

Terms of Use

Viewfinder Remote Software License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE VIEWFINDER REMOTE SOFTWARE. BY DOWNLOADING, INSTALLING, CLICKING THE “ACCEPT” OR “AGREE” BUTTON, OR USING THE VIEWFINDER REMOTE SOFTWARE, YOU INDICATE YOUR ACCEPTANCE OF AND AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT YOU MAY NOT DOWNLOAD, INSTALL OR USE THE VIEWFINDER REMOTE SOFTWARE.

This License Agreement (this “Agreement”) is a binding agreement made between you and Edwards Lifesciences LLC, a Delaware limited liability company with its principal place of business located at One Edwards Way, Irvine, CA 92614 (“Edwards”). You may be an individual and/or entity that uses the Software (collectively “Licensee”). Licensee may be referred to in this Agreement as “you” and “your” as applicable.

1. DEFINITION OF SOFTWARE. For purposes of this Agreement, the “Software” means Edwards’ Viewfinder Remote software together with any related user manuals and documentation made available to you (“Documentation”). The Software is delivered to you by Internet download or by other means determined by Edwards. This Agreement governs Licensee’s use of the Software provided by Edwards.


2. LICENSE FOR LIMITED USE. Subject to the terms and conditions of this Agreement, Edwards hereby grants you a limited, nonexclusive, nontransferable, non-assignable, non-sublicensable, revocable right and license (“License”) during the Term and only in the United States of America to install and use the Software on one or more personal computers, mobile device or other devices (“Device(s)”). The Software will enable you to establish a user ID and password to use the Software (“Login Information”) on your Device(s). You are responsible for managing and maintaining the security and confidentiality of Login Information. You are responsible for all activities undertaken under the Login Information associated with your account.

3. RESTRICTIONS. The Software licensed to you under this Agreement may only be used by you for your own purposes. You may not assign, sell, rent, lease, sublicense, lend, transfer, resell or distribute the Software to any third party. You agree not to copy the Software, in whole or in part, nor permit anyone else to copy the Software, except that you may make a reasonable number of copies of the Documentation for your own purposes. You agree not to modify, obscure, or delete any proprietary rights notices included in or on the Software or Documentation and you agree to include all such notices on all copies. You may not modify the Software, make derivative works or merge the Software into any other computer programs. You may not reverse engineer, disassemble or decompile the Software, in whole or in part or otherwise attempt to derive its source code or underlying ideas or algorithms of the Software by any means whatsoever.

4. SOFTWARE AND SECURITY. For Software licensed under this Agreement, Edwards warrants that: (i) it has the right to license or sublicense Software to you;



Edwards



and (ii) it will use efforts consistent with industry standards to remove viruses from Software before making the Software available to you. Edwards is not responsible for securing your own network or your Device(s). You are responsible for selecting and implementing necessary security measures in order to protect Login Information and as well as the confidentiality, integrity and availability of your networks, systems and data. You are responsible for the prevention of security breaches (malware, spyware, trojans, viruses etc.) on your Device(s).

5. DISCLAIMER.

A. NO WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 4, THE SOFTWARE IS OFFERED “AS IS,” AND YOU RECEIVE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR OTHERWISE. EDWARDS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY EXPRESS WARRANTIES BY DESCRIPTION, REPRESENTATION, WHETHER ORAL, WRITTEN, OR CONTAINED IN ANY LETTER, BROCHURE, WEBSITE, PHOTOGRAPH, OR OTHER MEDIUM. EDWARDS DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ACCURATE, UNINTERRUPTED OR ERROR-FREE OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE OR HARDWARE, OR THAT IT WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA.

