

**ITAMAR® MEDICAL**  
**TERMS AND CONDITIONS OF SALE**

The following terms and conditions of sale, together (if applicable) with the terms and conditions detailed in a sales quote or purchase order (“**Purchase Order**”) (collectively the “**Terms**”), shall apply to the sale of products and any consumables (“**Products**”) by Itamar® Medical, Inc. or its affiliates (“**Supplier**”) to the purchaser (including its affiliates) (“**Purchaser**”).

1. **SCOPE:** All sales by Supplier of any of its Products to Purchaser and all related Services are subject to these Terms. Purchaser hereby acknowledges and confirms that no terms or conditions contained in any order form submitted by Purchaser that varies from, or conflicts with, any of these Terms shall become part of these Terms unless it is expressly accepted in writing and signed by Supplier’s authorized representative. In these Terms, “**Services**” shall include, without limitation, the Software (as detailed below in Section 17); provision of customer support; and the use or disclosure of PHI in a manner permitted by the terms of the Supplier’s Business Associate Agreement with the Purchaser, where applicable. Supplier reserves its right to change or broaden the Services from time to time, at its discretion.
2. **DELIVERY AND ACCEPTANCE:** Delivery of all Products will be made *FOB Origin and/or Ex-Works* Supplier’s facilities (Incoterms 2020) (the “**Delivery Location**”) within fourteen (14) business days of Supplier’s acceptance of the Purchase Order. Supplier shall have the right to deliver Products earlier than any agreed upon delivery date. Supplier reserves the right to make deliveries in installments.
3. **RISK OF LOSS, TITLE, AND SECURITY INTEREST:** Risk of loss to Products and transfer of title shall pass from Supplier to Purchaser at the Delivery Location upon delivery.
4. **PRICES AND TERMS OF PAYMENT:** The prices of the Products and terms of payment shall be as detailed in the Purchase Order. Unless otherwise set forth in the Purchase Order, Purchaser shall pay for the Products within thirty (30) days of invoice date. All payments shall be made in US Dollars. In the event Supplier institutes legal action against Purchaser to collect delinquent accounts, Purchaser agrees to reimburse Supplier for reasonable legal fees and costs of any legal action taken by Supplier. In addition, all late payments shall be subject to a late payment penalty calculated at the rate of the higher of: (i) annual rate of 18%, compounded monthly (effective annual rate of 19.56%); or (ii) the highest amount permitted by applicable law. All payments will be made without set offs or deductions.
5. **TAXES AND ADDITIONAL COSTS:** Prices are exclusive of any applicable goods and services tax, harmonized sales tax, sales, use, value added, or other similar taxes, fees, levies, duties, and other governmental charges (with the exception of taxes imposed on the income of Supplier), all of which will be borne exclusively by Purchaser. If any payment made by Supplier or Purchaser as a consequence of a breach, modification or termination of these Terms is deemed by any applicable law to include a similar value-added or multi-staged tax, the amount of such payment shall be increased accordingly and borne by the breaching party.
6. **PURCHASER DEFAULT:** If Purchaser is in default on any provision of these Terms, Purchaser’s payment

obligations to Supplier shall immediately become due and payable, and Supplier may, without notice, decline to make further shipments or deliveries or terminate Purchaser’s outstanding Purchase Order(s), without affecting any other right or remedy Supplier may have, including, but not limited to, any right to cancellation charges. For purposes of these Terms, a “default” shall occur if Purchaser is more than five (5) days delinquent in any payment to Supplier, becomes insolvent, is adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statutes, has a receiver appointed or makes an assignment for the benefit of creditors, or is otherwise unable to meet its financial obligations as they become due. Continued shipment by Supplier following Purchaser’s default, which shall be at Supplier’s sole and exclusive discretion, shall not constitute a waiver of any of its rights nor shall it affect Purchaser’s legal obligations hereunder.

