

ITAMAR™ MEDICAL
TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale, together with the terms and conditions stated on the face of the Sales Quote or Purchase Order (“**Purchase Order**”) (collectively the “**Terms**”) shall apply to the sale of products and any consumables listed in the Purchase Order (“**Products**”) supplied by Itamar Medical Ltd. and its affiliates listed on the applicable Purchase Order (“**Supplier**”) to the purchaser/customer (including its affiliates) designated on the Purchase Order (“**Purchaser**”). Solely upon the Purchaser’s signature on the Purchase Order, and its approval by the Supplier, shall the parties be deemed to having entered into a binding contract for the manufacture, sale and supply of Products by Supplier.

1. **SCOPE:** All sales by Supplier of any of its Products to Purchaser 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 the Purchase Order or the contract for the sale of Products unless it is expressly accepted in writing and signed by Supplier’s authorized representative. Delivery of these Terms to Purchaser constitutes notification of Supplier’s objection to any terms or conditions that vary from or conflict with those contained herein. Except as set forth above, once Supplier has agreed to sell Products to Purchaser, no modification or addition to these Terms or to any other provision of the contract for the sale of Products shall be binding on either party unless it is in writing and signed by both parties.
2. **DELIVERY AND ACCEPTANCE:** Delivery of all Products will be made *FOB Origin and/or Ex-Works* Supplier’s facilities (Incoterms 2010) (the “**Delivery Location**”) within 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:** The prices of the Products shall be as detailed in the Purchase Order.
5. **TERMS OF PAYMENT:** Terms of payment for the Products shall be paid thirty (30) days from invoice date, unless otherwise set forth in the Purchase Order. All payments shall be made in either Euro or USD, as indicated on the Purchase Order. In the event Supplier institutes legal action against Purchaser to collect delinquent accounts, Purchaser agrees to reimburse Supplier for reasonable attorneys’ fees and costs of suit. In addition, all late payments shall be subject to a late payment penalty calculated at the rate of the higher of one and one-half percent (1.5%) per month or the highest amount permitted by law, which interest shall accrue daily.
6. **TAXES AND ADDITIONAL COSTS:** Prices are exclusive of all 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.

7. **PURCHASER DEFAULT:** If Purchaser is in default on any provision of the Terms, all of Purchaser’s payment obligations to Supplier shall immediately become due and payable, and Supplier may, without notice, decline to make further shipments, 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 in the event that 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 discretion, shall not constitute a waiver nor shall it affect Purchaser’s legal obligations hereunder.
8. **PURCHASER’S REPRESENTATIONS AND WARRANTIES:**
 - 8.1. Purchaser will use the Products solely in accordance with the Operation Manual and any updates as shall be provided by the Supplier.
 - 8.2. Purchaser shall only use the serial number(s) assigned to the Products as a means to communicate with Supplier and shall not use such serial number(s) as an identifier in any other manner.
 - 8.3. Purchaser shall use the Products only in the normal course of sleep testing and will not sell, convert or otherwise transfer them to any third party, except as detailed herein. Purchaser will not use the Products on any devices not covered under these Terms.
 - 8.4. 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 the Supplier of any misuse, malfunction or problems related to the Products and shall cease the use of such Products until it is repaired or replaced.
 - 8.5. The Products were either evaluated by or demonstrated to and selected by the Purchaser and the Purchaser is satisfied that the Products are suitable for Purchaser’s purposes.
 - 8.6. Purchaser has not relied on Supplier’s skill or judgment in the selection of the Products and Consumables suitable for any particular purpose.
 - 8.7. Purchaser has full right and authority to enter into this Agreement and to perform its obligations hereunder and it is enforceable against it.
 - 8.8. Purchaser shall: (a) comply with all applicable laws and regulations, accreditation standards, and third-party payor requirements applicable to services performed using the Products and Consumables; (b) maintain all licenses, permits and accreditations as required to perform its obligations hereunder and to provide services using the Products and Consumables; and (c) only use the Products and Consumables pursuant to the terms of these Terms.
 - 8.9. Unless otherwise agreed upon between the Parties in writing, Purchaser is solely responsible for

