

itamar LICENSE AGREEMENT

License To User From Itamar

IMPORTANT – PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR OTHERWISE USING THE LICENSED SOFTWARE (AS DEFINED BELOW) OR THE PRODUCT WITH WHICH YOU RECEIVED THIS LICENSE AGREEMENT. THIS LICENSE AGREEMENT APPLIES TO (a) ALL LICENSED SOFTWARE, (b) ALL LICENSED PRODUCTS (AS DEFINED BELOW), AND (c) ALL THIRD PARTY PRODUCTS (AS DEFINED BELOW). SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS LICENSE AGREEMENT, PLEASE CONTACT THE VENDOR FROM WHICH YOU PURCHASED THE LICENSED SOFTWARE, LICENSED PRODUCT, OR THIRD PARTY PRODUCT. YOU MAY ALSO CONTACT ITAMAR AT THE ADDRESS PROVIDED AT THE END OF THIS LICENSE AGREEMENT.

This License Agreement is a legal agreement between you (as an individual, company, organization or other entity) and Itamar Medical Ltd. (“Itamar”). By installing, copying, or otherwise using the Licensed Software, and/or by using the Licensed Product or Third Party Product, you agree to be bound by the terms of this License Agreement with respect to the Licensed Software and Licensed Products. If you do not agree to the terms of this License Agreement, including, without limitation, the limitations on use as provided in Section 2.3 and the restrictions on use as provided in Section 2.4 do not install, use or copy the Licensed Software or use the Licensed Product or the Third Party Product.

The Licensed Software and the Licensed Products are protected by US patent laws, other countries patent laws, trade secret laws, copyright laws, and international treaty provisions as well as other intellectual property laws and treaties.

The Licensed Products and/or method of use, is covered by US patents, including, without limitation, one or more of the following: 6319205, 6322515, 6461305, 6488633, 6916289, 6939304, 7374540, as well as any pending US patent applications and corresponding patents and/or patents or applications filed in other countries.

Therefore, you must treat the Licensed Software and the Licensed Products like any other copyrighted and protected material or product. All title to the Licensed Software and all intellectual property rights in and to the Licensed Software and the Licensed Products shall remain with Itamar.

1. DEFINITIONS

1.1 “Licensed Product(s)” means the EndoPAT WatchPAT100, the WatchPAT200, WatchPAT300, WatchPATONE and/or any derivatives or auxiliary related devices or components, the PAT Probe and the corresponding components of any Third Party Product with which this License Agreement was received. Some Licensed Products are stand-alone products and some Licensed Products are incorporated as components

within Third Party Products, in each case sold or otherwise made available, by Itamar and/or third parties. If you have received this License Agreement with a Third Party Product, this License Agreement applies only to the Licensed Product incorporated as a component within such Third Party Product.

1.2 “Licensed Software” means the EndoPAT software, zzzPAT, CloudPAT and the associated media and/or any other software and accompanying materials provided to you with such Licensed Product. Some Licensed Software is a stand-alone product and some Licensed Software is incorporated as a component within a Licensed Product, in each case sold or otherwise made available, by Itamar and/or third parties. If you have received this License Agreement with a Licensed Product, which incorporates the Licensed Software as a component within such Licensed Product, this License Agreement applies to the Licensed Software.

1.3. “Third Party Product” means any product into which a Licensed Product or Licensed Software is incorporated.

2. LICENSE TO USE, LIMITATIONS AND RESTRICTIONS ON USE

2.1 LICENSE TO USE LICENSED SOFTWARE Itamar hereby grants you a non-exclusive right to use the Licensed Software (i) solely with the Licensed Product(s), and (ii) solely for its intended use in sleep medicine in accordance with the provisions of this License Agreement and the instructions provided in the documentation accompanying the Licensed Software and the Licensed Product, subject to the Limitations on Use as provided in Section 2.3 and the Restrictions on Use as provided in Section 2.4. You may make one copy of the Licensed Software solely for backup or archival purposes or transfer the Licensed Software to a single hard disk, provided you keep the original solely for backup or archival purposes. However, you may not cause any Licensed Software, which is not designed for use on a server, to execute or be loaded into the active memory or media of more than one computer at any one time.

2.2 LICENSE TO USE LICENSED PRODUCTS Itamar hereby grants you a non-exclusive right to use the Licensed Product(s) (i) solely with the Licensed Software, and (ii) solely for its intended use in accordance with the provisions of this License Agreement and the instructions provided in the documentation accompanying the Licensed Software and the Licensed Product, subject to the Limitations on Use as provided in Section 2.3 and the Restrictions on Use as provided in Section 2.4.

