent expressly authorized in this Agreement) or disclose such confidential or proprietary information to any third-party or otherwise allow any third-party to use or access the Software, except you may allow your third-party contractors to use or access the Software in accordance with the terms of this Agreement solely to the extent necessary for such third-party contractors to perform services for you and on your behalf, provided that (a) such third-party contractors agree to be bound by the terms and conditions of this Agreement (including the confidentiality obligations and restrictions on use) and (b) you shall be responsible for any act or omission of such third-party contractors.

6. **No Maintenance.** Except as expressly provided in Section 7, PureChoice has no obligation to provide maintenance or support for the Software under this Agreement and may discontinue distribution of the Software at any time.

7. **Limited Warranty.** PureChoice warrants that the Software will perform substantially in accordance with the specifications set forth in the applicable PureChoice documentation for a period of sixty (60) days from the original date of delivery; provided that the Software (a) has not been altered, unless such alteration has been approved by PureChoice in writing, (b) is installed on a Nose® Monitor and (c) is operated in accordance with the applicable documentation. If notified of such nonconformity within the 60-day period, PureChoice, at its sole option, will (y) repair or replace any Software that does not operate in accordance with the specifications set forth in the applicable documentation; or (z) refund the license fee paid by you for the Nose® Monitor and terminate this Agreement and the license granted herein, provided that in order to receive such refund, you must first return to PureChoice the Nose® Monitor, all copies of the Software and any accompanying materials, discontinue all use of the Software and delete all copies of the Software in your possession. These remedies are further subject to the condition that you provide PureChoice with information sufficient to allow PureChoice to reproduce the nonconformity. THE LIMITED WARRANTY AND REMEDIES IN THIS SECTION 7 ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PERTAINING TO THE SOFTWARE.

8. **Disclaimer of Warranties.** EXCEPT AS PROVIDED IN SECTION 7, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, PURECHOICE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY OF ANY INFORMATIONAL CONTENT OR THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING OR USAGE OF TRADE. Without limiting the foregoing, PureChoice and its licensors do not warrant that the operation of the Software will meet your requirements or will be uninterrupted or error-free. CERTAIN STATES DO NOT ALLOW DISCLAIMERS OF CERTAIN WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO ONE OR ALL OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

9. **Limitation of Liability.** IN NO EVENT SHALL PURECHOICE OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR ANY LOST PROFITS, BUSINESS INTERRUPTION, COSTS OF DELAY, ANY FAILURE OF DELIVERY, LOSS OF DATA, REVENUE, PROFITS OR GOODWILL, COSTS OF LOST OR DAMAGED DATA, DOCUMENTATION OR EQUIPMENT, OR LIABILITIES TO THIRD PARTIES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE (INCLUDING THE USE OR INABILITY TO USE THE SOFTWARE, ERRORS IN THE SOFTWARE, OR MALFUNCTIONS OR ERRONEOUS DATA ARISING FROM USE OF THE SOFTWARE), EVEN IF PURECHOICE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR WARRANTY). WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL PURECHOICE'S LIABILITY (FOR ALL CAUSES OF ACTION), EXCEED THE AMOUNT PAID BY YOU FOR THE NOSE® MONITOR. CERTAIN STATES DO NOT ALLOW THE LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU AND YOU MAY HAVE ADDITIONAL RIGHTS.

10. **Termination.** This Agreement shall immediately and automatically terminate upon your breach of this Agreement or if you cease using the Software. Upon the termination of this Agreement, you must (a) cease all use of the Software; (b) return to PureChoice all copies (partial or complete) of the Software and any accompanying materials in your possession or under your control; (c) delete all copies of the Software in your possession; and (d) deliver to PureChoice a certificate signed by an officer of your company verifying compliance with this Section 10. The parties expressly acknowledge and agree that the provisions of this Agreement which by their express or implied terms extend beyond the termination of this Agreement shall continue in full force and effect notwithstanding the termination or expiration of this Agreement. Without limiting the foregoing, the following Sections shall survive the termination or expiration of this Agreement: Sections 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

11. **U.S. Government – Restricted Rights.** This Section 11 applies to all acquisitions of the Software by or for the Federal Government. By accepting delivery of the Software, the Government hereby agrees that the Software qualifies as commercial computer software and documentation within the meaning of the acquisition regulations(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Government's use and disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. The Software is provided to the government only with restricted rights and limited rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in FAR Sections 52.227-14 and 52.227-19, as applicable. If this Agreement fails to meet the Government's minimum needs or is inconsistent in any respect with Federal procurement law, the Government agrees to return the Software, unused, to the seller. Procurements governed by DFARs Subpart 227.4 are delivered to the Department of Defense under the provisions of DFARs 227.7202-3 and 227.7202-4. Manufacturer is PureChoice, Inc., 20855 Kensington Blvd., Suite 100, Lakeville, MN 55044.

12. **Export Controls.** The Software may be subject to export controls under the U.S. export control laws, rules and regulations, and may be subject to the export regulations of other countries. You shall not transfer, export or re-export, directly or indirectly, the Software, unless you have complied with all applicable laws and have obtained appropriate authorization from the U.S. Commerce Department and/or any other relevant government authorities.

13. **Governing Law; Choice of Forum.** This Agreement shall be governed by the substantive laws of the State of Minnesota, without giving effect to applicable conflict of laws provisions. Any action arising from or relating to this Agreement shall only be brought in a court of competent jurisdiction in Hennepin County in the State of Minnesota, and the parties consent to the jurisdiction, venue and convenience of such courts. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

14. **Injunctive Relief.** You acknowledge that the use, copying, disclosure or dissemination of the Software, or the confidential or proprietary information embodied therein, in a manner not authorized by this Agreement would cause irreparable harm to PureChoice that could not be fully remedied by monetary damages. You therefore agree that PureChoice shall be entitled, in addition to any other remedies available to it at law or in equity, to such injunctive or other equitable relief as may be necessary or appropriate to prevent such unauthorized use, copying, disclosure or dissemination without the necessity of proving actual or irreparable damage.

15. **Miscellaneous.**

This Agreement and the rights and obligations herein are personal to you, and you may not transfer or assign the Software, this Agreement or your rights or obligations hereunder without the prior written consent of PureChoice, which may be withheld in PureChoice's sole discretion.

In the event any term or provision of this Agreement or any application thereof shall be deemed to be illegal, void, or unenforceable, then the same shall not affect the remaining portions of this Agreement or any other application of the same which are not determined to be illegal, void or unenforceable, which remaining provisions and any other such application shall survive and constitute the agreement of the parties.

The failure of either party at any time to require performance of any provision of this Agreement or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by either party of any breach of any provision of this Agreement or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and cancels and supersedes all prior oral and written negotiations, agreements or understandings between the parties with respect to such subject matter. No modification of any provision of this Agreement shall be valid or binding unless made in writing and signed by an authorized officer of PureChoice. **WITHOUT LIMITING THE FOREGOING, NO VENDOR, DISTRIBUTOR, RESELLER, DEALER, RETAILER, SALES PERSON OR OTHER PERSON OR ENTITY IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THE WARRANTIES, REPRESENTATIONS OR PROMISES IN THIS AGREEMENT.**