- providing all medical oversight and supervision for all services performed using the Products and Consumable.
- 8.10. 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 require its physicians to comply with applicable laws and regulations, requirements of third-party payors, professional standards, and the standard of care of the medical community in which the patient resides; (c) it shall obtain an order from a physician who is licensed in the state where a patient resides prior to using the Products and Consumables 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 comparable laws and regulations of any other applicable jurisdiction or suspended or excluded from, or otherwise ineligible to participate in, any federal healthcare program or non-procurement program; and (e) its billing practices shall comply with applicable laws and regulations and any third-party payor requirements, including the Medicare Anti-Markup Rule and comparable requirements.
9. **INTELLECTUAL PROPERTY:** It is expressly understood and agreed by the Purchaser that the Products incorporate confidential knowledge, technology, and trade secrets (all of which, whether or not copyrighted or patented, are hereafter referred to as "Technology"). Ownership of and title in and to the Products (excluding WatchPAT ONE) is, and shall remain at all times, with the Supplier and its affiliates. The Technology is, and shall always remain, the exclusive property of the Supplier and its affiliates. The Purchaser shall have a continuing obligation to maintain the confidentiality of the Technology until such time that it becomes publicly known. The Purchaser agrees not to use in any way or form whatsoever, any part of the Technology for any purpose whatsoever other than in the normal business operation and the Purchaser shall not replicate, reproduce, alter, modify, disassemble, decompile, reverse engineer, create derivative works from, transfer or disclose to third parties, any part of the Technology for any purpose whatsoever. Purchaser, by taking delivery of or using the Products shall not become entitled to any proprietary or non-proprietary rights in or to the intellectual property rights.
10. **DATA PROTECTION:**
- 10.1. The Purchaser acknowledges and agrees that the Supplier is solely the developer and owner of the Products and the provider of the services. As such, Supplier has no contractual relationship or interaction with the patients or other end users of the Products. Purchaser further acknowledges that both Purchaser or Supplier may process certain Personal Data (as such term is defined in applicable data protection regulation) based on permission and disclosures presented by Supplier as required under applicable laws. Purchaser shall be responsible to obtain the patient's consent to the collection and processing of data as well as disclose its use of the Product which might enable the sharing of Personal Data with Supplier. The Purchaser and Supplier shall enter into a Data Protection Agreement and/or Business Associate agreement in order to set the data protection between the parties.
- 10.2. To the extent that the Purchaser is a "Covered Entity" or "Business Associate" as such terms are defined under 45 C.F.R. § 160.103, and in order to be compliant with any and all applicable data protection laws including, but not limited to: (A) 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; and (B) (i) the EU General Data Protection Regulation (Regulation 2016/679) ("GDPR"); (ii) the EU e-Privacy Directive (Directive 2002/58/EC), as amended ("e-Privacy Law"); (iii) any national data protection laws made under, pursuant to, replacing or succeeding (i) and (ii); and (iv) any legislation replacing or updating any of the foregoing., the parties shall enter into a business associate agreement or a data protection agreement.
11. **USE OF PRODUCTS SOLELY BY PURCHASER; PROHIBITED ACTIVITIES:** Purchaser is the sole authorized user of the Products and Purchaser may not sell, assign, transfer, lend to or allow any third party the right to use the Products. Purchaser shall not reverse engineer, decompile, misuse, incorporate into another product, modify, alter, enhance, change, copy or attempt to copy, or perform any similar type of operation on Products, in any fashion or for any purpose whatsoever or otherwise, either directly or indirectly, violate Supplier's rights with regard to the Products or the intellectual property rights therein ("**Prohibited Activities**").
12. **LIMITED WARRANTY:**
- 12.1. Supplier hereby warrants to Purchaser that: (1) each Product to be 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**").
- 12.2. If, during the Warranty Period, a Product or any component of the Products becomes defective by reason of material or workmanship, and provided the Purchaser immediately notifies Supplier of such defect, Supplier may, at its option, supply a replacement, or request the return of equipment to Supplier's premises for repair in accordance with Supplier's warranty and repair procedures.
- 12.3. This warranty shall not apply to any Products or component parts, that (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 instructions supplied by Supplier, including without limitation, in accordance with

the operation manual located on the Supplier's website: <https://www.itamar-medical.com/support/downloads/> and which may be modified from time to time by the Supplier; (c) have had changes or repairs made 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 and/or for a period of time contrary to the guidelines of Supplier which proves to be inadequate or unreasonable.