7. **PURCHASER’S REPRESENTATIONS AND WARRANTIES:**

- 7.1. Purchaser will use the Products solely in accordance with the operation manual available on the Supplier’s website: <https://www.itamar-medical.com/support/downloads/>, which may be modified from time to time by Supplier (the “**Operation Manual**”) and any updates as shall be provided by the Supplier. Purchaser shall also ensure that Purchaser’s patients are provided with instructions for proper use of the Products.
- 7.2. Purchaser shall use the Products only in the normal course of sleep testing and will not sell, resell, lend, assign, convert, or otherwise transfer them to any third party, except as expressly permitted herein. Purchaser will not use the Products on any devices not covered under these Terms.
- 7.3. Purchaser shall have full and sole responsibility for the proper safeguarding and preservation of the Products. The Purchaser shall promptly and without any undue delay notify Supplier of any misuse, malfunction, or problems related to the Products and shall cease the use of such Products until they are repaired or replaced.
- 7.4. The Products were either evaluated by or demonstrated to and selected by Purchaser and Purchaser is satisfied that the Products are suitable for Purchaser’s purposes.
- 7.5. Purchaser has not relied upon Supplier’s skill or judgment in the selection of the Products as suitable for any particular purpose.
- 7.6. Purchaser has full right and authority to enter into this Agreement and to perform its obligations hereunder.
- 7.7. Purchaser shall: (a) comply with all applicable laws and regulations, accreditation standards, and third-party payor requirements applicable to the Products and the Services performed using the Products; (b) maintain all licenses, permits, registrations, and accreditations as required to perform its obligations hereunder, including, without limitation, the purchase and use of the Products and any applicable requirements to maintain distribution records, complaint handling records, and recall procedures; and (c) only use the Products pursuant to these Terms.

- 7.8. Purchaser is solely responsible for providing all medical oversight and supervision for all services performed using the Products.
- 7.9. Purchaser further represents and warrants that (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, including all states where it provides medical services to patients; (b) it shall comply with applicable laws and regulations, requirements of third-party payors, including but not limited to the Medicare Anti-Markup Rule and comparable requirements, professional standards and policies, billing and conflict of interest policies, and the standard of care of the medical community in which the patients reside; (c) it shall obtain or ensure that an order, prescription or other applicable written direction from a physician who is licensed in the state where a patient resides is obtained prior to using the Products for that patient; (d) neither it nor any of its employees, contractors, and agents are, or have been, debarred or suspended under the US Federal Food, Drug, and Cosmetic Act or any applicable licensing body or any comparable laws and regulations of any other applicable jurisdiction or suspended or excluded from, or otherwise ineligible to participate in, any federal or state healthcare program or non-procurement program; and including the Medicare Anti-Markup Rule and comparable requirements.
8. **INTELLECTUAL PROPERTY:** It is expressly understood and agreed by Purchaser that the Products and any Services provided by Supplier incorporate confidential information, know-how, knowledge, ideas, inventions, works, designs, works of authorship, technology, trade secrets, and other technology, intellectual property, and intellectual property rights including the Technical Device Data as defined in Section 9.3. (All of which, whether or not copyrighted, patented, or registered, are hereafter referred to as the “**Technology**”). The Technology is, and shall always remain, the exclusive property of Supplier. Purchaser shall have a continuing obligation to maintain the confidentiality of the Technology until such time that it becomes publicly known through no fault of Purchaser. Purchaser agrees not to use in any way or form, any part of the Technology for any purpose other than its intended use. Purchaser shall not replicate, reproduce, alter, modify, disassemble, decompile, reverse engineer, create derivative works from misuse, incorporate into another product, enhance, change, copy or attempt to copy, transfer or disclose to third parties or perform any similar type of operation on Products or the Technology or any part thereof, in any fashion or for any purpose, or otherwise, either directly or indirectly, infringe, violate, or misappropriate Supplier's rights with regard to the Technology or Products. By taking delivery of or using the Products, Purchaser shall not become entitled to any proprietary or non-proprietary rights in or to the Technology or the Products.
9. **DATA PROTECTION AND OWNERSHIP:**
  - 9.1. Supplier has no contractual relationship or interaction with the patients or other end users (“**End Users**”) of the Products. Purchaser shall be responsible to obtain all required consents from, and provide all required notices to, all End Users of the Products to allow for the processing of their Personal Information (as such term is defined in applicable data protection laws and regulations) for the purposes contemplated by these Terms.
  - 9.2. In order to be compliant with any and all applicable data protection laws including, but not limited to: the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and their implementing rules and regulations codified at 45 C.F.R. Parts 160 and 164 (“**HIPAA**”), and any amendment thereto, and any regulation promulgated thereunder, the parties shall enter into the Business Associate Agreement attached hereto as **Exhibit A**.
  - 9.3. **Ownership of Data.** With regard to Purchaser and Supplier, Supplier shall have all ownership rights and title in any meta data, usage data, technical device data, information, or other related content generated by the Products during the Services including but not limited to the devices’ serial numbers, sleep test status, and codes (“**Technical Device Data**”). Any clinical recordings, sleep test results, and any other clinical data collected from End Users through Supplier’s performance of the Services (“**Clinical Data**”) shall be owned by the Purchaser. For the avoidance of doubt, Supplier shall have all ownership rights and title to Clinical Data, which has been de-identified in accordance with the Business Associate Agreement.
10. **LIMITED WARRANTY:**
  - 10.1. Supplier hereby warrants to Purchaser that each Product delivered hereunder will be free of defects in material and workmanship under normal use and service for a period of twelve months from the date of delivery (the “**Warranty Period**”).
  - 10.2. If, during the Warranty Period, a Product or any component of a Product becomes defective by reason of material or workmanship, and provided Purchaser immediately notifies Supplier of such defect, Supplier may, at its option, supply a replacement, or request the return of the Products or a component of the Products to Supplier's premises for repair in accordance with Supplier's warranty and repair procedures.
  - 10.3. This warranty shall not apply to any Products or component parts, that Supplier determines (a) have been damaged by improper operation, tampering with, improper maintenance, misuse, accident, or neglect, or were subject to any of the Prohibited Activities; (b) have been used in a manner not in accordance with the applicable laws or the instructions provided by Supplier, including without limitation, in accordance with the Operation Manual; (c) have had changes or repairs made not by Supplier or without written authorization of Supplier to do so; (d) were incorporated into another product without the prior written approval of Supplier; or (e) were stored in conditions or for a period of time contrary to the guidelines of Supplier.
11. **LIMITATION OF LIABILITY:**
  - 11.1. PURCHASER'S SOLE REMEDIES FOR BREACH BY SUPPLIER OF ANY

