

**Itamar™ Medical WatchPAT™ ONE App Terms of Use**  
*[Last Modified: July, 2021]*

IMPORTANT: BY ACCESSING AND/OR USING THE SERVICES (DEFINED BELOW) YOU ACCEPT THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS SET FORTH HEREIN PLEASE DO NOT ACCESS OR USE THE SERVICES.

**1. Acceptance of Terms**

The following agreement consists of the terms and conditions governing your access to, or use as user ("you") of Itamar Medical Ltd. and its affiliates' ("**Itamar Medical**" or "**We**") mobile application generally known as WatchPAT ONE App and the services, information, tools, features, data, content and functionality therein (collectively, the "**Services**") and the Device, as defined in Section 3 below. These Itamar Medical Terms of Use together with the Itamar Medical Privacy Policy available at: [https://www.itamar-medical.com/\(the "Terms"\)](https://www.itamar-medical.com/(the \) constitute a binding agreement between you and Itamar Medical, and by continuing to use the Services (in whole or in part) in any way or manner you agree to abide by, and be bound, by these Terms. If you do not understand and/or agree to these Terms, you should immediately exit the Services and cease making any use thereof.

We may unilaterally change or add to the terms of these Terms at any time. In the event of a material change, We shall notify you by means of a prominent notice on the Services. You should check our Services periodically and review changes to the Terms at the following URL: <https://www.itamar-medical.com/support/downloads/>. By continuing to use the Services following such modifications, you agree to be bound by such modifications. If you are not comfortable with all of the provisions of these Terms, please do not use the Services.

**2. License**

Subject to the terms and conditions set forth herein, Itamar Medical hereby grants to you, and you accept, a personal, nonexclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited license to access the Services on a non-commercial basis for your personal use only according to the terms of these Terms. The license shall be granted until terminated in accordance with the terms hereof.

These Terms and the foregoing license do not include any right to use any other Itamar Medical's services, applications or solutions, all of which are subject to entering into a separate license or services agreement with Itamar Medical.

**3. Limitations on Use**

You agree not to (i) sell, license (or sub-license), lease, assign, transfer, pledge, or share any of your rights under these Terms with/to any third party; (ii) transfer, distribute, scrap, copy, publish, duplicate, all or any part of the Services and/or the Itamar Medical IPR (as defined below); (iii) refer to the Services by use of framing; (iv) make use of the Services in any jurisdiction where same are illegal or which would subject Itamar Medical to any registration requirement within such jurisdiction or country; (v) use, or encourage, promote, facilitate or instruct others to use the Services for any illegal, harmful or offensive use; (vi) transmit or upload any viruses, spyware or other harmful, infringing, illegal, disruptive or destructive content, messages or files; (vii) access the Services through or use with the Services any unauthorized means, services or tools including without limitation any data mining, robots, or any other automated means or data gathering and extraction tools, including without limitation in order to extract for re-utilization of any parts of these Services; (viii) perform any act that destabilizes,

interrupts or encumbers the Services or its servers or use automatic means, such as robots or crawlers, that enable sending more request messages to the servers of the Services, in a given period of time, than a human can reasonably send in that time period by using the Services; (ix) copy, modify, translate, reverse engineer, decompile, disassemble, make any attempt to discover the source code of the Services and/or any other software available on the Services or create derivative works thereof; (x) penetrate or circumvent or attempt to penetrate or circumvent any technical restrictions or limitations included in the Services or its servers; and/or (xi) attempt to interfere with, hack into or decipher any transmissions to or from the servers of the Service. You are solely responsible for obtaining, paying for, repairing and maintaining all the equipment, software, hardware and services required for getting access to and using the Services. You are solely responsible for any mobile charges when you use the Services including data charges for use or the Services. If you are not sure if such charges apply or what they may be, please ask your provider before using the Services. You shall use the Services strictly in accordance with the Services' user manual available at: <https://www.itamar-medical.com/support/downloads/>. You may use the Services solely in conjunction with: (i) WatchPAT ONE device ("Device") under its terms available at <https://www.itamar-medical.com/support/downloads/> and (ii) with the applicable system management services whether CloudPAT™ or zzzPAT available at <https://www.itamar-medical.com/terms-and-conditions/>, respectively or any other permitted compatible system management services, as applicable, subject to their respective terms. Itamar Medical shall not be responsible for third party services.