13. **LIMITATION OF LIABILITY:**

13.1. PURCHASER'S SOLE REMEDIES FOR BREACH BY SUPPLIER OF ANY WARRANTIES HEREUNDER OR FOR ANY OTHER BREACH BY SUPPLIER SHALL BE LIMITED TO THE EXPRESS REMEDIES PROVIDED FOR HEREIN.

13.2. THE PRODUCTS ARE PROVIDED TO THE PURCHASER HEREUNDER "AS-IS". EXCEPT AS SET FORTH IN THESE TERMS, THE SUPPLIER MAKES NO WARRANTIES OF ANY KIND HEREUNDER, WHETHER EXPRESS, IMPLIED OR ARISING FROM TRADE USAGE, CONTRACT, AND TORT OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WARRANTIES EXTEND SOLELY TO THE PURCHASER. THE 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 AND PURCHASE ORDER, 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 THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY AND ALL WARRANTIES AND FOR THE SUPPLIER'S LIABILITY OF ANY KIND UNDER OR ARISING OUT OF THESE TERMS (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS.

14. **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 its obligations hereunder due to 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.

15. **COMPLIANCE:** The Supplier is committed to conducting its business in an ethical, legal and socially responsible manner and expects similar principled conduct from everyone with whom Supplier has commercial dealings. The Purchaser undertakes to conduct its business in compliance with all applicable national and international laws and regulations, including with respect to Foreign Corrupt Practices Act and regulation thereunder and any similar laws and regulation in applicable jurisdictions, including without limitation with respect to corruption, bribery, fraud and/or unfair and/or prohibited business practices, and to keep high ethical values of integrity, professionalism, loyalty and respect both for man and environment.

16. **GOVERNING LAW; JURISDICTION:** These Terms are governed by the laws of the State of Israel, 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 and/or a Purchase Order shall be submitted to the exclusive jurisdiction of the competent court in Tel-Aviv, Israel and by the signature on Purchase Order, the signing party hereby irrevocably consent to the jurisdiction of such venue.

17. **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 or all of the remaining portions hereof. Failure of either party to insist upon strict performance of any of the terms or conditions hereof, or delay in exercising any remedy, shall not constitute a waiver of such terms and conditions nor shall it constitute a waiver of any default or remedy hereunder. These Terms and the Purchase Order are a complete and exclusive statement of the agreement and understanding between the parties regarding the subject matter hereof and thereof. These Terms supersede and replace all prior or contemporaneous agreements, written or oral.

18. **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.

19. **EXPORT CONTROL AND PRIVACY REGULATION COMPLIANCE.** Purchaser agrees to comply with all United States 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.

20. **SOFTWARE**

20.1. If Purchaser opts to purchase a license to access and use one of the Supplier's test

- management systems, (either the CloudPAT™ cloud-based platform or the zzzPAT software, the Supplier shall grant the Purchaser a non-transferable, nonexclusive, royalty-free License to the applicable system, all subject to the provisions set forth herein, including without limitation as set forth in **Exhibit A** (the “**License**”).
- 20.2. CloudPAT offering. If Purchaser opts to use the CloudPAT cloud-based management system, the License shall be subject to the provisions set forth herein, including without limitation, the CloudPAT terms and conditions in **Exhibit B**.
- 20.3. When using CloudPAT, the Purchaser shall have the option, but not the obligation, to use the Supplier’s interpretation services of the Results (as defined in **Exhibit B**). To the extent that the Purchaser wishes to use these services, then the Purchaser hereby consents to the terms of the Interpretation Services Agreement (“**Interpretation Services Agreement**”). The Purchaser hereby confirms that except as set forth in the Interpretation Services Agreement, the Supplier does not perform any diagnostic services, including without limitation, of the Results.
- 20.4. SleePAtH™ offering. Purchases of the SleePAtH services are also subject to the the privacy policy and WatchPAT ONE App terms and conditions which are available at <https://www.itamar-medical.com/terms-and-conditions/> and are incorporated by reference herein.
21. **TERMS APPLICABLE TO WATCHPAT ONE PURCHASES**
- 21.1. Single Use Products. It is hereby clarified that the WatchPAT ONE is a single use Products as opposed to other reusable WatchPAT Products the Purchaser may purchase under its last current commercial agreement with the Supplier (e.g., WatchPAT 300). Therefore, it is hereby clarified and agreed that any terms of last current commercial agreement 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.
- 21.2. Notwithstanding the above, Purchaser is not allowed to resell the Equipment. Purchaser shall only be allowed to market its service package of Home Sleep Apnea Test and interpretation using the Equipment to a third party through marketing, sales and/or online marketing channels 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 Equipment, Purchaser shall comply with any internal requirements of such subcontractors and/or third parties and Purchaser shall ensure that