- WARRANTIES OR TERMS HEREUNDER OR FOR ANY OTHER BREACH BY SUPPLIER SHALL BE LIMITED TO THE EXPRESS REMEDIES PROVIDED FOR HEREIN.
- 11.2. THE PRODUCTS ARE PROVIDED TO PURCHASER HEREUNDER “AS-IS”. EXCEPT AS SET FORTH IN THESE TERMS, SUPPLIER MAKES NO WARRANTIES OR CONDITIONS OF ANY KIND HEREUNDER, WHETHER EXPRESS, IMPLIED, LEGAL, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WARRANTIES EXTEND SOLELY TO PURCHASER. SUPPLIER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, CAUSED BY OR RELATING TO THE SERVICES PERFORMED OR THE PRODUCTS PROVIDED UNDER THESE TERMS, OR BY DELAY OR ANY ACT OR OMISSION OF SUPPLIER IN CONNECTION WITH THESE TERMS, THE USE OR PERFORMANCE OF, OR THE RESULT OBTAINED OR NOT OBTAINED FROM THE PRODUCTS EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 11.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SUPPLIER BE LIABLE TO PURCHASER FOR DAMAGES IN EXCESS OF THE FEES PAID BY PURCHASER FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THE FOREGOING LIMITATION SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, CIVIL LIABILITY OR OTHERWISE.
12. **FORCE MAJEURE:** No default shall be caused by, and the parties shall not be responsible to one another for any loss, damages, or penalty resulting from any delay or failure to perform the obligations of a party hereunder that are due to any cause beyond a party’s control. Both parties shall not be liable to one another for any delay(s) or failure(s) to perform their obligations hereunder due to acts of God, war, strike, epidemic, the scarcity of the basic elements necessary to manufacture the Products or because of any governmental restriction whatsoever upon the possession or distribution of such basic elements.
13. **COMPLIANCE:** Supplier is committed to conducting its business in an ethical, legal, and socially responsible manner and expects similar high ethical values of integrity, professionalism, loyalty, and respect both for person and environment from everyone with whom Supplier has commercial dealings. Purchaser undertakes to conduct its business in compliance with all applicable national and international laws and regulations, including but not limited to the Federal Anti-kickback Statute, Physician Self-Referral Law (Stark Law), Foreign Corrupt Practices Act, and any regulations under these statutes, and any similar laws or regulations in applicable jurisdictions, including without limitation with those concerning corruption, bribery, fraud, and/or unfair and/or prohibited business practices.
14. **GOVERNING LAW; JURISDICTION:** These Terms are governed exclusively by the laws of the State of Georgia, United States, 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 hereunder. Any proceeding brought by a party arising out of, under or relating to any dispute relating to these Terms, shall be submitted to the exclusive jurisdiction of the competent courts in the city of Atlanta, Georgia, and by the signature on Purchase Order, the signing party hereby irrevocably consents to the exclusive jurisdiction of such venue.
15. **GENERAL:** No rights or obligations of Purchaser under these Terms may be assigned or otherwise transferred by Purchaser, in whole or in part, without the express written consent of Supplier. If any provision of these Terms is held to be invalid or unenforceable for any reason, such determination shall not affect the validity or enforceability of any of the remaining portions hereof. Failure of either party to insist upon strict performance of any of these Terms hereof, or delay in exercising any remedy, shall not constitute a waiver of such Terms nor shall it constitute a waiver of any default or remedy hereunder. These Terms are a complete and exclusive statement of the understandings between the parties regarding the subject matter hereof and thereof. These Terms supersede and replace all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, written or oral. The relationship of the parties established by these Terms shall be that of independent contractors and nothing contained in this agreement shall be construed to constitute the parties as principal and agent, employee and employer, franchisor and franchisee, partners, co-owners, or otherwise as participants in a joint venture or common undertaking.
16. **NOTICES:** All notices shall be in writing and shall be hand-delivered or sent by courier, certified or registered mail, return receipt requested, or any nationally recognized express mail service or via email to the addresses set forth in the Purchase Order or such other address as the parties shall notify the other in accordance with this section. Notices shall be deemed delivered upon receipt if delivered by hand, overnight courier service, or email, or on the date set forth in the return receipt if sent by certified mail, return receipt requested.
17. **EXPORT CONTROL COMPLIANCE:** Purchaser agrees to comply with all United States and other government export controls laws including but not limited to the Export Administration Regulations (“EAR”, 15 CFR. 730-774) administered by the U.S. Department of Commerce, Bureau of Industry and Security and the International Traffic in Arms Regulations (“ITAR”, 22 CFR 120-130) administered by the U.S. Department of State, Directorate of Defense Trade Controls.
18. **SOFTWARE:**
- 18.1. If Purchaser opts to access and use one of the Supplier’s test management systems - the CloudPAT® cloud-based platform (including its optional patient management tool,