#### **4. Ownership of Proprietary Rights**

The Services, including without limitation any underlying data, software, platforms, algorithms, technology, design, UI, any concept, content, information, texts, files, charts, graphs, photos, videos, sound, music, organization, structure, "look and feel" and features and any modifications, enhancements and derivatives thereof and all Intellectual Property Rights (defined below) related thereto ("**Itamar Medical IPR**") are the exclusive property of Itamar Medical and/or its licensors who retain all right, title and interest in connection therewith.

No transfer or grant of any rights by Itamar Medical is made or is to be implied by any provision of these Terms or by any other provision contained in the Services with respect to the Itamar Medical IPR or otherwise, except for the limited license set forth in Section 2 above.

"**Intellectual Property Rights**" means worldwide, whether registered or not (a) rights associated with works of authorship, designs, mask works and photography including copyrights; (b) trademarks, service marks, domain names, logos, trade names, trade dress, the right to publicity and goodwill rights; (c) patents, patent applications and industrial designs; (d) trade secrets; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

#### **5. Your Warranties, Representations and Parental Consent**

You represent and warrant to Itamar Medical that: (a) you have, and will have at all times, all permits, consents, licenses and approvals for your use of the Services and as required to fulfill your obligations herein; (b) you and your use of the Services will comply with all applicable laws, regulations, rules and standards; and (c) you shall only use the serial number assigned to you as a means to communicate with Itamar Medical solely for support services or your healthcare provider/physician/applicable HIPAA

Covered Entity (together, “**Healthcare Provider**”), as applicable, and shall not use such serial number as an identifier in any other manner.

You represent and warrant to Itamar Medical that: (a) you are at least eighteen (18) years old or (b) the user is between the age of twelve (12) and eighteen (18) years old and you are the user's parent or legal guardian and have the right, authority, and capacity to bind the user to these Terms without any restrictions and in any event will ensure that no personally identifiable information is provided to Itamar Medical in connection with the user. If this Section 5(b) applies then the term "you" as used in these Terms relates to both the user and its parent/legal guardian.

## **6. Credentials**

You are solely responsible for all actions performed in the Services under your credentials (including without limitation serial number and PIN number/personal code). Keeping your credentials safe is your sole responsibility. If you have any reasons to suspect that your credentials were discovered by any third party or that there was an unauthorized access to your account you will immediately notify Itamar Medical at <https://www.itamar-medical.com/data-subject-request-form/> or to your Healthcare Provider, as applicable and modify your login information. The Services are intended for use by users at least eighteen (18) years old, you hereby undertake to monitor your account to ensure that no minor under that age has access to the Services.

## **7. Privacy**

**7.1** You agree that the data generated through the Services may be transferred to your Healthcare Provider, as applicable, on a personally identifiable basis, as controller of such data, for its use under terms (including without limitation privacy and data protection terms) agreed to between you and such controller.

**7.2** Itamar Medical is not responsible for use of the data by your Healthcare Provider. Itamar Medical provides the Services as a mere conduit between you and your Healthcare Provider and generally, no personally identifiable information is required to be provided to Itamar Medical for the Services.

**7.3** Notwithstanding the foregoing, the Services might include questionnaires created by your Healthcare Provider for you to respond via the Services (“**Questionnaire**”). Your response to such Questionnaire might require Itamar Medical to process personally identifiable information provided in connection with the Questionnaire. Itamar Medical's privacy practices are governed by the Itamar Medical's privacy policy, the most updated copy of which can be found at <https://www.itamar-medical.com/> (“**Itamar Medical Privacy Policy**”) and you are deemed “Patient” under the terms thereof. Note that Itamar Medical may collect and process your “protected health information” governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) when we interact with you as a patient of your Healthcare Provider that is subject to HIPAA. Where that is the case, your Healthcare Provider’s HIPAA Notice of Privacy Practices will govern Itamar Medical’s collection and use of such protected health information, not the Itamar Medical Privacy Policy. Your use of the Epworth Sleepiness Scale (ESS) and/or the Insomnia Severity Index (ISI) Questionnaires is subject to the terms and conditions set out by the author and licensor of the Questionnaire, attached hereto in **Annex A**.

