

## **Diopsys, Inc. Terms of Use**

Our Terms of Use were updated on August 25, 2022.

The website located at [www.diopsys.com](http://www.diopsys.com) including all subdomains (the “Site”) is a copyrighted work belonging to Diopsys, Inc. (“Diopsys”, “us”, “our”, and “we”). Certain features of the Site may be subject to additional guidelines, terms, or rules, which will be posted on the Site in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

Diopsys provides (1) the Site, including access to and use of Diopsys’ e-commerce website for the purchase of Diopsys Products, (2) certain Diopsys products available for purchase, including the NOVA-VEP, NOVA-ERG, Enfant®, and sensors and related disposables (“Products”), and (3) certain services accessible through the Sites in connection with the use and maintenance of its Products (in addition to access to and use of the Sites, the “Services”).

THESE TERMS OF USE (THESE “TERMS”) SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SITE, INCLUDING YOUR ACCESS TO AND USE OF PRODUCTS AND SERVICES. BY ACCESSING OR USING THE SITE, YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF AND THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF AND THE ENTITY THAT YOU REPRESENT). YOU MAY NOT ACCESS OR USE THE SITE OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SITE.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 12) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

The disclaimers, exclusions, mandatory and binding arbitration, limitations of liability, indemnification, waiver of jury trial, waiver of class action and waiver of punitive damages under these Terms will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

### **1. No Medical Advice**

Nothing on the Site should be construed as the giving of advice or the making of a recommendation regarding any decision or action related to your health or the health of others. If you are a patient, you should consult a doctor or other qualified health care professional regarding any questions you have about your health or before making any treatment decisions. If you are a doctor or other qualified health care professional or organization, you should not allow the content of these Sites substitute for your own medical and professional judgment, which you should exercise in evaluating the information on this Site.

### **2. Overview, Eligibility, Customer Service, Term and Termination**

- a. Overview and Relation to Other Agreements. In addition to these Terms, your purchase of any Product is also governed by the limited warranty provided with that Product (“Limited Warranty”), and the Diopsys Terms and Conditions of Sale. Any software

embedded in the Product (and any updates thereto) (“Product Software”) is licensed and governed by the Diopsys End User License Agreement. All additional guidelines, terms or rules and the Diopsys Privacy Statement (“Privacy Statement”) are incorporated by reference into these Terms and you are agreeing to accept and abide by them by using the Site, Services, or Products. Except for information covered by our Privacy Statement, any communication or materials you may transmit to or through the Sites, including data, comments, questions, suggestions, ideas, concepts, know-how, techniques, or the like, shall become the property of Diopsys and Diopsys shall be free to use, disclose, reproduce, or distribute any such communications or materials without limitation of any kind.

- b. Eligibility. You may use the Services and Products only if you have the legal capacity to form a binding contract with Diopsys, you accept these Terms through the Site, or by accessing or using the Services or Products, and only if you are in compliance with these Terms and all applicable local, state/provincial, national and international laws, rules and regulations.
- c. Customer Service. If you have any questions or concerns regarding the Products, the Services or these Terms, please contact Diopsys.
- d. Term and Termination. These Terms will remain in full force and effect as long as you continue to access or use the Site, Services, or Products, or until terminated in accordance with the provisions of these Terms. At any time, Diopsys may (i) suspend or terminate your rights to access or use the Site, or (ii) terminate these Terms with respect to you if Diopsys, in good faith, believes that you have used the Site, Services, or Products in violation of these Terms, including any incorporated guidelines, terms or rules.
- e. Effect of Termination. Upon termination of these Terms, your Account and your ability to use the Services and purchase Products will automatically terminate. The obligations in Sections 7 through 14 will survive any expiration or termination of these Terms.

### **3. Accounts**

To access certain Site features or pursue Services and Products, you must register for a user account (“Account”) and provide certain information about yourself, as prompted by the applicable registration form. You represent and warrant that: (i) all required registration information that you submit is truthful and accurate; (ii) you will maintain the accuracy of such information; and (iii) your use of the Services and Products will not violate any US or other applicable law or regulation (e.g., you are not located in an embargoed country or are not listed as a prohibited or restricted party under applicable export control laws and regulations). You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account. You agree to use “strong” passwords (passwords that use a combination of upper-case and lower-case letters, numbers and symbols) with your Account and to maintain your password securely to prevent others from gaining access. You agree to immediately notify Diopsys of any unauthorized use or suspected unauthorized use of your Account, or any other breach of security. Diopsys is not liable for any loss or damage arising from your failure to comply with the above requirements.