SleePATh®), the zzzPAT® software, or EndoPAT® software - Supplier shall grant Purchaser a non-transferable, revocable, non-exclusive, non-sublicensable, royalty-free License to the applicable system(s), all subject to the provisions set forth herein, including without limitation as set forth in **Exhibit A** (the “License”).

- 18.2. When using CloudPAT, Purchaser shall have the option, but not the obligation, to have the results of the patient’s sleep study interpreted by a licensed physician facilitated by Supplier. To the extent that Purchaser wishes to use the interpretation services, then Supplier and Purchaser shall enter into an Interpretation Services Agreement. Purchaser hereby confirms that despite the facilitation of a licensed physician to interpret the results, Supplier does not perform any diagnostic services.

**19. TERMS APPLICABLE TO PRODUCTS PURCHASES:**

- 19.1. **Single Use Products:** It is hereby clarified that the WatchPAT® ONE is a single use Product. It is hereby clarified and agreed that any terms of any other commercial agreement between the parties that by their nature apply to reusable Products, such as, without limitation, pricing or RMA terms, shall not apply to the purchase of WatchPAT ONE and are hereby expressly disclaimed.
- 19.2. Notwithstanding the above, Purchaser is not permitted to resell the Products. Purchaser shall only be permitted to market home sleep apnea test interpretation services using the Products subject to the following terms: (1) Purchaser complies with the representations and warranties detailed in these Terms; (2) to the extent Purchaser uses subcontractors or third parties’ platforms (such as Amazon) for marketing its services using the Products, Purchaser shall comply with any requirements of such subcontractors and/or third parties and Purchaser shall ensure that any subcontractors and/or third parties comply with the provisions of these Terms; (3) the header of any such marketing materials must include language that reflects clearly that Purchaser is marketing its

own services in connection to home sleep apnea tests and not the Products themselves; (4) as part of the description of the services offered by Purchaser, it must be clarified that these services are not provided by Supplier nor are they for the sale of any of Supplier’s Products or Services. The subcontracting of any of Purchaser’s obligations under these Terms will not relieve Purchaser from any obligation or liability under these Terms. Purchaser will remain responsible for subcontractor’s and/or third party’s acts performed by each subcontractor and/or third party and their respective agents and employees to the same extent as if those acts were performed by Purchaser. Their work will be deemed to be work performed by Purchaser.