any subcontractors and/or third parties complies with the provisions of these Terms. The subcontracting any of the Purchaser's obligations under these Terms will not relieve the Purchaser from any obligation or liability under these Terms. The Purchaser will remain responsible for subcontractor’s and/or third parties’ acts performed by each subcontractor and/or third party and its and their respective agents and employees to the same extent as if those acts were performed by the Purchaser. Their work will be deemed to be work performed by the Purchaser.

22. **MARKETING AND TRADEMARKS**

- 22.1. “Trademark” shall refer to the trademarks “PAT™”, “WatchPAT™ ONE”, “WatchPAT™”, “Itamar™-Medical” and any other of the Supplier’s trademarks, as detailed on Supplier’s website.
- 22.2. Any user of the Trademark (the “User”) shall ensure that any and all such Trademark shall bear the trademark notice (™ symbol) and should appear superscripted at the end of the Trademark: (1) on the most prominent use; such as the main use on a label or the headline of a document; and (2) the first use of the mark in running text and in each new section; and (3) once every page or field of vision.
- 22.3. The User shall not alter the Trademark in spelling or usage. It should always be an adjective that modifies the generic. The User shall avoid using the Trademark in a possessive form.
- 22.4. User shall not use Supplier’s Trademarks in any of its online assets (including in any metadata) or in any third-parties’ assets such as Amazon, except for the following materials which may include the Trademarks:
- 22.4.1. User may use Supplier’s images provided to the User by Supplier, without cropping, changing, editing, adding text or altering the images in any way.
- 22.4.2. User shall comply with all instructions and guidelines for trademark and marketing materials issued Supplier from time to time, and User agrees to incorporate all such changes as soon as possible after notification. User shall ensure the Trademarks and marketing materials not modified in any manner without the prior written consent of Supplier.
- 22.5. Devices, consumables, and/or any products and/or materials and/or documents bearing the Trademark shall comply with the provisions of these Terms and any associated agreement. Any breach or violation shall be corrected (or relevant materials destroyed) immediately upon the Supplier’s demand at User’s sole cost and expense.

END

Exhibit A

License Agreement

IMPORTANT – PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR OTHERWISE USING THE LICENSED SOFTWARE (AS DEFINED BELOW) WITH WHICH YOU RECEIVED THIS LICENSE AGREEMENT. THIS LICENSE AGREEMENT APPLIES TO (a) ALL LICENSED SOFTWARE, AND (b) ALL THIRD-PARTY SOFTWARE (AS DEFINED BELOW). SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS LICENSE AGREEMENT, PLEASE CONTACT THE VENDOR FROM WHICH YOU PURCHASED THE LICENSED SOFTWARE, OR THIRD-PARTY SOFTWARE. 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, Supplier, organization or other entity that is a party to the Ts&Cs) and Itamar Medical Ltd. or its affiliate ("Itamar") that is a party to the Terms and Conditions of Sales ("Ts&Cs"). By installing, copying, or otherwise using the Licensed Software, and/or by using Third-Party Software, you agree to be bound by the terms of this License Agreement with respect to the Licensed Software. If you do not agree to the terms of this License Agreement, including, without limitation, the limitations on use as provided in Sections 2 do not install, use or copy the Licensed Software or use the Third Party Software.

The Licensed Software 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.

