

LETTER OF AGREEMENT REGARDING USE OF THE EORAL SOFTWARE

This Letter of Agreement (Agreement) is made between the COUNCIL OF EMERGENCY MEDICINE RESIDENCY DIRECTORS (CORD) and _____(Program) effective the ____ day of _____ 2017 (the Effective date).

The American Board of Emergency Medicine (ABEM) has developed proprietary software for the creation and delivery of electronic-based, oral examinations to evaluate candidates for certification in the specialty of emergency medicine (the eOral software) and has licensed CORD to distribute components of the eOral Software to emergency medicine residency programs to be used for the purpose of familiarizing future certification candidates with the eOral software and examination process.

To that end, CORD desires to sublicense the Program to use certain components of the eOral software, namely the Candidate Application and the Examiner Application components under the terms of this Agreement. This Agreement defines the Program's and CORD's respective responsibilities, and assures ABEM that candidates will obtain realistic exposure to the eOral software and that ABEM's intellectual property will be protected. If the Program accepts the license of the eOral software on the terms of this Agreement, an authorized representative of the Program should sign this Agreement and return it to CORD.

SOFTWARE LICENSE

Contingent upon the Program's acceptance of this Agreement, and the return of a signed original of this Agreement to CORD, CORD grants to the Program a non-exclusive, non-transferable license to use the Candidate Application and the Examiner Application components of the eOral software for the purpose of familiarizing the Program's emergency medicine residents and other medical students and residents on rotation in the Program's emergency department with the eOral software through practice or mock examinations (the Purpose). This license shall expire on December 31, 2018.

THE PROGRAM'S RESPONSIBILITIES

1. This license is granted for the cost of \$300 until December 31, 2018. If the parties agree to extend the license, the Program shall sign CORD's then current license agreement and pay the then current fee for the agreed extension of the license.
2. The Program will be responsible for providing all software and hardware needed for it to install and operate the eOral software, and deliver and score eOral mock examinations.
3. The Program agrees to use the eOral software solely for the Purpose and in the manner directed by CORD.
4. The Program will keep the eOral software up-to-date by installing any updates it receives from CORD.
5. The Program will not modify, copy, or distribute the eOral software without ABEM's written consent, and will use its best efforts to prevent unauthorized copying, modification, and distribution of the eOral software. The Program will promptly inform CORD and ABEM in writing of any unauthorized copying, modification, or distribution.

6. The Program will not seek, review, disclose, copy, or share ABEM's cases used for certification examinations.
7. The Program will not make any public statements or any representations or warranties to residents or anyone else regarding the eOral software or examination process, or the results obtained by using the practice or mock examinations provided under this Agreement.

CORD'S RESPONSIBILITIES

1. CORD will provide the Candidate and Examiner Application components of the eOral software to the Program upon its receipt of a signed copy of this Agreement, and will also provide any updates to the applications that are provided to CORD by ABEM. The applications will allow the Program to deliver and score mock eOral examinations.
2. CORD will provide to the Program two sample examination cases that will be provided to CORD by ABEM (the ABEM Cases), and the means to download those cases to the Candidate and Examiner Applications.
3. CORD will further provide to the Program sample examination cases created by CORD (the CORD Cases), and the means to download those cases to the Candidate and Examiner Applications.
4. CORD will provide telephone and email technical support (at CORD's expense) to the Program to assist the Program with installing and setting up the candidate and examiner applications, downloading the cases, and delivering eOral mock examinations. If the support from CORD does not resolve a technical problem, CORD will refer the Program to the application vendor (currently Maestro eLearning) for further technical support, at CORD's expense.