**20. MARKETING AND TRADEMARKS**

- 20.1. “Trademark” shall refer to the trademarks “PAT®”, “WatchPAT® ONE”, “WatchPAT®”, “Itamar® Medical”, CloudPAT®, SleePATh®, EndoPAT® and any other of Supplier’s trademarks, as detailed, *inter alia*, on Supplier’s website.
- 20.2. Purchaser shall not use Supplier’s name, logo, Trademarks, trade names, trade dress, design, images, look and feel, or other proprietary rights (together “**Proprietary Rights**”) in any of its advertising, promotional communications, publications, or other work without the prior written permission of Supplier. Any such use shall be solely for the purpose of identifying Supplier as the source of the referenced Product(s) and shall not imply any other relationship between Supplier and Purchaser. Purchaser must not remove, obfuscate, deface, cover or alter any Supplier’s Trademarks or other Proprietary Rights nor add any Supplier’s mark or other mark to any materials provided by Supplier nor to any Product or its packaging. Neither Purchaser nor its agents will register or use any trademark that may cause confusion with Supplier’s Proprietary Rights.

**END**

## **Exhibit A**

### **License Agreement**

**PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR OTHERWISE USING THE LICENSED SOFTWARE (AS DEFINED BELOW). THIS LICENSE AGREEMENT APPLIES TO ALL LICENSED SOFTWARE (AS DEFINED BELOW).**

This License Agreement is a legal agreement between Purchaser (also referred to as “**you**”) and Supplier (also referred to as “**Itamar**”) pursuant and subject to the Terms to which this Exhibit A is attached. Terms not defined in this Exhibit A shall have the definitions provided in the Terms.

By installing, copying, or otherwise using the Licensed Software, you agree to be bound by the terms of this License Agreement. If you do not agree to the terms of this License Agreement, including, without limitation, the limitations and restrictions on use as provided in Section 2, do not install, use or copy the Licensed Software or use the Third-Party Software.

The Licensed Software is protected by US Intellectual Property laws, other countries’ Intellectual Property laws, and international treaty provisions. Therefore, you must treat the Licensed Software like any other Intellectual Property-protected material or product. All right, title and interest in and to all Intellectual Property Rights in and to the Licensed Software are and shall remain with Itamar.

#### **1. DEFINITIONS**

- 1.1. “Feedback” means all data, feedback, suggestions, comments, ideas, questions, material, defects, errors or problems, and any information regarding the Licensed Software.
- 1.2. “Intellectual Property Rights” means worldwide (a) patents, patent applications, and patent rights; (b) rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions, mask work rights, mask work applications, and mask work registrations; (c) rights relating to the protection of trade secrets and Confidential Information; (d) trademarks and indicia of origin; (e) designs, including without limitation industrial designs; (f) rights similar or analogous to those set forth herein; (g) any other Intellectual Property, proprietary or other rights relating to the foregoing; and (h) all applications and registrations for the foregoing now existing or hereafter filed, issued, or acquired.
- 1.3. “Product(s)” means the EndoPAT®, WatchPAT®200, WatchPAT®300, WatchPAT® ONE and/or any derivatives, modifications, improvements, or related Products or components, the PAT® Probes and the corresponding components of any third party with which this License Agreement was received. Some Products are stand-alone products, and some Products are incorporated as components within third party products, in each case sold, or otherwise made available, by Itamar and/or third parties.
- 1.4. “Licensed Software” means the EndoPAT software, zzzPAT®, CloudPAT®, SleepATH® and the associated media and/or any other software and accompanying materials provided to you by Itamar. Some Licensed Software is a stand-alone product, and some Licensed Software is incorporated as a component within a Product, in each case sold or otherwise made available, by Itamar and/or third parties.