## **8. Third Party Components**

The Services may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with the Services is subject to any applicable acknowledgements and license terms accompanying such Third Party Components contained therein or related thereto, available upon request, which may be updated from time to time. If there is a conflict between the licensing terms of such Third Party Components and these Terms, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. You hereby agree to such terms associated with the Third Party Components. The Third Party Components are provided on an "AS IS" basis without any warranty of any kind and shall be subject to any and all limitations and conditions required by such third parties. Under no circumstances shall the Services or any portion thereof (except for the Third Party Components contained therein) be deemed "open source" or "publicly available" software.

## **9. Disclaimer**

YOU AGREE THAT YOUR USE OF THE SERVICES; OR ANY RELATED MATERIALS, EQUIPMENT, TOOLS, HARDWARE, SOFTWARE, CONSULTATION, ADVICE AND OTHER SERVICES (COLLECTIVELY: "**ANCILLARY SERVICES**") SHALL BE AT YOUR OWN RISK. THE SERVICES, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, ITAMAR MEDICAL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND COMPLIANCE WITH REGULATORY REQUIREMENTS.

ITAMAR MEDICAL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AVAILABLE AT ALL TIMES, OR THAT THE SERVICES OR THE SERVER(S) THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ITAMAR MEDICAL SHALL NOT BE LIABLE FOR ANY ERRORS AND/OR DELAYS ARISING FROM MALFUNCTIONS OR FAILURES OF THE INTERNET. ITAMAR MEDICAL IS NOT RESPONSIBLE FOR ANY ANCILLARY SERVICES.

YOU ACKNOWLEDGE AND AGREE THAT YOUR THE SERVICES OR USE THEREOF DOES NOT CREATE A DOCTOR-PATIENT RELATIONSHIP BETWEEN ITAMAR MEDICAL AND YOU AND THE SERVICES DO NOT CONSTITUTE MEDICAL TREATMENT. YOU FURTHER ACKNOWLEDGE AND AGREE THAT THE DATA AND INFORMATION GENERATED FROM YOUR USE OF SERVICES DOES NOT CONSTITUTE MEDICAL TREATMENT, ADVICE OR OTHER ADVICE FROM ITAMAR MEDICAL AND THAT THE SERVICES ARE SOLELY A MERE CONDUIT BETWEEN YOU AND YOUR HEALTHCARE PROVIDER, AS APPLICABLE. ANY ADVICE INCLUDING WITHOUT LIMITATION A COMPLETE ASSESSMENT OF YOUR SLEEP HEALTH REQUIRES A MEDICAL EXAMINATION FROM A LICENSED MEDICAL PROFESSIONAL. WE DO NOT RECOMMEND OR ENDORSE ANY PARTICULAR MEDICAL PROFESSIONAL OR HEALTH-RELATED PRODUCTS, ITEMS, OR SERVICES. IF YOU SUSPECT THAT YOU MAY HAVE A MEDICAL EMERGENCY, THEN CALL YOUR DOCTOR OR GENERAL EMERGENCY NUMBER IN YOUR COUNTRY IMMEDIATELY BECAUSE OUR SERVICES ARE NOT INTENDED TO BE USED IN CONNECTION WITH MEDICAL EMERGENCIES. NEVER DISREGARD THE ADVICE FROM A LICENSED MEDICAL PROFESSIONAL OR DELAY IN SEEKING IT BECAUSE OF YOUR USE OF OUR SERVICES.

ITAMAR MEDICAL HEREBY DISCLAIMS ALL LIABILITY RELATED TO ANCILLARY SERVICES, MEDICAL ADVICE OR MEDICAL SERVICES PROVIDED TO YOU IN CONNECTION WITH YOUR USE OF OUR SERVICES, AND YOU ASSUME ALL RISKS ARISING FROM YOUR USE OF OUR SERVICES. THE INFORMATION PROVIDED BY THE SERVICES IS NOT INTENDED TO DIAGNOSE, CURE OR PREVENT ANY DISEASE OR HEALTH CONDITION.

