

END USER LICENSE AGREEMENT FOR BAXTER INFUSION PUMPS AND RELATED SOFTWARE

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This Agreement is between Baxter Healthcare Corporation (“**Baxter**,” “**We**,” “**Us**,” or “**Our**”) and any person (“**User**,” “**you**” or “**your**”) who accesses or otherwise uses the Spectrum or Novum IQ Infusion Pump and associated hardware (“**Equipment**”), and any related software, applications, or services (all of the foregoing collectively, the “**Baxter Software**”) and governs your access and use of the Baxter Software. Baxter and User are each a “**Party**” and collectively, the “**Parties**” to this Agreement.

1. License Grant and Access Rights.

- 1.1. *Scope of License.* Subject to the terms of this Agreement, Baxter hereby grants to User a limited, nonexclusive, nontransferable, non-sublicensable, revocable license and right to access and use, the Baxter Software, and the Baxter Infusion Content (defined below) made available or otherwise accessible via the Baxter Software, solely in connection with User’s use of the Equipment, and only in accordance with applicable laws, rules and regulations.
- 1.2. *Ownership; Reservation of Rights.* The access granted hereunder is licensed and not sold to User. User shall not, by virtue of this Agreement or otherwise, acquire any rights in the Baxter Software aside from the limited licenses granted herein, and User hereby expressly disclaims any other rights therein. Baxter and its licensors and service providers reserve and retain all of their respective rights, title, and interest in and to the Baxter Software as well as any software, modifications or enhancements made thereto, and all Intellectual Property Rights therein. “**Intellectual Property Rights**” mean any and all rights, title, and interest in and to (a) copyrights, copyrightable work or other work of authorship, derivative works, right of attribution, integrity and moral rights thereof; (b) trademarks, service marks, logos, design, emblem, slogan, sign, insignia, internet domain name, software (in any form, including source code and executable or object code) and trade dress, including all goodwill associated therewith; (c) trade secrets, scientific, technical, economic or engineering information, know-how (including algorithms, apparatuses, patterns, plans, compilations, program devices, formulae, designs, prototypes, methods, techniques, processes, inventions, procedures, programs or codes), compositions, techniques; (d) patents and inventions whether patentable or non-patentable, as they exist anywhere in the world; and (e) all other intellectual property that may be registered or not, of any kind in any jurisdiction, together with all registrations and applications for registration for any of the foregoing, all reissues, divisions, renewal, extensions and re-examinations of any of the foregoing and all rights in or to any of the foregoing provided by applicable laws, rules and regulations.
- 1.3. *User Account.* In order to access and use Baxter Software, each User must have an Account (defined below). If a user is an administrator (“**Administrator**”) of a facility, hospital, or other organization (each a “**Facility**”) that has executed a Purchase Agreement with Baxter, such Administrator will

work with a Baxter account representative to setup an Administrator account (“**Administrator Account**”). Once an Administrator has an Administrator Account, such Administrator may create additional accounts for other Users. To register and create an account for another User, an Administrator will need to provide a User’s username and initial password, designate a User role or permissions, and enter the User’s first name, last name, job title, and email address (“**Additional User Account**”). An Administrator Account and an Additional User Account is each and collectively, referred to as an “**Account**.” By providing your email address or creating an Account, you agree that we may contact you using the information you provided, including by email, for purposes of providing implementation and ongoing support or sending any notice, disclosure, statement, reminder, or invitation in connection with the Baxter Software.