B. YOUR RESPONSIBILITIES. YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF ANY DATA THAT MAY BE MONITORED, COLLECTED, DOWNLOADED AND/OR EXPORTED VIA THE SOFTWARE (“COLLECTED DATA”) AND ANY ACTS OR OMISSIONS UNDERTAKEN BASED UPON COLLECTED DATA. YOU SHALL COMPLY WITH ALL APPLICABLE LAWS, INCLUDING WITHOUT LIMITATION ALL LAWS THAT MAY APPLY TO YOU RELATING TO THE COLLECTION, USE, DISCLOSURE, OR SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION OR PROTECTED HEALTH INFORMATION.

6. LIMITATION OF LIABILITY. EXCEPT AS PROVIDED HEREIN, IN NO EVENT SHALL EDWARDS BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LICENSE AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF PURPOSE OF ANY LIMITED REMEDY. ADDITIONALLY, IN NO EVENT SHALL EDWARDS BE RESPONSIBLE FOR YOUR LOSS OF DATA OR RECORDS, IT BEING UNDERSTOOD THAT YOU SHALL BE RESPONSIBLE FOR ENSURING PROPER AND ADEQUATE BACKUP AND STORAGE OF YOUR DATA. IN ANY CASE, EDWARDS’ ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE. THE TERMS OF THIS LIMITATION DO NOT LIMIT OR EXCLUDE ANY LIABILITY TO THE EXTENT NOT PERMITTED BY APPLICABLE LAW.

7. TERM. This Agreement commences when you download the Software and shall continue until terminated as provided in the applicable subscription or evaluation agreement (the “Term”). Further, Edwards may terminate this Agreement immediately upon notice to you. You may terminate this license at any time upon notice to Edwards, subject to payment obligations under the applicable subscription agreement. Upon termination or expiration of this Agreement, you will immediately stop using and return the Software and Documentation, together with all copies in any form and any other Confidential Information in your possession or control or certify to Edwards in writing that the same has been destroyed.

8. INTELLECTUAL PROPERTY RIGHTS. The Software is the intellectual property of Edwards and its suppliers. The Software's structure, organization, and code are the valuable trade secrets and confidential information of Edwards and its suppliers. The Software is protected by copyright, including without limitation by United States copyright law. This Agreement is a license, not a sale. You do not obtain title to the Software. The ownership of all copies of the Software remains with Edwards, subject only to the limited license granted to you in this Agreement. Edwards retains the ownership of all patents, copyrights, trade secrets, trademarks and other intellectual property rights pertaining to the Software

9. GENERAL TERMS. Any claim relating to the Software or this Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, without regard to its conflicts of law principles. Performance time for non-monetary obligations will be reasonably extended for delays beyond a party's control. Rights and obligations under this Agreement cannot be assigned without the other party's prior written consent, unless: (i) it is to an entity (except to an Edwards competitor) that (a) is an affiliate or parent of the party or (b) acquires substantially all of the stock or assets of such party's applicable business; and (ii) the assignee agrees in writing to be bound by this Agreement. You agree to hold Edwards' business, technical and proprietary information, including Software pricing ("Confidential Information") in strict confidence. You will use such Confidential Information only in connection with this Agreement and the use of the Software and related services and will not disclose such Confidential Information of Edwards to others except as required by law. Upon request by Edwards, you will return or destroy Edwards' Confidential Information. If any provision of this Agreement is not enforced, it is not a waiver of that provision or of a party's right to later enforce it. Terms in this Agreement that by their nature are intended to survive will survive the Agreement's expiration or termination. You may provide Edwards with feedback related to the Software or Documentation, and Edwards may use it in an unrestricted manner. You agree to defend, indemnify and hold Edwards, and its subsidiaries, affiliates, officers, directors, employees, agents, predecessors, successors, and assigns harmless from and against any and all suits, actions, claims, demands, proceedings (whether judicial, regulatory, or administrative), damages, settlements, judgments, injuries, liabilities, losses, risks, costs, and expenses (including reasonable attorneys' fees and litigation expenses) relating to or arising from your use of the Software, your fraud, violation of law, or willful misconduct, and any breach by you of the terms in this Agreement. This Agreement may only be amended by mutual written agreement between the parties.