### **4. Fees and Payment**

Products and/or Services may be provided for a fee. You shall pay all applicable fees (including all taxes, shipping charges, etc.) in connection with the Products and Services selected by you in accordance with Diopsys’ Terms and Conditions of Sale.

## 5. Access to Services and Products

- a. License. Subject to these Terms, Diopsys grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Site, subject to these Terms.
- b. Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (i) you agree not to license, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Services or Products except as contemplated by Diopsys; (ii) you agree not to modify, make derivative works of, disassemble, reverse-compile or reverse-engineer any part of the Services or Products; (iii) you agree not to access the Services or Products in order to build a similar or competitive service or product; (iv) except as expressly stated herein, no part of the Services or Products may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (v) you agree not to upload, transmit or distribute any computer viruses, worms or any software intended to damage or alter a computer or communications network, computer, handheld mobile device, data, the Services, the Products, the Product Software or any other system, device or property; (vi) you agree not to interfere with, disrupt or attempt to gain unauthorized access to the servers or networks connected to the Services or violate the regulations, policies or procedures of such networks; (vii) you agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by Diopsys; and (viii) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) that may be contained in, or displayed in connection with, the Services or Products. Any future release, update or other addition to functionality of the Services shall be subject to these Terms.
- c. Privacy. Please refer to the Diopsys Privacy Statement to learn how Diopsys protects your personal information, and for other matters regarding the collection, use, processing, and privacy of information.
- d. Security. Diopsys cares about the security of your personal information, and works to implement appropriate security measures. However, Diopsys cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.
- e. Modification. Diopsys reserves the right, at any time, to modify, suspend or discontinue the Services or any part thereof with or without notice. You agree that Diopsys will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services or any part thereof.
- f. Access Outside Certain Countries. Although the Sites are accessible worldwide, the Products and Services provided or accessed through or on the Sites are not available to all persons or in all countries. The commercial sale of Diopsys' Products is highly regulated, and the Diopsys' current distribution is limited certain countries. If you choose to access the Sites from outside a country in which Diopsys supports the Product and Services, you do so on your own initiative and you are solely responsible for complying with applicable local laws in your country. You understand and accept that the Sites are not designed for use in countries where Diopsys does not currently offer Products. To the extent permissible by law, Diopsys accepts no responsibility or liability for any damage or loss caused by your access or use of the Sites or Diopsys Products in countries where Diopsys does not currently offer Products. You will be bound by these Terms wherever you access or use the Sites or the Services.

- g. Release. You hereby release and forever discharge the Diopsys (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present, and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Site (including any interactions with, or act or omission of, other Site users or any External Websites).

## **6. Third-Party Links**

In an attempt to provide increased value to our visitors, the Sites may contain links to other sites on the Internet that are owned and operated by third party vendors and other third parties (the “External Websites”). Diopsys has no control over these linked External Websites, all of which have separate privacy and data collection practices, independent of Diopsys. Diopsys has no responsibility or liability for these independent policies or actions and is not responsible for the privacy practices or the content of such External Websites. These linked sites are only for your convenience and therefore you access them at your own risk. Links do not imply that Diopsys sponsors, endorses, is affiliated with or associated with, or has been legally authorized to use any trademark, trade name, service mark, design, logo, symbol or other copyrighted materials displayed on or accessible through such External Websites.

## **7. Ownership and Intellectual Property**

- a. Diopsys Property. You acknowledge that all intellectual property rights, including, without limitation, copyrights, patents, trademarks and trade secrets, on the Site, in the Product, in Product Software, and in Services are owned by Diopsys or its affiliates or our licensors. Your possession, access to and use of the Product, Product Software and Services do not transfer to you or any third party any rights, title or interest in or to such intellectual property rights. Diopsys, and its affiliates and licensors and suppliers, reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms.
- b. Copyrights and Trademarks. The entire content of the Site, including but not limited to text, design, graphics, interfaces, or code and the selection and arrangements thereof is copyrighted as a collective work under the United States and other copyright laws, and is the property of Diopsys. The collective work may include works licensed to Diopsys. All trademarks, service marks, and trade names (collectively the “Marks”) are trademarks or registered trademarks of and are proprietary to Diopsys, or other respective owners that have granted Diopsys the right and license to use such Marks.