#### **2. LICENSE TO USE, LIMITATIONS AND RESTRICTIONS ON USE**

- 2.1. **LICENSE TO USE LICENSED SOFTWARE.** Subject to the terms and conditions of this License Agreement and the Terms, and for the duration thereof, Itamar hereby grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable right to use the Licensed Software: (i) solely with the Product(s); and (ii) solely in object code for its/their intended use in accordance with the provisions of this License Agreement and the instructions provided in the documentation accompanying the Licensed Software and the Product, subject to the Limitations on Use as provided in Section 2.2 and the Restrictions on Use as provided in Section 2.3.
- 2.2. **LIMITATIONS ON USE.** The licenses granted in Section 2.1 above are for use in connection with the medical diagnosis of sleep apnea. 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 Products and/or the Licensed Software, for the purpose of seeking or obtaining any regulatory approval from any governmental or regulatory agency for any diagnostic or therapeutic claim, or for any medical, 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 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. **NOTHING IN THIS LICENSE AGREEMENT, INCLUDING THIS LIMITATION ON USE, IS INTENDED, IN ANY MANNER, TO RESTRICT THE REPORTING OF INFORMATION REGARDING ITAMAR’S PRODUCTS AND/OR LICENSED SOFTWARE IN ACCORDANCE WITH THE REPORTING REGULATIONS OF ANY GOVERNMENTAL OR REGULATORY AGENCY.**
- 2.3. **RESTRICTIONS ON USE.** Any use of the Licensed Software other than as set forth in Section 2.1 above, as limited by Section 2.2 above, is strictly forbidden. Without derogating from the generality of the above, you may not:
  - 2.3.1. Distribute, reproduce, copy, assign, rent, lease, publish, market, license, sublicense, sell, pledge, resell, or otherwise transfer the rights granted to you under this License Agreement to any third party except as explicitly set forth in this License Agreement;
  - 2.3.2. Reverse engineer, decompile, or disassemble, as applicable, the Licensed Software;
  - 2.3.3. Engage in or permit any form of automated scraping, data mining, data harvesting, or any similar activity that involves unauthorized extraction or collection of data related to the Licensed Software or Technical Device Data.

- 2.3.4. Attempt to discover, access, or use the Licensed Software source code;
- 2.3.5. Modify or create any derivative work in any manner of the Licensed Software;
- 2.3.6. Disclose, publish, or otherwise make publicly available the results of any benchmarking of the Licensed Software, or use such results for competing software development activities;
- 2.3.7. use or permit the Licensed Software to be used to perform services for third parties, whether on a service bureau or time-sharing basis or otherwise;
- 2.3.8. Transmit any content which contains software viruses, or other harmful, infringing, illegal, disruptive or destructive content, messages, computer code, files, or programs;
- 2.3.9. Use or launch any automated system (including without limitation, “robots” and “spiders”) to access the Licensed Software, including, without limitation, in order to extract for re-utilization of any parts of the Licensed Software, or perform any act that destabilizes, interrupts, or encumbers the Licensed Software or its servers or use automatic means that enable sending more request messages to the servers of the Licensed Software, in a given period of time, than a human can reasonably send in that time period by using the Licensed Software;
- 2.3.10. Circumvent, disable, or otherwise interfere with security-related features of the Licensed Software, such as features that restrict or monitor use of the Licensed Software or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Licensed Software;
- 2.3.11. Use or encourage, promote, facilitate, or instruct others to use the Licensed Software for any unlawful, harmful, irresponsible, prohibited by this Agreement, or inappropriate purpose;
- 2.3.12. Remove or otherwise alter any of Itamar's trademarks, logos, copyrights, or other proprietary notices or indicia, if any, fixed or attached to the Licensed Software or use the Itamar name, logo, or trademarks without prior written consent from Itamar;
- 2.3.13. Ship, transfer, or export the Licensed Software or use the Licensed Software in any manner that is prohibited by law, including without limitation, selling, distributing, downloading, or exporting the Licensed Software : (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon; or Syria (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. or Israeli government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or Israel or any foreign agency or authority; or (e) make use of the Licensed Software in any jurisdiction where same are illegal or which would subject Itamar or its affiliates to any registration requirement within such jurisdiction or country. You hereby agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country as in sub-section (a) or on any such prohibited party list;
- 2.3.14. Contest Itamar's Intellectual Property Rights, including at any time after the termination or expiration of this License Agreement;
- 2.3.15. Refer to the Licensed Software by use of framing or utilize the Licensed Software, including without limitation any related point of presence, servers, and network, in any way which will result in the violation or circumvention of any applicable laws or regulations including, without limitation, those enforcing censorship, privacy, government authority restrictions or others;
- 2.3.16. Use the Licensed Software contrary to this License Agreement or the license metrics and work environment conditions set forth in the Operation Manual or in any agreement between the parties.

You are solely responsible for acquiring and maintaining all of the hardware, software, and services necessary to access and make use of the Product, including without limitation paying all fees and other costs related to internet access, server or cloud account subscription and maintenance.