ITAMAR MEDICAL IS NOT RESPONSIBLE FOR THE QUESTIONNAIRES SELECTED BY YOUR HEALTHCARE PROVIDER, YOUR RESPONSE TO SUCH QUESTIONNAIRES AND ANY ADVICE RENDERED BY YOUR HEALTHCARE PROVIDER IN CONNECTION THEREWITH.

ITAMAR MEDICAL DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE ITAMAR MEDICAL IPR OR SERVICES OR QUESTIONNAIRES OR ANY ANCILLARY SERVICES PROVIDED IN CONNECTION WITH THE SERVICES, INCLUDING WITHOUT LIMITATION THEIR CORRECTNESS, COMPLETENESS, ACCURACY, RELIABILITY, AVAILABILITY OR OTHERWISE. WITHOUT DEROGATING FROM THE FOREGOING. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS NECESSARY OR ADVISABLE TO PROTECT YOURSELF AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF OR RELIANCE UPON THE SERVICES AND/OR ANY OF THE ITAMAR MEDICAL IPR.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**10. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, UNDER NO CIRCUMSTANCES WHATSOEVER WILL ITAMAR MEDICAL AND/OR ITS AFFILIATES, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS, SUBCONTRACTS AND SUPPLIERS ("**REPRESENTATIVES**") BE RESPONSIBLE OR LIABLE TO YOU OR TO ANY OTHER ENTITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNDER ANY LEGAL THEORY, WHETHER CONTRACT, TORT OR OTHERWISE FOR ANY DIRECT, COMPENSATORY, INDIRECT, INCIDENTAL, CONSEQUENTIAL INCLUDING WITHOUT LIMITATION ANY LOST PROFITS AND LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, REVENUE, INCOME, GOODWILL, USE, DATA OR OTHER TANGIBLE OR INTANGIBLE LOSSES, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO THIS AGREEMENT, YOUR USE OF THE SERVICES OR ITAMAR MEDICAL IPR, OR RELIANCE THEREON OR TO ANY ERRORS, INACCURACIES, OMISSIONS, DEFECTS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY ITAMAR MEDICAL OR ITS REPRESENTATIVES. WITHOUT DEROGATING FROM THE FOREGOING, IF DESPITE THE FOREGOING ITAMAR MEDICAL AND/OR ITS REPRESENTATIVES WILL BE FOUND LIABLE OR RESPONSIBLE BY A COMPETENT AUTHORITY, UNDER ANY LEGAL THEORY, ITAMAR MEDICAL'S AND/OR ITS REPRESENTATIVES AGGREGATE LIABILITY SHALL NOT EXCEED THE VALUE OF THE DEVICE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **11. Indemnification**

You agree to defend, indemnify and hold Itamar Medical and anyone on its behalf, including but not limited to, all of its owners, managers, officers, affiliates, employees, licensors and suppliers harmless against any losses, expenses, costs, claims, damages (including attorneys' fees, expert fees' and other costs of litigation) arising from, incurred as a result of, or in any manner related to: (i) your use of the Services; and/or (ii) any breach of these Terms.

#### **12. Termination**

We may terminate these Terms and/or suspend your right to access or use any portion or all of the Services and/or Itamar Medical IPR immediately (including without limitations the license set forth in Section 2 above), at our sole discretion without notice. Upon termination you shall immediately cease using the Services and the following Sections shall survive: 1, 3, 4, 5, 7 – 13.

