

## SOFTWARE TERMS OF USE

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6. Taxes. All amounts due to B.Braun for the Software are net of all taxes (including withholding taxes), fees, assessments, charges and levies of any Governmental Authority, all of which are the sole obligation of Customer, except for taxes payable on the income of B.Braun.
7. Required Computer Environment. Customer shall procure, install, and operate a proper computing environment, in accordance with the minimum operating environment requirements set forth in the Software License and Services Agreement, for the Software and shall provide proper electrical and other required utilities for such computing environment, including uninterrupted power supplies.
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any such digital media is defective after the ninety (90) warranty period, B.Braun reserves the right to charge Customer a restocking or reissue fee.

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(d) THE LIMITED WARRANTY SET FORTH IN SECTION 9 IS IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES AND B.BRAUN HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR USE AND/OR A PARTICULAR PURPOSE. IN ADDITION, B.BRAUN DOES NOT REPRESENT THAT THE SOFTWARE WILL BE ERROR FREE OR OPERATE UNINTERRUPTED.

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(b) NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE PARTIES AGREE THAT B.BRAUN'S AGGREGATE LIABILITY FOR DAMAGES UNDER THE AGREEMENT, INCLUDING DAMAGES ARISING FROM CUSTOMER'S USE OF THE SOFTWARE, SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT OF THE LICENSE FEES PAID BY CUSTOMER FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM THAT GAVE RISE TO THE DAMAGES.

13. Term; Termination. Each License granted for the Software shall remain in effect for the Term set forth in the Software License and Services Agreement unless otherwise terminated as provided in this Section 13. B.Braun may terminate the

License if Customer breaches any term of the Agreement and does not cure such breach within thirty (30) days (10 days in the case of nonpayment) of receipt of written notice of such breach, or immediately on written notice in the case of breach of any of the provisions of Sections 1-3 of these Terms of Use. Customer may terminate its License at any time provided that such termination shall not relieve Customer from responsibility to make any payments due to B.Braun. Any and all fees paid to B.Braun shall be nonrefundable.

14. Effect of Termination. Upon any termination, all of Customer's rights (except as expressly and unambiguously provided in this Section 14) under the Agreement and the License shall terminate, and Customer shall immediately discontinue use of the Software and return or destroy all copies of the Software and all portions thereof and Proprietary Materials or portions thereof in Customer's possession, custody or control in whichever form held (including all copies or embodiments thereof, whether or not modified or incorporated with or into other software) and so certify to B.Braun. Termination is not B.Braun's sole remedy under the Agreement and, whether or not termination is effected, all other remedies will remain available. Sections 2, 3, 11, 12, and 14-20 of these Terms of Use shall survive termination of the License.

15. Assignment. The License may not be assigned (by operation of law or otherwise) or transferred, in whole or in part, by Customer without the prior written consent of B.Braun.

16. Governing Law; Dispute Resolution. The Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of law principles or the United Nations Convention on the International Sale of Goods. Any dispute, controversy or claim arising from or related to the Agreement or the Software or any other relationship or arrangement between the parties ("Action") shall be tried by a court and not a jury. **Customer hereby unconditionally waives its rights to a jury trial in any such Action.**

17. Remedies. Customer acknowledges that money damages would be both incalculable and an insufficient remedy for any breach by Customer of Sections 1-3 of these Terms of Use and that any such breach would cause B.Braun irreparable harm. Accordingly, Customer also agrees that in such event, B.Braun, in addition to any other remedies at law or in equity it may have, is entitled, without the requirement of posting any security, to equitable relief, including injunctive relief and specific performance.

18. Severability. If any provision of the Agreement is declared invalid or illegal for any reason, then the remaining provisions of the Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

19. Export Laws. Customer shall not directly or indirectly transfer the Software to any destination subject to export restrictions under United States law unless such export is permitted under all applicable laws, rules and regulations of any Governmental Authority.

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**"Proprietary Materials"** shall mean the Software and all documentation for the Software, all copies thereof, all updates, upgrades, releases, modifications and enhancements thereto (including all copyrights and all other intellectual property rights pertaining thereto).

**"Permitted Use"** shall mean the purpose set forth in the Software License and Services Agreement.

**"Services"** shall mean the services set forth in the applicable Software Schedule to the Software License and Services Agreement.

**"Site"** shall mean Customer's location at which the Software has been installed.

**"Software"** shall mean the Software licensed by Customer from B.Braun as indicated in the Software License and Services Agreement, as further described in the user documentation provided by B.Braun to Customer.

**“Software License and Services Agreement”** shall mean the Software License and Services Agreement entered into between B.Braun and Customer for the Software.

**“User”** shall mean each employee of Customer at the Site who Customer has authorized to use the Software in accordance with the terms hereof.

21. **Rules of Construction.** All defined terms contained herein apply equally to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall have the corresponding masculine, feminine and neuter forms. Headings of Sections have been inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of the Agreement.