SOFTWARE AND HARDWARE REQUIREMENTS

The eOral candidate and examiner applications require the following software and hardware for each eOral station, to be provided by the Program at its expense:

Examiner App on iPad:

1 Apple iPad 3 or higher
iOS 10.3 32 GB Storage
Supports Bluetooth LE
Apple AC Adapter with USB Cord

Candidate App on Mac Mini:

1 Apple Mac Mini – Core 2.4GHZ, 2GIG or higher
Mac OS 10.12
1 Keyboard – Apple
1 External Mouse – USD
1 Apple – HDMI to DVI
1 24" LCD Display, 1920 x 1200, 16:9
1 Pair of Desktop Speakers

Authoring Tool

Mac and PC Desktop
IE10+, Latest versions of Chrome, Firefox, and Safari

GENERAL PROVISIONS

1. The Program agrees that ABEM owns all intellectual property rights in the eOral software, including all modifications and derivatives of it, and the Program assigns to ABEM all interests in any modifications to or derivatives of the eOral software, regardless of the source of such modifications or derivatives.
2. *The Program agrees that ABEM and CORD provide the eOral software “as is” and disclaim all warranties with respect to the eOral software, including the implied warranties of merchantability and fitness for a particular purpose. ABEM and CORD do not represent or warrant that use of the eOral Software by any candidate will increase that candidate’s performance in the ABEM Certification exam. CORD will not be liable to the Program for any consequential or punitive damages, or for any damages with respect to the application vendor’s conduct.*
3. ABEM is a third party beneficiary of this Agreement, but not a party to it. *The Program agrees that ABEM is not liable to the Program for any reason with respect to this Agreement, the eOral software, or CORD’s or the application vendor’s conduct.*
4. If the eOral software becomes, or is likely to become, the subject of an infringement or similar claim, ABEM or CORD may, at ABEM’s option, procure for the Program the right to continue using the eOral software, replace, or modify the eOral software so that it becomes non-infringing, or terminate the Program’s license and this Agreement.
5. CORD will indemnify and defend the Program against all claims, expenses, damages, and other liabilities of any kind (including reasonable attorney’s fees) arising from CORD’s breach of this Agreement or illegal or negligent acts or omissions. The Program will indemnify and defend CORD and ABEM against all claims, expenses, damages, and other liabilities of any kind (including reasonable attorney’s fees) arising from the Program’s breach of this Agreement or illegal or negligent acts or omissions.
6. This Agreement is governed by the laws of the State of Texas, excluding its principles of conflicts of laws. If there is a dispute among the parties, the parties will attempt to resolve the dispute in good faith without resorting to litigation, including by resorting to nonbinding mediation either telephonically or in Dallas County. The venue for any litigation between the parties will be the state courts of Dallas County if a state law claim, and if a federal claim (including if pursuant to diversity jurisdiction), the federal district courts for the Northern District of the State of Texas. The parties submit to the jurisdiction of such courts. However, if ABEM seeks to assert its third party rights under this agreement in any suit, whether brought or joined by ABEM, the parties agree to the removal or change of venue of the suit to the courts of Ingham County, Michigan, if a state law claim, and if a federal claim (including pursuant to diversity jurisdiction), the federal courts for the Eastern District of the State of Michigan, and the parties submit to the jurisdiction of such courts. The nonprevailing parties will reimburse the prevailing party(ies) for all costs and expenses incurred by the prevailing party(ies) with respect to any litigation (but not any prior mediation or negotiation), including reasonable attorney fees.
7. Each of CORD and ABEM may enforce its rights under this Agreement by specific performance.
8. This Agreement may be amended only in a writing signed by both parties and ABEM.
9. Although it is unlikely, ABEM may terminate its agreement with CORD at any time, which will automatically terminate the Program’s license and the other provisions of this Agreement. Either party to this agreement may otherwise terminate it at any time by providing written notice to the other party and ABEM. Upon the termination of this Agreement, the Program will, upon ABEM’s request, permanently delete the eOral software from all hardware and systems and return any returnable copies of the eOral software or related materials to CORD, and certify the deletion and return to CORD.

10. The signatory below on behalf of the Program represents and warrants to CORD and ABEM that the signatory has the legal authority to bind the Program with respect to this Agreement.
11. These "General Provisions" will survive the termination of this Agreement.

SIGNATURES

By their signatures below (including in counterpart by email or fax), the Program and CORD agree to be bound by all of the terms of this Agreement.

On behalf of the Program:

Name of Program and Hospital Sponsoring Program

By: _____

Name and Title: _____

Date: _____

On behalf of CORD:

By: _____

Name and Title: _____

Date: _____