- 1.4. *Confidentiality and Monitoring.* You agree that you are responsible for the confidentiality of your Account information and are fully responsible for all activities that occur under your Account. Each Administrator shall be responsible for disabling any Accounts for Users who are no longer active. Except as otherwise permitted herein, you are prohibited from sharing with or otherwise disclosing your Account information to any other person without the prior written authorization of Baxter. You agree that you will provide truthful and accurate information that belongs to you or the User for whom you are creating an Account while using the Baxter Software. Should you become aware of or suspect any unauthorized use of your Account or your information changes, you agree to notify us and your Administrator immediately and in writing. Baxter reserves the right to monitor the Baxter Software to (a) operate and provide the Baxter Software; (b) administer and manage Baxter’s business; (c) verify compliance with laws or this Agreement; (d) protect Users; or (e) satisfy any applicable law, regulation or other government request. User acknowledges that other Users have access to the Baxter Software and the actions of other Users are beyond the control of Baxter.
- 1.5. *Updates.* User acknowledges that Baxter is under no obligation to provide any updates to the Baxter Software; however, Baxter may provide updates to the Baxter Software, which may correct errors, add new features, or modify or delete certain features or functionality of the Baxter Software. User acknowledges that such updates are intended to keep the Baxter Software functioning and agrees to permit Baxter to install all updates when available or as otherwise required under an applicable services agreement or applicable laws, rules and regulations.
- 1.6. *Baxter Infusion Content.* All content and materials, including text, graphics, logos, button icons, images, audio clips, illustrations, photographs, digital downloads, or other materials appearing on or associated with the Baxter Software (collectively, “**Baxter Infusion Content**”) and all Intellectual Property Rights therein, are the property of Baxter or its third party licensors and protected by U.S. and international property laws, and no right, title, or interest in any Baxter Infusion Content is transferred to you as a result of your use of the Baxter Software. Except as expressly provided for herein, User may not copy, reproduce, republish, store, upload, transmit, transfer, adapt, reformat, print, distribute, commercially exploit, or publicly display the Intellectual Property Rights of Baxter, Baxter’s licensors, the Baxter Software, or any portion thereof.
- 1.7. *Reports.* The Baxter Software may allow Users to extract or export data, or create or generate reports using data, contained in the Baxter Software. A User may have the ability to create a customized library, input notes, or generate a report. User shall be solely responsible for the creation and maintenance of any data extracted or report created through use of the Baxter Software. User acknowledges that by providing User the ability to input information, extract data, or create or generate reports, Baxter does not control, and is not responsible for, the data or information (and quality thereof) that any User may input while using the Baxter Software

neither for the results and analysis obtained by the User. User represents that User has the necessary rights and permissions to input and use the data in connection with the Baxter Software and that such data will be processed in accordance with applicable data protection laws.

1.8 Data. User acknowledges that, during the use of Baxter Software, Baxter will receive certain data related to User's operation of the Baxter Software and/or Equipment, which may include data that is generated, transmitted, or stored by the Equipment and data obtained through the remote and/or Baxter Software support services ("User Data"). User grants Baxter, its affiliates, and its contracted third parties the right to use and disclose the User Data for any lawful purpose including, without limitation: (i) benchmarking and analysis of workflow and User Data to identify system improvements, efficiency improvements, and increase cost efficiencies; (ii) quality improvements and product development; (iii) in-depth analysis of the specifics of errors for better understanding of errors and error situations to help understand and reduce their incidence; (iv) to facilitate better technical support and User support to avoid machine downtime and/or return and replacement of given hardware modules; and (v) investigate changes in ordering patterns that could yield opportunities to define new warning limits, formulary ingredients, and label templates; provided that, to the extent that any User Data contains "Protected Health Information" as that term is defined by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA"), Baxter's use and disclosure of such data shall be governed by a business associate agreement between the Parties. User further grants Baxter the right to use the User Data for the purpose of de-identifying Protected Health Information in accordance with the requirements of HIPAA set forth at 45 C.F.R. § 164.514 and to use such resulting de-identified data for any lawful purpose. Baxter acknowledges that: USER SHALL HAVE NO LIABILITY FOR BAXTER'S USE, RETENTION OR DISCLOSURE OF ANY USER DATA OR THE ACCURACY OF SUCH DATA.

1.9 Children. The Baxter Software is not directed to persons under the age of 18 and is not aimed or intended for children under the age of 13. If you a User in the United States and are under the age of 18, please DO NOT USE the Baxter Software. By using or accessing the Baxter Software, you represent and certify that you are 18 years of age or older.

2. Conduct and Prohibitions.

You agree to use the Baxter Software only for lawful purposes and to follow all applicable laws, rules and regulations of the country, state and/or jurisdiction in which you reside or are located when using the Baxter Software. Baxter reserves the right to revoke User's privilege to use the Baxter Software or take any appropriate measures to enforce the terms and conditions set forth herein, if violations are brought to its attention. While using the Baxter Software, you agree that you must not:

- License, sublicense, sell, resell, rent, lease, time-share, publish, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party any portion of the Baxter Software;
- Use the Baxter Software in a service bureau, outsourcing, time-sharing, or other similar arrangement;
- Copy, modify, correct, adapt, alter, translate, enhance, or otherwise create derivative works or improvements of the Baxter Software;