2.3 LIMITATIONS ON USE The licenses granted in Sections 2.1 and 2.2 above are for use in normal medical practice, and you are not licensed or authorized to include, or use in any manner, or to provide to any third party for such inclusion or use, any test results derived from any of the Licensed Products and/or the Licensed Software, for the purpose of seeking or obtaining any regulatory approval from any governmental or regulatory agency of any diagnostic or therapeutic claim, or medical device, pharmaceutical or other therapeutic or diagnostic product. Without derogating from the generality of the foregoing, the inclusion by you or any third party of any results of any type, derived through the use of the Licensed Products and/or the Licensed Software, in any regulatory filing for the purpose of supporting, or obtaining any such approval, without the prior written consent of Itamar is expressly prohibited.

THIS LIMITATION REFERS SOLELY TO THE SEEKING OR OBTAINING OF DIAGNOSTIC OR THERAPEUTIC CLAIMS AND NOTHING IN THIS AGREEMENT, INCLUDING THIS LIMITATION ON USE, IS INTENDED, IN ANY MANNER, TO RESTRICT THE REPORTING OF INFORMATION REGARDING THE LICENSED PRODUCT AND/OR LICENSED SOFTWARE IN ACCORDANCE WITH THE REPORTING REGULATIONS OF ANY GOVERNMENTAL OR REGULATORY AGENCY.

2.4 RESTRICTIONS ON USE Any use of the Licensed Software and/or Licensed Product other than as set forth in Sections 2.1 and 2.2 above, in each case as limited by Section 2.3 above, is strictly forbidden. Without derogating from the generality of the above, you may not:

- Distribute, reproduce, copy, assign, rent, lease, or otherwise transfer the rights granted to you under this License Agreement to any third party except explicitly as set forth in this License Agreement;
- Reverse engineer, decompile, or disassemble, as applicable, the Licensed Software or the Licensed Product, except as expressly permitted by applicable law; or
- Modify in any manner the Licensed Software and/or the Licensed Product unless obtaining the prior written consent of Itamar.

3. TRADEMARKS

Any and all trademarks and logos, which appear on or in connection with the Licensed Software and/or any of the Licensed Products, as may be amended and updated from time to time, are, unless stated otherwise, trademarks of Itamar. No right, license, or interest to such trademarks are generated or granted hereunder other than the limited right to use provided herein, and you agree that no such right, license, or interest shall be asserted by you with respect to such trademarks. You may not remove or destroy any copyright, trademark, logo or other proprietary marking or legend placed on or contained in the Licensed Software or a Licensed Product.

4. LIMITED WARRANTIES AND DISCLAIMERS

a. Against Infringement. Itamar hereby warrants to you that it has the right to grant you the license to use the Licensed Software and/or the Licensed Product and to enter into this License Agreement and that neither the Licensed Software nor the Licensed Product(s) infringes the intellectual property rights of any third party.

b. As to Licensed Product. Itamar warrants that the Licensed Product, with which this License Agreement was delivered, will be free from defects in design, materials, and workmanship for a period of one year from the date of delivery of the Licensed Product to you. If the Licensed Product contains a defect in design, materials or workmanship and such Licensed Product is returned to Itamar within one (1) year of delivery of the Licensed Product to you, Itamar will repair or replace the Licensed Product, or issue a credit for the purchase price of the Licensed Product, with the choice to repair, replace or credit being within the sole discretion of Itamar. The foregoing repair, replacement or credit remedy will be your sole remedy for breach of the warranty set forth in this Section 4(b).

c. As to Licensed Software. Itamar warrants that for a period of ninety (90) days from the date of delivery of the Licensed Software to you, the Licensed Software will, under normal use, be free from defects in materials and workmanship, and will perform substantially as it is intended to perform. If during such ninety (90) day period, the Licensed Software has a defect in materials or workmanship or does not perform substantially as it is intended to perform, Itamar shall (a) attempt to correct or assist you around errors with efforts which Itamar believes suitable to the problem, (b) replace the Licensed Software with a functionally equivalent software, or (c) issue a credit for the purchase price of the Licensed Software, with the choice to correct or assist, replace or credit being within the sole discretion of Itamar. The foregoing correct or assist, replacement or credit remedy will be your sole remedy for breach of the warranty set forth in this Section 4(c).

d. Limitation of Warranties. The warranties contained in Sections 4(b) and 4(c) above do not cover damage to the Licensed Products or the Licensed Software caused by accident, misuse, abuse, negligence, failure to install in accordance with Itamar's installation instructions, failure to operate under conditions of normal use and in accordance with the terms of the documentation accompanying the Licensed Product and/or the Licensed Software, failure to maintain in accordance with applicable documentation accompanying the Licensed Product and/or the Licensed Software, alteration or any defects not related to materials or workmanship, or in the case of Licensed Products, design, materials or workmanship. This warranty does not cover damage, which may occur in shipment. This warranty does not apply to Licensed Products and/or Licensed Software not purchased new. This warranty does not apply to any Licensed Product or any individual parts of a Licensed Product which have been repaired or altered by anyone other than Itamar or a person or entity authorized by Itamar to repair Licensed Products.