You should assume that all logos, designs, slogans, and trade dress appearing on the Sites, whether or not appearing in large print, italics, or with the trademark symbol, are owned by Diopsys or its affiliate companies, or are used under license. The Sites may also contain or reference patents, proprietary information, technologies, products, processes, or other proprietary rights of Diopsys and/or other parties. No license to, or right in, any such trademarks, patents, trade secrets, technologies, products, processes, and other proprietary rights of Diopsys and/or other parties is granted to, or conferred upon, you.

You may not, distribute, modify, transmit, reuse, repost, or use the content of the Sites for public or commercial purposes, including the text, images, audio, or video, without the written permission of Diopsys. You should assume that everything you see or read on this Site is copyrighted unless otherwise noted and may not be used without the written permission of

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## **8. Accuracy of Information**

While Diopsys has used reasonable efforts to ensure that the information on its Site is accurate, complete, and current. Diopsys makes no warranties or representations about the accuracy or completeness of the Site's content or the content of any site or External Websites, and expressly disclaims any warranty or representation regarding the accuracy, completeness, or currency of such information.

## **9. Indemnification**

You agree to indemnify and hold Diopsys (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Site, (b) your violation of these Terms, or (c) your violation of applicable laws or regulations. Diopsys reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Diopsys. Diopsys will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **10. Disclaimers**

THE SITE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND DIOPSY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SITE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SITE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **11. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DIOPSY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SITE, EVEN IF DIOPSY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **12. Dispute Resolution and Arbitration.**

***Please read this carefully. It is part of your contract with Diopsys and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.***

Any dispute, controversy or claim arising out of or relating to these terms, your purchase of products or services, or any contract or agreement between you and Diopsys, including the formation, interpretation, breach or termination thereof, and including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of a sole arbitrator. The seat of the arbitration will be Seattle, Washington U.S.A. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

This agreement to arbitrate is intended to be broadly interpreted, including, for example:

- claims arising out of or relating to any aspect of the relationship between us that is created by or involves these terms and/or your use of the products, regardless of the legal theory;
- claims for mental or emotional distress or other emotional/mental injury arising from the relationship between us;
- claims that arose before you accepted these terms (such as claims related to disclosures or the marketing of the products or the process for seeking approval to use the products);
- claims that may arise after the termination of your use of the products or any agreement between us; and
- claims brought by or against our respective subsidiaries, parent companies, members, affiliates, as well as the respective officers, directors, employees, agents, predecessors, successors, and assigns of these entities, you, and Diopsys.

This agreement to arbitrate does not preclude either of us from seeking an individualized preliminary injunction or temporary restraining order, pending arbitration, in any court that has jurisdiction. In addition, you or Diopsys may seek injunctive or other equitable relief to protect your or its intellectual property rights or to prevent loss or damage in any court with competent jurisdiction.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE, LAW, YOU UNDERSTAND AND AGREE THAT WE ARE EACH (A) WAIVING THE RIGHT TO A TRIAL BY JURY; (B) WAIVING THE RIGHT TO PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION; AND (C) WAIVING THE RIGHT TO CLAIM OR RECOVER PUNITIVE DAMAGES AGAINST THE OTHER. These terms evidence a transaction in interstate commerce, and, thus, the Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision.

- a. **Notice of Disputes.** If either of us intends to seek arbitration of a dispute, that party must provide the other with notice in writing (“Notice”). The Notice to Diopsys should be sent to: Diopsys, Inc., Attn: Legal Department, 19578 10<sup>th</sup> Avenue, STE 200, Poulsbo, WA 98370, U.S.A. Diopsys will send Notice to you at the e-mail and/or addresses associated with your account or otherwise on file with Diopsys. Your Notice to Diopsys must (a) provide your name, mailing address, and email address; (b) describe the dispute; (c) state the relief you are requesting; and (d) provide the name and title of the executive who will represent the party in negotiations, and of any other person who will accompany the executive.
  