Therefore, you must treat the Licensed Software like any other copyrighted and 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. "Confidential Information" shall have the meaning ascribed to it in Section 8 below.
- 1.2. "Feedback" means any and all data, feedback, suggestions, comments, ideas, questions, material, defects, errors or problems and any information regarding the Licensed Software.
- 1.3. "Intellectual Property Rights" means all 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) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (e) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.
- 1.4. "Itamar IPR" shall have the meaning ascribed to it in Section 3.1 below.
- 1.5. "Privacy Policy" shall have the meaning ascribed to it in Section 11 below.
- 1.6. "Product(s)" means the EndoPAT WatchPAT100, the WatchPAT200, WatchPAT300, WatchPAT ONE and/or any derivatives or auxiliary related Products or components, the PAT Probe 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.
- 1.7. "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 Product, in each case sold or otherwise made available, by Itamar and/or third parties. If you have received this License Agreement with a Product, which incorporates the Licensed Software as a component within such Product, this License Agreement applies to the Licensed Software.
- 1.8. "Third Party Software" means any third-party software into which a Product or Licensed Software is incorporated.

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 Ts&Cs and for the duration thereof Itamar hereby grants you a 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 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 Product, subject to the Limitations on Use as provided in Section 2.2 and the Restrictions on Use as provided in Section 2.3. 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. LIMITATIONS ON USE The licenses granted in Section 2.1 above is 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 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 Products, 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. 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 PRODUCT 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, distribute, lease, reproduce, publish, market, license, sublicense, sell, pledge, resell 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;
 - 2.3.2. Reverse engineer, decompile, or disassemble, as applicable, the Licensed Software, except as expressly permitted by applicable law; or
 - 2.3.3. Attempt to discover, access or use the Licensed Software source code.
 - 2.3.4. Modify, create any derivative work in any manner of the Licensed Software.
 - 2.3.5. 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;
 - 2.3.6. 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;
 - 2.3.7. Transmit any content which contains software viruses, or other harmful, infringing, illegal, disruptive or destructive content, messages, computer code, files or programs;
 - 2.3.8. 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;
 - 2.3.9. 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;
 - 2.3.10. 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;
 - 2.3.11. 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;
 - 2.3.12. Ship, transfer or export the Licensed Software or use the Licensed Software in any manner that is prohibited by law, including without limitation, to sell, distribute, download or export 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 is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list;
 - 2.3.13. Contest Itamar's Intellectual Property Rights;
 - 2.3.14. 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.
 - 2.3.15. Use the Licensed Software contrary to this License Agreement or the license metrics and work environment conditions set forth in the operational 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 Licensed 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 improvements and derivatives thereof and all Intellectual Property Rights related thereto ("**Itamar IPR**") are the property of Itamar and/or its licensors who retain 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, 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.

4. LIMITED WARRANTIES AND DISCLAIMERS

- 4.1. Against Infringement. 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. 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, will perform substantially in accordance with its technical specifications. If during such ninety (90) day period, the Licensed Software does not perform substantially in accordance with its technical specifications, Itamar shall as sole and exclusive remedy (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.
- 4.3. Limitation of Warranties. The warranty contained in Section 4.2 above does not cover damage to the Licensed Software 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 has 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 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 AND NON INFRINGEMENT.

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 PRODUCT DURING THE TWELVE (12) MONTHS 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, 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 AND/OR THE LICENSED SOFTWARE, THE USE OF OR INABILITY TO USE THE LICENSED SOFTWARE AND/OR THE THIRD PARTY SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES BY ITAMAR AND/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 LIMINATION OF LIABILITY SHALL BE APPLICABLE REGARDLESS OF WHETHER THE ACTION GIVING RISE TO SUCH DAMAGES IS IN TORT, CONTRACT, STRICT PRODUCTS LIABILITY, OR OTHERWISE.

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, 10-12.

7. TRANSFERABILITY

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 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.

8. CONFIDENTIALITY

All data and information related to the Licensed Software and/or to Itamar or its affiliates, are confidential information of Itamar (“**Confidential Information**”). You agree to keep confidential and not disclose or use any Confidential Information. You will not disclose any information regarding the results of the Licensed Software 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 information. The Licensed Software are intended for use by users at least eighteen (18) years old, you hereby declare that you 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 Services.

10. USER WARRANTIES

You represent and warrant that: (a) you have, and will have at all times, all permits, consents and right, title and interest in connection with the Services and as required to fulfill your obligations ; (b) you and your use of the Services 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 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.

11. 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/wp-content/uploads/2019/10/Itamar-Medical-Privacy-Policy-Final-230919-1.pdf> ("**Privacy Policy**").

