SOFTWARE TERMS OF USE

Thank you for licensing B.Braun Medical Inc.’s Software. These are the Terms of Use ("Terms of Use") of the Software and are a part of the Software License and Services Agreement between the licensee of the Software ("Customer") and B. Braun Medical Inc. ("B.Braun"), located at 824 Twelfth Avenue, Bethlehem, PA 18018. The license of the Software is made subject to these Terms of Use and the Software License and Services Agreement (collectively, the "Agreement"). Definitions of capitalized terms are contained in Section 20.

1. Grant of License. B.Braun grants to Customer, in accordance with the terms hereof, a non-exclusive, non-transferable license, without right of sub-license, to install the current version of the Software onto its servers at the Site if Customer is licensing DoseTrac® Infusion Management Software, or onto its computers or its servers at the Site if Customer is licensing Pump Configuration Editor Software, Configuration Management Application Software, Drug List Editor Software or Space OnlineSuite Software, and Customer will only permit the Users to use the Software for the Permitted Use (the “License”).

2. No Ownership. Customer acknowledges that (a) the Proprietary Materials are confidential information of B.Braun, (b) all rights and title in and to the Proprietary Materials vest with B.Braun and/or B.Braun’s third party licensors and Customer has no ownership right in the Proprietary Materials, or any portion thereof, and (c) Customer’s right to use the Software is limited to the terms and conditions of the License. Notwithstanding anything to the contrary in the Agreement, B.Braun shall have the right to extract data stored in the Software on a monthly basis during the Term of the Agreement and use such data to perform the Services and/or on a de-identified, aggregate basis.

3. Restrictions on Use. Customer shall not use, copy, or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized in these Terms of Use. Customer may make one archival copy of the Software provided Customer affixes to such copy all copyright, confidentiality and proprietary notices that appear on the original. Customer agrees not to remove any proprietary legend or notice of any Person from any copy of the Software. Neither these Terms of Use nor any other relationship or course of dealing grant Customer any right to access or use any source code of the Software. Customer shall not nor permit any third party to decompile, disassemblable, reverse engineer, modify or create derivative works of the Software, directly or indirectly, or attempt to do so.


5. Payment Terms. Payment terms for the License Fees are set forth in the applicable Software Schedule to the Software License and Services Agreement. All unpaid amounts due to B.Braun shall bear interest at the rate of 1.5% per month or the highest rate permitted by Pennsylvania law, whichever is less.

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.

8. Support. During the Term of the Agreement, B.Braun shall provide Customer with telephone support in the form of advice on the use of the Software in the same manner such support is provided to B.Braun’s general client base for the Software. B.Braun has no other responsibilities with respect to Software support and/or maintenance. Except as otherwise expressly set forth in the Software Schedules to the Software License and Services Agreement, the Agreement does not give Customer any right to any upgrades or new releases to the Software or to any extensions or enhancements to the Software developed by B.Braun in the future.

9. Limited Warranty. B.Braun represents and warrants solely to Customer that B.Braun has the right to grant Customer a license to use the Software as provided for in the Agreement. B.Braun further warrants solely to Customer that the Software, when operated with the equipment configuration and in the operating environment specified in the Software License and Services Agreement, will, during the Term, materially conform to the user documentation provided by B.Braun to Customer. In addition, B.Braun warrants solely to Customer that the digital media upon which the Software is provided to Customer by B.Braun will be free from defects for a period of ninety (90) days from the date of delivery of the Software. Any defective digital media will be replaced at no additional charge during such ninety (90) day period. If Customer notifies B.Braun that
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.

10. **Indemnification.** B.Braun agrees to indemnify, defend and hold harmless Customer from and against any costs and damages awarded against Customer by a court of competent jurisdiction pursuant to a final judgment in favor of the owner of any valid U.S. patent, copyright, or trade secret, as a result of any claim of infringement by a third party of any such patent or copyright or misappropriation of any trade secret related to the Software (each a “Misappropriation Claim”); provided that (1) Customer promptly notifies B.Braun in writing of such Misappropriation Claim, (2) B.Braun has sole control of the defense of and all settlement negotiations relating to such Misappropriation Claim, (3) Customer cooperates fully in the defense of such Misappropriation Claim, and (4) Customer has paid all accrued fees owed to B.Braun for the Software. Customer shall indemnify, defend and hold B.Braun harmless from any claims and/or liabilities arising out of or related to personal injury and/or tangible property damage arising from or related to Customer’s use of the Software.

11. **LIMITATIONS ON WARRANTIES AND INDEMNIFICATION.** (a) NEITHER THE LIMITED WARRANTY SET FORTH IN SECTION 9 NOR THE INDEMNIFICATION SET FORTH IN SECTION 10 SHALL APPLY TO, AND B.BRAUN SHALL NOT HAVE ANY LIABILITY TO CUSTOMER WITH REGARD TO, ANY CLAIM WHICH IS BASED IN WHOLE OR IN PART ON (1) THE USE OF THE SOFTWARE IN COMBINATION WITH ANY EQUIPMENT, SOFTWARE OR DATA NOT APPROVED FOR USE IN WRITING BY B.BRAUN; (2) ANY MODIFICATION OR SUPPLEMENT TO THE SOFTWARE MADE BY CUSTOMER OR ANY OTHER PERSON WITHOUT B.BRAUN’S PRIOR WRITTEN CONSENT; (3) THE MISUSE OF THE SOFTWARE; OR (4) DAMAGE CAUSED BY FIRE, CASUALTY OR OTHER EXTERNAL CAUSES.

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(c) IN THE EVENT OF A BREACH OF ANY OF THE LIMITED WARRANTY SPECIFIED IN SECTION 9 DURING THE PRODUCT WARRANTY PERIOD, B.BRAUN SHALL, AT ITS OPTION, AND AS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY HEREUNDER, MAKE REASONABLE EFFORTS TO CORRECT SUCH NON-CONFORMITY. THIS REMEDY IS IN LIEU OF ANY OTHER REMEDY AVAILABLE HEREUNDER OR AT LAW OR EQUITY.

(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.

12. **LIMITATIONS ON LIABILITY.** (a) IN NO EVENT SHALL B.BRAUN BE LIABLE UNDER ANY CIRCUMSTANCES FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER (WHETHER ARISING OUT OF CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE) ARISING OUT OF THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS OF CUSTOMER, WHETHER OR NOT B.BRAUN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE.

(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.

20. **Definitions.** The following capitalized terms shall have the respective meanings given them below:

   - **Governmental Authority** shall mean any Federal, state, local or foreign governmental authority, agency, court, regulatory commission or other governmental body.
   - **Person** shall mean any individual, firm, corporation, unincorporated association, partnership, limited liability company, trust, Governmental Authority or other entity.
   - **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.