### 3. ITAMAR INTELLECTUAL PROPERTY

- 3.1. The Licensed Software (including Feedback) and any modifications, improvements, or derivatives thereof and all Intellectual Property Rights related thereto (“Itamar IPR”) are the property of Itamar who retains all right, title and interest in connection therewith. Nothing herein contained shall be construed as granting you any right, title, or interest in and to Itamar IPR.
- 3.2. Any and all trademarks and logos which appear on or in connection with the Licensed Software, as may be amended and updated from time to time, are 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, alter, or destroy any copyright, trademark, logo or other proprietary marking or legend placed on or contained in the Licensed Software.

### 4. LIMITED WARRANTIES AND DISCLAIMERS

- 4.1. Itamar hereby warrants to you that to its knowledge the Licensed Software does not infringe any third party owned patent registered in the US.
- 4.2. Itamar warrants that during the provision of Services, the Licensed Software will, under normal use, perform substantially in accordance with its technical specifications. If during that time, the Licensed Software does not perform substantially in accordance with its technical specifications, Itamar shall as sole and exclusive remedy and at its sole discretion: (a) attempt to correct or assist you around errors with efforts which Itamar believes suitable to the problem, or (b) replace the Licensed Software with a functionally equivalent software. Notwithstanding the foregoing, the warranty period for the Licensed Software incorporated as a component within a Product shall not extend beyond the warranty period for the Product itself.
- 4.3. Limitation of Warranties. The warranty contained in Section 4.2 above does not cover damages caused by accident, misuse, abuse,

negligence, failure to install in accordance with this License Agreement or Itamar's installation instructions, failure to operate under conditions of normal use and in accordance with the terms of the documentation accompanying the Licensed Software, defects discovered in any component of the Licensed Software that have been modified, altered, or enhanced other than by Itamar, failure to maintain in accordance with applicable documentation accompanying the Licensed Software, alteration or any defects not related to materials or workmanship.

- 4.4. 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.
- 4.5. ITAMAR HEREBY DISCLAIMS, WITH RESPECT TO THE LICENSED SOFTWARE, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, LEGAL OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF OR RELATED TO MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, TRADE USAGE, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF INFORMATION, LACK OF NEGLIGENCE AND CORRESPONDENCE TO DESCRIPTION, AND TITLE.

## 5. LIMITATION OF LIABILITY

- 5.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ITAMAR AND/OR ANY OF ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE TO YOU FOR DAMAGES IN EXCESS OF THE FEES YOU PAID FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM, COMPLAINT, OR DEMAND. THE FOREGOING LIMITATION SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, CIVIL LIABILITY OR OTHERWISE.
- 5.2. IN NO EVENT SHALL ITAMAR /OR ANY OF ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS LICENSE AGREEMENT OR THE LICENSED SOFTWARE, THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES BY ITAMAR OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, EVEN IF ITAMAR AND/OR ANY OF ITS AFFILIATES OR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, CIVIL LIABILITY OR OTHERWISE.
- 5.3. Notwithstanding the foregoing, you shall be liable to Itamar for all direct damages incurred by Itamar resulting from your failure to comply with this License Agreement as well as negligent or willful misconduct directly resulting in damage to Itamar's network or Itamar. Specifically, you shall compensate Itamar for damage caused to Itamar's network by introduction of a virus, including, but not limited to, workstation reimaging, forensic analysis, containment activities, employee or contractor time, repair or replacement of hardware or software directly attributable to the virus introduction. You shall also compensate Itamar for any direct damages caused by your misuse of Itamar's intellectual property, or use of licensed property for which you were not provided a license or sublicense to use.

## 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, return any and all information representing Itamar IPR and Confidential Information and delete any such information held by you in electronic form. The following Sections shall survive termination: 1, 3, 4.5, 5, 8, 10.

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Except as expressly permitted hereunder, you may not transfer or assign the rights and obligations hereunder together with the Licensed Software or third party Software. Any attempt by you to sell, 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. Itamar may assign its rights and obligations herein to any third party at its discretion.

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All data and information related to the Licensed Software or to Itamar or its affiliates, are confidential information of Itamar ("**Confidential Information**"). You agree to keep the Confidential Information confidential and not disclose to any person or entity or use any such Confidential Information in any other way. You will not disclose any information regarding the results of the Licensed Software to any third party without Itamar's prior written consent.