12. MISCELLANEOUS

(i) This License Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, US, without regard to the principles of conflict of law therein. The Parties consent to the exclusive jurisdiction of the courts residing in Atlanta, Georgia and hereby submit themselves to the exclusive jurisdiction of these courts. Notwithstanding the foregoing, Itamar may seek any equitable remedy, including an injunctive relief, in any jurisdiction worldwide. The application of the United Nations Convention of Contracts for the International Sale of Goods or other international laws is expressly excluded; (ii) if any provision of this License Agreement 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 this License Agreement and shall not cause the invalidity or unenforceability of the remainder of the License Agreement; (iii) This License Agreement (together with the Privacy Policy and the Ts & Cs to which this License Agreement is attached are the entire agreements between you and Itamar regarding the subject matter herein; (iv) 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 any rights, remedies or other benefits under or by reason of this License Agreement; (v) Itamar'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 as to subsequent enforcement of rights or subsequent actions in the event of future breaches. All waivers must be in writing. (vi) ANY CAUSE OF ACTION INITIATED BY YOU AND ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT 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.

Exhibit B
CloudPAT™ Terms and Conditions

1. The relevant provisions of the Agreement between the Itamar Medical Ltd. and/or Itamar Medical Inc. and its affiliates (“Supplier”) and the other party listed in this Agreement (“Purchaser”) shall apply to use of the Supplier’s cloud-based test management system (“CloudPAT”), *mutatis mutandis*.
2. During the term of this Agreement and, if applicable, subject to the execution of an underlying agreement for the purchase of good and/or services from the Supplier, the Supplier shall grant the Purchaser a non-transferable, nonexclusive, royalty-free license to the applicable software and access to CloudPAT, all subject to the provisions set forth herein below. The purchase price as well as the price for usage of CloudPAT, shall be as set forth in the invoice to be provided by Supplier to the Purchaser (the “Invoice”). Payment terms shall be as set forth in the Invoice.
3. It is hereby clarified that any license granted hereunder and for the use of Supplier’s products, including CloudPAT, shall be subject to the terms of Supplier’s license agreement as set forth in Exhibit B.
4. CloudPAT shall be used and shall operate in accordance with the terms and conditions as provided on the Supplier’s website, the manual or user guide provided by the Supplier and/or available on the Supplier’s website, as shall be amended from time to time.
5. Upon payment, as further described in the Agreement, Purchaser shall be granted with access to the test results and related information (the “**Results**”) available on CloudPAT for a specific patient for a period of forty-five (45) days from the date the test is performed.
6. In the event that a particular patient undergoes an additional test, then, subject to Section 10 below, the Purchaser shall have access to Results for said patient from the current test as well prior tests that were initially uploaded to CloudPAT, to the extent available on CloudPAT at such time, for a period of forty-five (45) days from the date the latest test is performed.
7. Use of CloudPAT will enable the Purchaser to transfer the Results for a specific patient to the relevant physicians on a per patient basis. CloudPAT utilizes a secure HIPAA compliance format for encrypting and sending data files. It is the 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.
8. It is clarified that use of CloudPAT is limited with respect to those patients of the Purchaser who are registered for this service in accordance with the Agreement.
9. The Purchaser shall not assign or transfer or grant any other third-party access to CloudPAT except as permitted hereunder.
10. The Supplier shall only be obligated to store any Purchaser’s data using CloudPAT for up to seven (7) years as of the applicable test date. Upon termination of this Agreement, the Supplier shall be entitled to transfer the Purchaser’s data to the Purchaser and upon such transfer, the Supplier shall be entitled to destroy or delete the Purchaser’s data without any liability to the Purchaser and/or the patient and/or any third party. Notwithstanding the above, the Parties may agree in writing on a different retention period of Purchaser’s data.
11. It is the Purchaser’s sole responsibility to maintain sufficient and proper records of all Results if and as the Purchaser may be required to under laws and regulations applicable to Purchaser.
12. The Purchaser shall designate an individual to administer the program on the Purchaser’s behalf and be the contact person to whom notices and communication regarding the will be sent by the Supplier (the “**Designated Representative**”). The Purchaser may have more than one Designated Representative. the Supplier will not send notices or communications to anyone other than a Designated Representative and will only interact with Designated Representatives.
13. All rights and title to CloudPAT, the web portal, 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 the Supplier.