- b. **Good Faith Negotiations.** Prior to initiating arbitration, the parties will attempt in good faith to resolve any such dispute promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the person with direct responsibility for administration of these Terms. Within 15 days after delivery of the Notice, the receiving party shall submit to the other a written response. The response shall include with reasonable particularity (a) a statement of the party’s position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party, and of any other person who will accompany the executive. Within 30 days after delivery of the Notice, the executives of both parties shall meet at a mutually acceptable time and place. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of the executives described above (“First Meeting”). Such closure shall not preclude continuing or later negotiations, if desired. All offers, promises, conduct and statements, whether written or oral, made in the course of the negotiation by any of the parties, their agents, employees, experts and legal representatives are confidential, privileged, and inadmissible for any purpose in arbitration or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation. At no time prior to the First Meeting shall either side initiate litigation related to these Terms except to pursue a provisional remedy that is authorized by law. Neither may either side initiate arbitration except to pursue a provisional remedy authorized by the JAMS International Arbitration Rules. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of this paragraph. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified this paragraph are pending and for 15 calendar days thereafter. If the dispute has not been settled at the close of the First Meeting as defined above, or within such time period as the parties may agree in writing, either party may initiate arbitration with respect to the matters submitted to negotiation by filing a written demand for arbitration with JAMS or its successors no earlier than 60-days after delivery of the Notice. The negotiations may continue after the commencement of the arbitration if the parties so desire.
  
- c. **Arbitration Procedures.** If the good faith negotiations described above do not result in resolution of the dispute, the parties may commence arbitration in accordance with the JAMS International Arbitration Rules no earlier than 60-days after delivery of the Notice. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the privacy of the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. All applicable terms and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of Washington U.S.A., exclusive of conflict or choice of law rules. In any arbitration, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits.

- d. **Prevailing Party Fees.** In any arbitration, the arbitrator shall award to the prevailing party, if any, the reasonable costs for legal representation incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under the circumstances where the prevailing party won on some but not all of its claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the reasonable costs for legal representation incurred by the prevailing party in connection with the arbitration.
- e. **No Class Arbitration.** The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND DIOPSYS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.** Further, unless all affected parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

### **13. Forward-Looking Statements**

The Sites may contain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. All statements other than statements of historical facts are “forward-looking statements” for purposes of these provisions, including those relating to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as “may,” “might,” “will,” “should,” “expect,” “plan,” “anticipate,” “project,” “believe,” “estimate,” “predict,” “potential,” “intend” or “continue,” the negative of terms like these or other comparable terminology, and other words or terms of similar meaning in connection with any discussion of future operating or financial performance. These statements are only predictions. All forward-looking statements included in the Sites are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Any or all of our forward-looking statements in the Sites may turn out to be wrong. Actual events or results may differ materially. Our forward-looking statements can be affected by inaccurate assumptions we might make or by known or unknown risks, uncertainties and other factors.

### **14. General**

- a. **Changes to These Terms.** These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Site. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Site. Continued use of our Site following notice of such changes shall indicate



your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

- b. **Governing Law.** These Terms, and any claim, dispute, action, cause of action, issue, or request for relief arising out of or relating to these Terms or your use of the Products and Services shall be governed by the laws of the State of Washington without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO SUBMIT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS IN OR FOR KING COUNTY, WASHINGTON FOR THE PURPOSE OF LITIGATING ALL SUCH CLAIMS OR DISPUTES, UNLESS SUCH CLAIM OR DISPUTE IS REQUIRED TO BE ARBITRATED AS SET FORTH IN AN ABOVE SECTION.
- c. **Protection of Confidentiality and Intellectual Property Rights.** Notwithstanding the foregoing, Diopsys may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.
- d. **Entire Agreement/Severability.** These Terms, the Terms and Conditions of Sale, Privacy Statement, End User License Agreement, and Limited Warranty, if applicable, constitute the entire agreement between you and Diopsys regarding the use of the Site, Services, and purchase of the Products. Any failure by Diopsys to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Neither party is an agent or partner of the other party.
- e. **Survivability.** The obligations in Sections 7 through 14 will survive any expiration or termination of these Terms.
- f. **Assignment.** These Terms, and any associated rights or obligations, may not be assigned or otherwise transferred by you without Diopsys' prior written consent. These Terms may be assigned by Diopsys without restriction. These Terms are binding upon any permitted assignee.
- g. **Notifications.** Diopsys may provide notifications to you as required by law, or for marketing or other purposes, via (at its option) email to the primary email associated with your Account, or posting of such notice on [www.Diopsys.com](http://www.Diopsys.com) or a related Site. Diopsys is not responsible for any automatic filtering that you or your network provider may apply to email notifications that may limit the delivery of these messages.
- h. **Electronic Communications.** The communications between you and Diopsys use electronic means, whether you use the Site or send us emails, or whether Diopsys posts notices on the Site or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Diopsys in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Diopsys provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights

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- j. Contact Information:

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