## 9. YOUR ACCOUNT

You are solely responsible for any actions performed in the Licensed Software under your username and password. Keeping your password safe is your sole responsibility. If you have any reasons to suspect that your password was discovered by any third party or that there was an unauthorized access to your account, you will immediately notify Itamar and modify your login and password details. You shall also provide

notice to Itamar of any representative who is terminated by you or no longer permitted to access your account on your behalf within 24 hours of such change or determination.

The Licensed Software is intended for use by users at least eighteen (18) years old. You hereby declare that you and all the users of the Licensed Software on your behalf are eighteen (18) years old or older and undertake to monitor your account to ensure that no minor under that age has access to the Licensed Software. Access is provided subject to a security review by Itamar; such review may include a review of your process, procedures, and oversight to individual's receiving access to your account. This License Agreement does not guarantee access to your account, but defines the terms under which Itamar may provide such access. Itamar reserves the right to deny access to your account to any individual for any reason, including non-compliance with Itamar's policy or procedures or this License Agreement. You shall ensure no representative shall access any resource for which access is not authorized by Itamar or which is not necessary for you to receive Itamar's services.

You shall be responsible for: (a) providing, configuring, installing, maintaining, and troubleshooting all equipment and software required to maintain your account connectivity at your facility; (b) maintaining your internet connectivity to facilitate the transfer of electronic information; (c) reporting problems with your account to Itamar in a timely manner; (d) assisting Itamar in the management of your account and this Agreement; (e) providing Itamar an early warning of any organizational, functional, or technical change that might affect your ability to fulfill your obligations described in this Agreement; and (f) assisting Itamar in resolution of account incidents.

You shall also be responsible for the cost and support in providing, configuring, installing, maintaining, and troubleshooting all equipment, including switches, hubs, and routers, necessary to access your account. Itamar shall not be responsible for providing any technology to you necessary for you to set up your account except that which is expressly set forth in this License Agreement. Each party shall retain exclusive control over its own management and affairs and shall be responsible for its own acts or omissions in using the account.

#### 10. USER WARRANTIES

- 10.1. You represent and warrant that: (a) you have, and will have at all times, all permits and consents in connection with the Licensed Software as required to fulfill your obligations ; (b) you and your use of the Licensed Software will comply with all applicable laws; (c) you are not located in, under the control of, or a national or resident of any of the countries or entities referred to in Section 2.3.12(a) above and/or any country or entity that is subject to an Israel or U.S. Government embargo, or that has been designated by the Israel or U.S. Government as a "terrorist supporting" country and are not listed on any Israel or U.S. Government list of prohibited or restricted parties.
- 10.2. PRIVACY. Itamar's privacy practices are governed by its privacy policy, the most updated copy of which can be found at [https://www.itamar-medical.com/privacy\\_policy.htm](https://www.itamar-medical.com/privacy_policy.htm) ("**Privacy Policy**").

#### 11. CLOUDPAT TERMS OF USE

- 11.1. Use of CloudPAT will enable the Purchaser to provide access to the relevant physicians to the results of the sleep study for a specific patient. CloudPAT utilizes a secure HIPAA compliance format for encrypting and sending data files. It is Purchaser's obligation to ensure that transfer of any patient records and/or results is performed in accordance with applicable law and ensuring patient confidentiality.
- 11.2. Purchaser shall not assign or transfer or grant any other third-party access to CloudPAT except as permitted herein.
- 11.3. Itamar shall only be obligated to store any Clinical Data using CloudPAT for up to seven (7) years as of the applicable test date. Upon termination of this License Agreement, Itamar shall be entitled to transfer Clinical Data to Purchaser and upon such transfer, Itamar shall be entitled to destroy or delete Clinical Data without any liability to Purchaser or the patient or any third party. Notwithstanding the above, the parties may agree in writing on a different retention period of Clinical Data.
- 11.4. It is Purchaser's sole responsibility to maintain sufficient and proper records of all Results in accordance with the laws and regulations applicable to Purchaser.
- 11.5. All rights and title to CloudPAT and any and all derivative works and/or modifications thereof, as well as any documentation, trademarks, and any patentable information contained therein or embodied thereby, shall remain solely with Itamar.
- 11.6. Purchaser who provides patient education videos will obtain consent and authorization from participants and physicians, to distribute such videos to all assigned patients via SleepPATH® before providing them to Itamar. Purchaser acknowledges that provided videos will be available for general patient education unless specifically disabled by that patient's physician.



**Exhibit B**  
**Business Associate Agreement**  
***[Attached Separately]***