- Reverse engineer, decompile, disassemble, or otherwise attempt to learn or gain access to the source code, structure, or ideas upon which the Baxter Software is based;
- Promote illegal activities, fraudulent schemes, child abuse, drugs, or anything objectionable (as determined by us) or otherwise violate any applicable law;
- Stalk, harass, threaten, or invade the privacy of or engage in predatory behavior towards another User or any other person;
- Post, upload or otherwise transmit any User content or information that is unlawful, harmful, abusive, tortious, profane, indecent, sexually explicit, hateful, or racially, ethnically or otherwise objectionable or intended to offend any person or that is otherwise objectionable to Baxter, in its sole discretion;
- Use the Baxter Software to post, use, upload, or disseminate content, files, graphics, software, or other material that infringes or misappropriates any trade secret or intellectual property rights, rights of publicity, rights of privacy, or proprietary rights of any party;
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- Frame or otherwise simulate the appearance or functions of the Baxter Software or any portion thereof;
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- Authorize or assist a third party to do any of the foregoing.

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5. **Representations.** User represents and warrants to Baxter that (a) User has provided and will maintain accurate, complete and current registration information; (b) User is an authorized representative of the entity or party on whose behalf User purports to act, as applicable; (c) User’s access or use of the Baxter Software does not and will not constitute a breach or violation of another agreement, contract, terms of use, or understanding to which User is or may be subject; and (d) User will not use the Baxter Software in violation of the terms of this Agreement or any applicable laws, rules or regulations.
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- 7. Release; Indemnification.** You hereby agree to release Baxter, its affiliates, subsidiaries, officers, directors, employees, licensors, service providers, and agents from any and all liability and obligations whatsoever in connection with or arising out of your use of the Baxter Software. If at any time you are not satisfied with the Baxter Software, your sole remedy is cessation of use of the Baxter Software. You agree to indemnify, defend, and hold harmless Baxter, its licensors, affiliates, or subsidiaries and any members, officers, directors, employees, and agents of the foregoing, from and against any action, cause, claim, damage, loss, debt, expenses, demand or liability, including reasonable costs and attorneys' fees asserted by any person or entity, arising out of or relating to: (a) this Agreement or your violation of the terms of this Agreement; (b) your use of the Baxter Software, including any User content, data, communication, or information transmitted or received by you; (c) gross negligence, fraud, or any intentional or negligent act or omission by you; and (d) your violation of any third party rights, including any Intellectual Property Right or privacy right.
- 8. Term; Termination.** This Agreement is effective upon your acceptance and continues until terminated in accordance with the terms herein. You agree that we may terminate this Agreement at any time without notice if you breach any term of this Agreement, your Facility no longer has possession of the Equipment, or your access otherwise terminates pursuant to the applicable Purchase Agreement between Baxter and your Facility. User may terminate this Agreement by terminating access to the Baxter Software and notifying Baxter using the contact information below. Upon termination, User shall terminate use of and access to the Baxter Software and all related content or information and delete all copies of the Baxter Software. Baxter reserves the right to discontinue or suspend any aspect of or access to the Baxter Software at any time. Baxter further reserves all rights or remedies available at law or in equity.
- 9. Miscellaneous.**

 - 10.1. *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties hereto concerning the subject matter hereof and supersedes any prior or contemporaneous agreements concerning such subject matter.
 - 10.2. *Amendment.* Baxter may amend or modify the terms of this Agreement at any time. Your acceptance of the modified terms or continued access or use of the Baxter Software after the terms of this Agreement are revised, constitutes your express consent to the modified Agreement. Notwithstanding the foregoing, no amendment, change, or extension to this Agreement is valid or binding, unless approved in writing by Baxter.
 - 10.3. *Waiver.* No delay or failure by either Party to exercise or enforce at any time any right or

provision of this Agreement will be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right or provision of this Agreement.

10.4. *Severability.* The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and the offending provision shall be deemed automatically modified by the minimum necessary to render it valid and enforceable under applicable law, with the nature and extent of the modifications to be determined by a court of competent jurisdiction.

10.5. *Governing Law.* You agree that this Agreement and any dispute arising out of or in connection with this Agreement or Baxter Software will be construed and governed by the laws of Delaware, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Both Parties consent to the exclusive jurisdiction of the state and federal courts in Chicago, Illinois in connection with all actions arising out of or in connection with this Agreement, and User waives any objections that venue in Chicago, Illinois is an inconvenient forum.

