

# CAPNOTRAINER® RENTAL AGREEMENT

This Agreement is made and entered in this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between **INSPIRING**, of 703 Camino de la Familia, Unit #3102, Santa Fe, New Mexico 87501, hereinafter called "**PROVIDER**," and \_\_\_\_\_, of \_\_\_\_\_, hereinafter called "**CLIENT**." In consideration of the understandings of the parties hereto, and intending to be legally bound hereby, the parties, hereto agree as follows:

## CapnoTrainer® Rental

The Client agrees to rent a CapnoTrainer® instrument  for a period of **ten (10) days** at a rate of two hundred and seventy-five dollars (\$275.00), **OR**,  for a period of \_\_\_\_ **week(s)** at a rate of one hundred and fifty dollars (\$150.00) per week, when rented for a rental period of four (4) weeks or more.

If shipment is involved, the Provider agrees to pay for shipment of the CapnoTrainer® to the Client, and the Client agrees to pay for its return shipment to the Provider.

The Provider represents that to the best of its knowledge and belief that said CapnoTrainer® instrument is in sound and safe condition and free of any known faults or defects which would affect its safe operation under normal use.

Provider and Client agree that there is no refund for the CapnoTrainer® Rental, unless (a) the Provider agrees to a refund, or (b) the CapnoTrainer® instrumentation is faulty and/or inoperable.

There are no other warranties, express or implied, which have been made by the Provider to the Client under this Agreement in connection with either the sessions to be provided or the personal use of the CapnoTrainer® instrument.

The Provider agrees that the rental time may be extended by the Client, on a week by week basis, wherein if the Client has been paying two hundred dollars (\$200.00) per week, and the number of total rental weeks increases to at least four weeks, the rental rate will be retroactively reduced to one hundred and fifty dollars (\$150.00) per week and credited to subsequent weekly rentals.

## Rental Period

Provider and Client agree that the rental shall commence on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and shall terminate on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Provider and Client agree that CapnoTrainer® shipment time (UPS to and from) shall be a part of the Rental Period, but delays due to malfunction, late shipment, or unavailability shall not be included as part of the Rental Period.

The Client agrees that the CapnoTrainer® instrument shall be used only in accordance with the manufacturer's specifications and that (a) its software will not be used, modified, copied, or distributed (electronically or otherwise); (b) it will not be used outside of the United States of America without the Provider's prior written approval; (c) it will not be used for any illegal purpose; (d) it will not be operated in a negligent manner; and (e) it will not be operated by any other person, without the Provider's prior written approval.

## Insurance

The Client hereby agrees that (s)he shall fully indemnify the Provider for any and all loss of or damage to the CapnoTrainer® instrument during the term of this Agreement whether caused by collision, fire, flood, vandalism, theft or any other cause, except that which shall be determined to be caused by a fault or defect of the instrument. Loss of the instrument shall constitute a purchase of the instrument by the Client for \$3,300.00.

## Return

The Client agrees to return the CapnoTrainer® instrument must arrive at the office of the Provider, as shown above, on or before the last day of the time period provided for in this agreement, e.g., 30 days. It may be returned in person, or by a carrier such as UPS or Federal Express, insured for \$2,500.00.

The Client agrees, that if the instrument arrives late, to pay \$30.00 per day, and that this fee may be charged to the Client's credit card by the Provider. The Client agrees that failure to return the instrument, within 30 days of the last day of the last agreed to learning period, constitutes a purchase of the instrument by the Client for \$3,300.00, and that this amount may then be charged to the same credit card, unless payment is agreed to otherwise by both parties.

## Indemnification

Client agrees to indemnify and hold the Provider harmless from all liability resulting from the use of the CapnoTrainer® or any other matters under this Agreement.

Both parties warrant they have full authority to enter into an agreement of this nature and be bound by terms hereof.

Nothing in the Agreement shall be construed to constitute the Client as the employee or agent of Provider nor shall either party have any authority to bind the other in any respect, it being intended that each shall remain an independent entity responsible only for its own actions.

The Client will promptly deliver to the Provider any notices or papers served upon it in any proceeding covered by this indemnity, and the Provider will defend same at its expense. The Client shall, however, have the right to participate in the defense at its own expense.

### Assignment

This Agreement may not be assigned by the Client except upon the written approval of the Provider, in the Provider's sole discretion.

### Severability

If any provision(s) of the agreement are declared to be invalid, such provision(s) shall be severed from this agreement and the other provision(s) shall remain in full force and effect.

### Notice

Any notice required or permitted to be sent out under this agreement shall be mailed by registered mail, return receipt requested, to the addresses of the parties as first set forth in this agreement. Notice so sent will be deemed effective when deposited in the mail or delivered by hand.

### Governing Laws and Jurisdiction

It is agreed by the parties that this agreement shall be governed and constructed in accordance with the laws of the State of New Mexico and the United States of America. Jurisdiction for any proceeding in law or equity, or any arbitration, shall be in the City and County of Santa Fe, State of New Mexico.

### Arbitration

Any dispute arising under this agreement shall be submitted to binding arbitration under rules then prevailing of the American Arbitration Association and judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction.

The party submitting such dispute shall request the American Arbitration Association to:

Appoint an arbitrator who is knowledgeable in the area and familiar with the industry and who will follow substantive rules of law.

If an arbitration panel is appointed, the panel shall include a lawyer.

Require the testimony to be transcribed and require findings of fact and a statement of reasons for the decision accompanying the award.

Judgment upon award made in such arbitration may be entered and enforced in any court of competent jurisdiction.

Except where clearly prevented by the area of dispute, both parties agree to continue performing their respective obligations under this agreement while the dispute is being resolved.

Both parties will use best efforts to resolve any disputes prior to invoking the arbitration procedures. If either party fails to perform its obligation as set forth in this agreement and such failure to perform is not corrected within thirty (30) days of written notifications of such failure from the other, the matter may be turned over to arbitration upon ten (10) days written notice to the other party.

### Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes any prior agreement. This agreement may only be changed or modified by mutual agreement of both parties and must be in writing.

**IN WITNESS WHEREOF**, the parties hereto hereby execute this Agreement on the date first above written.

Provider: **INSPIRING**

Signed by: Sandra Reamer, MFA, CST, RFE  
Authorized Officer

Client: \_\_\_\_\_ Date \_\_\_\_\_.

Electronic Signature by Client: \_\_\_\_\_.