While every reasonable effort has been made to ensure that you will receive Licensed Software that you can use, Itamar does not warrant that the functions of the Licensed Software will meet your requirements or that the operation of the Licensed Software will be uninterrupted or error free. Itamar is not responsible for problems caused by changes in the operating characteristics of the hardware or operating system software you are using, nor for any problems in the interaction of the Licensed Software with non-Itamar software.

ITAMAR HEREBY DISCLAIMS, WITH RESPECT TO THE LICENSED PRODUCTS AND THE LICENSED SOFTWARE, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF OR RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF INFORMATION, LACK OF NEGLIGENCE AND CORRESPONDENCE TO DESCRIPTION.

5. LIMITATION OF LIABILITY

(A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR DAMAGES ARISING UNDER SECTION 4(A) ABOVE, IN NO EVENT SHALL ITAMAR AND/OR ANY OF ITS AFFILIATES BE LIABLE TO YOU FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE YOU PAID FOR THE LICENSED SOFTWARE, THE LICENSED PRODUCT OR THE APPLICABLE THIRD PARTY PRODUCT. THE FOREGOING LIMITATION SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, OR OTHERWISE.

(B) IN NO EVENT SHALL ITAMAR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE AND/OR THE LICENSED PRODUCT AND/OR THE THIRD PARTY PRODUCT, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES BY ITAMAR AND/OR ANY OF ITS AFFILIATES, EVEN IF ITAMAR AND/OR ANY OF ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CONSEQUENTIAL DAMAGES. THE FOREGOING DISCLAIMER OF CONSEQUENTIAL DAMAGES SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, OR OTHERWISE.

(C) IN ORDER TO BE ENTITLED TO INDEMNIFICATION HEREUNDER IN CONNECTION WITH AN INFRINGEMENT CLAIM, YOU MUST (i) NOTIFY ITAMAR IN WRITING PROMPTLY UPON BECOMING AWARE OF AN INFRINGEMENT CLAIM OR THE POSSIBILITY THEREOF, (ii) GRANT ITAMAR SOLE CONTROL OF THE SETTLEMENT, COMPROMISE, NEGOTIATION AND DEFENSE OF ANY SUCH ACTION, AND (iii) PROVIDE ITAMAR WITH ALL INFORMATION RELATED TO THE ACTION THAT IS REASONABLY REQUESTED BY ITAMAR. NOTWITHSTANDING THE FOREGOING, NEITHER ITAMAR NOR ANY OF ITS AFFILIATES SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO ANY INFRINGEMENT CLAIM TO THE EXTENT ARISING FROM YOUR USE OF THE LICENSED PRODUCT AND/OR LICENSED SOFTWARE IN CONJUNCTION WITH OTHER HARDWARE OR SOFTWARE WHERE USE WITH SUCH OTHER HARDWARE OR SOFTWARE GAVE RISE TO THE INFRINGEMENT CLAIM.

6. TERMINATION

Without prejudice to any other rights or remedies, Itamar may terminate this License Agreement immediately if you fail to comply with any of its terms and conditions. In the event of such termination, you must, within ten (10) business days of receiving notice of termination from Itamar, cease all use of the Licensed Software and destroy all copies thereof, and cease all use of the Licensed Product (including Licensed Product incorporated within Third Party Product).

7. TRANSFERABILITY

Except as expressly permitted hereunder, you may not transfer or assign the rights and obligations hereunder together with the Licensed Software and/or the Licensed Product or Third Party Product. Any attempt by you to rent, lease, sublicense, assign or transfer any of the rights, duties or obligations hereunder in any other way is forbidden and shall be null and void.

8. SEVERABILITY

Should any term or provision of this License Agreement be declared void or unenforceable by any court of competent jurisdiction in any country or countries, such declaration shall have no effect on the remainder of this License Agreement in such country or countries, or on this License Agreement in other countries.

9. NO WAIVER

The failure of either party to enforce any rights granted to it hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement actions in the event of future breaches.

10. GOVERNING LAW AND JURISDICTION

This License Agreement is governed by the laws of the State of New York, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any of the transactions contemplated by this License Agreement.

11. ENTIRE UNDERSTANDING

This License Agreement represents the complete and exclusive understanding between you and Itamar concerning the license by Itamar to you of Licensed Software and Licensed Products and supersedes all prior agreements and representations between the parties with respect to the subject matter hereof, unless specifically stated otherwise in a writing signed by Itamar and you. This License Agreement may not be amended other than by a written agreement specifically intended for this purpose and signed by Itamar and you.

Note: Should you have any questions concerning this License Agreement, or if you desire to contact Itamar for any reason, please write to:

Itamar Medical Ltd., 9 Halamish St., North Ind. Park, Caesarea, 38900, Israel.

Facsimile: +972 4627 5598,

Or visit Itamar's web site at www.itamar-medical.com.