

## End User License Agreement for FDB Solutions

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FDB will make the FDB INFUSION KNOWLEDGE PORTAL “Available” twenty-four (24) hours per day, seven (7) days per week (“24 x 7”), no less than 99.9% of time as measured each calendar month, except during periods of “Excused Downtime”. For purpose of this Agreement, the term “Available” shall mean the FDB INFUSION KNOWLEDGE PORTAL is available for access by End Users for the purposes set forth herein and the term “Excused Downtime” shall mean time when FDB performs any planned upgrades and/or maintenance on the FDB INFUSION KNOWLEDGE PORTAL. In the event FDB performs any routine maintenance on the FDB INFUSION KNOWLEDGE PORTAL, FDB will use its commercially reasonable efforts to (a) perform such maintenance in a manner which does not render the FDB INFUSION KNOWLEDGE PORTAL un-Available and (b) notify Licensee via electronic notification as early as possible in advance of such maintenance.

**5. WARRANTY AND DISCLAIMER.** Solely with respect to the Software, along with corrections, upgrades, modifications, Baxter hereby provides the following pass-through warranties: (i) the FDB CUSTOMIZED KNOWLEDGE BASE will be updated on a quarterly basis; and (ii) FDB exclusively owns, free and clear of all Liens, all right, title and interest in and to the Software and all intellectual property therein.

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iii. As between FDB and End User, End User and any healthcare providers responsible for patient care shall retain full responsibility for all decisions relating to patient care, and the Software shall not be used as a substitute or replacement for diagnosis or treatment recommendations or other clinical decisions or judgment. End User shall not make any representations to the contrary to the foregoing to its End Users.

iv. End User acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. End User acknowledges that the use of the Software in no way is intended to replace or substitute for professional judgment. FDB does not assume any responsibility for actions of End User which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis. End User shall ensure that all healthcare professionals using the Software are aware of the limitations of the use of the Software.

v. Neither Baxter nor FDB shall have any liability for any changes made by End User to the content of the Software. End User assumes full responsibility for any and all changes that it may make to any portions of such content in the Software.

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**7. EXPORT RESTRICTIONS.** Company makes no representation that the Software is appropriate for use in your country of use. You acknowledge that no part of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) any countries subject to U.S. trade embargo (currently Iran, Cuba, Syria, North Korea, and Sudan), or anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By using the Software, you are agreeing to the foregoing, and are representing and warranting that you are not located in or under the control of a national or resident of any applicable country or on any applicable list. You further acknowledge and understand that certain functionality of the Software, such as encryption or authentication, may be subject to import restrictions in the event you transport the Software from the country of delivery and you are responsible for complying with all applicable restrictions.

**8. INDEMNITY.** You hereby agree to indemnify, defend and hold the Company, its affiliates and FDB, and their respective employees, officers and directors harmless from and against any and all third party claims, suits, actions, investigations, proceedings, liability, loss, damage, or demands, and all related costs, penalties, interest, or expenses (including reasonable attorneys' fees) at all levels of litigation or other proceedings which may be sustained or incurred by Baxter or any Baxter representative relating to or arising from (i) bodily injury, property damage or any other damage or injury allegedly caused by, in whole or in part, or contributed by End User's breach of its representations or warranties in this EULA; (ii) claims premised on strict liability theories or on any negligent acts or omissions or willful misconduct of End Users and its employees and agents acting under its control or

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**10. TRANSFER.** You may not assign or otherwise transfer, by operation of law or otherwise, this Agreement or the Software. Any assignment or transfer in violation of this Section shall be null and void.

**11. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings..

**12. GOVERNING LAW; EXCLUSIVE VENUE FOR LITIGATION.** This Agreement shall be governed by the laws of the State of Illinois, without regard to conflicts of law provisions. You and Company both consent to the exclusive jurisdiction of the state and federal courts sitting in Chicago, Illinois.

**13. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE SALE OF INTERNATIONAL SALE OF GOODS.** This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**14. SEVERABILITY; WAIVER.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, the applicable provision shall be modified to the extent necessary to render it enforceable without losing its intent or severed from this Agreement if no applicable modification is possible, and other provisions of this Agreement shall remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive the applicable term or condition or any subsequent breach thereof.