#### **13. General**

(i) These Terms shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to the principles of conflict of law therein. The parties consent to the exclusive jurisdiction of the courts of Atlanta, Georgia. The application of the United Nations Convention of Contracts for the International Sale of Goods or other international laws is expressly excluded; (ii) notwithstanding the foregoing, in the event of breach or threatened breach by of any provision of these Terms by you, Itamar Medical could suffer significant and irreparable harm that could not be satisfactorily compensated in monetary terms, and that the remedies at law available to Itamar Medical may otherwise be inadequate and Itamar Medical shall be entitled, in addition to any other remedies to which it may be entitled to under law or in equity, to the immediate ex parte issuance, without bond, of an equitable relief, including without limitation an injunctive relief, in any jurisdiction worldwide. You hereby acknowledge and agree that Itamar Medical shall not be required to post bond as a condition to obtaining or exercising any such remedies, and you hereby waive any such requirement or condition; (iii) if any provision of these Terms is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable and if such provision is determined to be invalid or unenforceable nonetheless, the provision shall be deemed to be severable from the remainder of these Terms and shall not cause the invalidity or unenforceability of the remainder of these Terms; (iv) You acknowledge and agree that Itamar Medical has the right, at any time and for any reason, to redesign or modify the Itamar Medical IPR and other elements of the Services or any part thereof; (v) these Terms are the entire agreement between you and Itamar Medical regarding the subject matter herein; (vi) Itamar Medical may assign these Terms, in whole or in part, in its sole discretion. You are not entitled to assign or otherwise transfer the Terms, or any of your rights or obligations hereunder, to any third party without the prior written consent of Itamar Medical. Any unauthorized assignment will be void and of no force or effect; (vii) no provisions of these Terms are intended or shall be construed to confer upon or give to any person or entity other than you and Itamar Medical any rights, remedies or other benefits under or by reason of these Terms; (viii) Itamar Medical's failure to enforce any rights granted hereunder or to take action against you in the event of any breach hereunder shall not be deemed a waiver by Itamar Medical as to subsequent enforcement of rights or subsequent actions in the event of future breaches; (ix) all waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other

occasion; (x) We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, pandemic, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; (xi) ANY CAUSE OF ACTION INITIATED BY YOU AND ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED AND YOU SHALL BE DEEMED TO WAIVE ANY CLAIM YOU MAY HAVE IN RESPECT THEREOF.

If you have any further questions or require further clarification, please contact us by [privacy@itamar-medical.com](mailto:privacy@itamar-medical.com).

### **Annex A - Questionnaire T&C**

For the purposes of these COA Licensing T&Cs, the User agrees to the terms listed below, when capitalized: (1) “COA” means the Clinical Outcome Assessment accessible through COMPANY’s modality/platform.; (2) “COMPANY” means the company which implemented the COA and provides access to the COA through its modality/platform; (3) “Copyright Holder” means the person or legal entity who owns the copyright on the COA; (4) “Services” means the access of the COA provided by COMPANY to the User under the agreement between COMPANY and the User; (4) “User” means COMPANY’s clients who will access and use the COA on COMPANT’s modality/platform.

1. Copyright/Use. The COA available through the Services is licensed by Mapi Research Trust, a not-for-profit organization registered at 27 rue de la Villette, 69003 Lyon, France and, is the property of the Copyright Holder. The User shall not use the COA except as permitted pursuant to these Licensing T&Cs. The Copyright Holder owns all of the intellectual property rights in the COA and any derivative work from the COA including but not limited to existing and future translations, and in particular the rights to reproduce, perform, modify, amend, adapt and translate the COA. The User may not delete or alter the copyright notice(s) included on the COA.
2. Grant of license. The User is granted a non-exclusive, non-concurrent, non-transferable, limited license to use the COA. The User shall not use the COA for any purpose other than for the Services. The User agrees not to reproduce, retransmit, modify, photocopy, distribute, disseminate, sell, publish, broadcast, or circulate the COA to anyone else without the express prior written consent of Mapi Research Trust .
3. Warranties. THE USER UNDERSTANDS AND AGREES THAT THE COA IS PROVIDED “AS IS”. MAPI RESEARCH TRUST DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NON INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE COA. MAPI RESEARCH TRUST AND THE COPYRIGHT HOLDER ACCEPT NO RESPONSIBILITY FOR ANY EXPENSES, LOSSES OR ACTIONS INCURRED OR UNDERTAKEN BY THE USER AS A RESULT OF ITS USE OF THE COA UNDER THIS AGREEMENT.