10.6. *Dispute Resolution; Arbitration Agreement.* THIS SECTION AFFECTS YOUR RIGHTS – PLEASE READ CAREFULLY BEFORE AGREEING TO THIS AGREEMENT.

a. Mandatory Arbitration. All claims, controversies and disputes arising out of, in connection with or relating to this Agreement or Baxter Software, including the existence, validity, performance, breach or termination thereof, will be finally and solely resolved by binding arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). The Federal Arbitration Act applies to this arbitration agreement. The arbitration will be conducted in the English language. The arbitration will be heard by three arbitrators. The Parties each shall select one arbitrator and the two Party-selected arbitrators shall select the third arbitrator. The arbitrators shall have jurisdiction to determine all matters in the dispute, including whether the dispute is arbitrable and falls within their jurisdiction under this Agreement. The arbitrators shall apply all privileges and protections (such as the attorney-client privilege and attorney-work product doctrine) recognized by relevant laws and the federal rules of evidence and civil procedure. Any in-person arbitration shall take place in Chicago, Illinois. Judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. All arbitration proceedings, including all written submissions, evidence provided, and award(s), shall be confidential and shall not be disclosed to any third party, except to the extent: (1) required by applicable law, (2) required in connection with any court application for interim relief or post-arbitration confirmation or enforcement proceedings, or (3) all parties to the arbitration proceedings consent to the disclosure. To the extent that either party seeks to confirm, modify, or vacate the arbitral award, the parties agree to cooperate in seeking to file the arbitral award and information about the arbitration proceedings under seal. If the arbitrators rule in favor of one party on all disputed issues, the losing party shall pay the prevailing party's fees and expenses (including attorney's fees). If the arbitrators rule in favor of one party on some issues and the other party on other issues, the arbitrators shall allocate fees and expenses in a way that bears a reasonable relationship to the ruling.

b. No Class Action. YOU AGREE THAT ANY CLAIM YOU MAY HAVE AGAINST US MAY ONLY BE BROUGHT INDIVIDUALLY AND YOU WILL NOT JOIN SUCH CLAIM WITH CLAIMS OF ANY OTHER PERSON OR ENTITY OR BRING, JOIN, OR PARTICIPATE IN A CLASS ACTION AGAINST US. BY ACCEPTING THESE TERMS, YOU AND BAXTER ARE EACH WAIVING THE RIGHT TO PARTICIPATE IN OR BRING A CLASS ACTION.

- c. Time to File. ANY DISPUTE THAT YOU MAY HAVE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE DISPUTE ACCRUES, OTHERWISE, SUCH DISPUTE IS PERMANENTLY BARRED.
- d. Conflict. If any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the code of procedure established by the CPR, the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein.
- 10.7. *Equitable Relief*. Notwithstanding anything herein to the contrary, User acknowledges that any breach of the terms of this Agreement, including your use of the Baxter Software in violation of the rights granted herein or infringement upon or misappropriation of any Intellectual Property Rights of Baxter or its licensors, would cause irreparable harm and significant injury to Baxter and/or its licensors. As such, the Parties agree that Baxter has the right to enforce the terms of this Agreement by injunction (without necessity of posting bond), specific performance, or other equitable relief without prejudice and in addition to any other rights and remedies that may be available to Baxter.
- 10.8. *Export Control*. Unless otherwise specified, the Baxter Software, content, and other related materials for the Baxter Software are available in the United States. Baxter makes no representations or warranties that the Baxter Software, or other related material accessible via the Baxter Software is appropriate outside of the United States. User hereby agrees to comply with all applicable export and re-export control laws, restrictions, and regulations.
- 10.9. *Headings*. The headings used herein are for convenience only and will not limit the interpretation of any section hereof.
- 10.10. *Force Majeure*. Neither Party shall be liable for failure to fulfill its obligations under this Agreement due to any major unforeseeable event beyond the control of, and not caused by the fault or negligence of, such Party or its agents, including, without limitation, an act of God, fire, earthquake, flood, explosion, action of the elements, war, terrorism, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials, or supplies in the open market, failure of power, failure of telecommunications systems or infrastructure, strike, lockout, action of labor unions, condemnation, requisition, epidemic, pandemic, national emergency, law or order of government, civil or military authorities; provided that the Party failing to perform in such event shall promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

11. Contact Information

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