

Orthopedic Navigation Standard Terms and Conditions of Fee Per Use

I. Definitions.

"Customer" shall mean the customer set forth in the attached order documentation ("Order").

"Equipment" shall mean the Brainlab items set forth in the Order.

"Fee" shall mean the fee identified in the Order for the use of the Products and Services on a per case basis.

"Products" shall mean the Equipment and Software.

"Services" shall mean the installation, maintenance, training, and ancillary services performed in connection with the Products.

"Software" shall mean the software products set forth in the Order and any software delivered with or integrated in the Equipment.

II. Scope and Application.

1. Subject to these Standard Terms and Conditions of Fee Per Use ("Terms") and the attached Order (collectively, the "Order" and "Terms"), are herein referred to as the "Agreement"), Customer utilized, or will utilize, the Products on a per use basis, as identified in the Order (each a "Use").

2. All Products and Services are furnished on these Terms only.

Customer's terms and conditions in any order documentation pre-printed or otherwise, shall not apply.

3. Customer acknowledges that this is a commercial and not a consumer transaction and represents and warrants that it has selected the Products and Brainlab based solely on its own judgment.

III. Removal of Customer Data.

Customer shall remove all Customer data and information stored on the Equipment after use. In the event Customer data or information remains on the Equipment, the Customer data or information may be deleted or removed without liability to Customer.

IV. Installation ; Use and Operation

1. Installation will be performed by support personnel at a mutually agreed upon date.

2. After complete installation, support personnel will test the Products to assure their capability of functioning according to the specifications.

At least one representative of Customer shall be present during this procedure.

3. Support personnel must be present for each use of the Products, otherwise a full acceptance protocol, signed by Customer, will be required.

4. Brainlab shall be entitled to appoint subcontractors to perform the installation.

5. Customer warrants that the Products will be operated only by personnel who have participated in user training.

V. Compatibility to Third Party Products.

Brainlab warrants compatibility with third party manufacturer's products only as explicitly listed in the version of the Products documentation which is current as of the date of Use.

VI. Intellectual Property

1. The rights to patents, trademarks, and any other intellectual property incorporate in or associated with the Products shall remain the property of Brainlab, its parent company, Brainlab AG, or its licensors. The Software provided by Brainlab is licensed to the Customer, and not sold. Brainlab and/or its affiliates, suppliers and/or licensors presently owns and will continue to own all right, title, and interest in and to the Software and its source code, and any and all copyrights, trademarks, trade names, logos and other proprietary rights in and to the Software and any other materials provided to or otherwise made available to Customer hereunder, and all worldwide intellectual property rights embodied herein. Brainlab represents that Brainlab and/or its affiliates have the right to license the Software under this Agreement to Customer.

2. Nothing in this Agreement shall entitle Customer to copy, decompile, or allow third parties access to the software.

VII. Ownership and Title

1. The Products shall at all times be and remain the sole and exclusive property of Brainlab notwithstanding that the Products may now be, or hereafter become, in any manner affixed or attached to, or embedded in, or permanently resting upon real property or any improvement thereon or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise. Customer shall not remove any labeling affixed to the Products. Customer shall have no right, title or interest therein or thereto except as to the use thereof subject to the terms and conditions of this Agreement. Customer shall not permit its rights or interests hereunder to be subject to any lien, charge or encumbrance and shall keep the Products free and clear of any and all liens, charges and encumbrances which may be levied against or imposed upon Customer for whatever reason.

2. Without the prior written consent of Brainlab, Customer shall not make any alterations, additions or improvements to the Products. All

additions and improvements of whatsoever kind or nature made to the Products shall be deemed accessions thereto, shall belong to and immediately become the property of Brainlab and shall be returned to Brainlab with the Products upon completion of the Equipment Use. In addition, for Products which consist of a dedicated computer workstation provided by Brainlab, or which reside on a dedicated computer workstation provided by Brainlab, Customer shall not install any third party software or programs on the dedicated computer workstation.

VIII. Fees, Payment Terms

1. Customer shall pay to Brainlab the Fee for each Use of the Products.

2. The Fee shall be due net ten (10) days from the date of the Brainlab invoice.

3. Fees not paid within five (5) days of their respective due dates may incur a late fee of one and a half percent (1.5%) per month, or the maximum amount allowed by law.

4. Customer shall pay as directed by Brainlab or reimburse Brainlab upon demand for all taxes, including but not limited to sales, use, or property taxes (exclusive of federal and state taxes based on or measured solely by Brainlab's net income), fees, charges or assessments, of whatsoever kind, whether based on the fee, rent or levied, assessed or imposed upon the Products or upon or in respect of the manufacture, purchase, delivery, ownership, leasing, use, return or other disposition of the Products, now or hereafter levied, assessed or imposed under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable ("Taxes and Fees"). Customer authorizes Brainlab to add to the amount of the Fee, and shall pay, any Taxes and Fees that may be imposed on or measured by such fees at any time. In the event Customer is a tax exempt entity, Customer shall notify Brainlab in writing and provided written evidence of such status.

5. Customer shall bear the costs of operation including, without limitation, costs for energy, sterilization, and the like.

6. Customer agrees to provide all information reasonably requested by Brainlab to carry out credit approval.

IX. Confidentiality

1. The terms of this Agreement and Brainlab's technology, business or market information or information related to business ventures that Brainlab has undertaken or may undertake, shall be considered confidential and Customer shall not disclose the foregoing without the written consent of Brainlab.

2. For the improvement of products and customer support Brainlab shall be entitled to collect statistical data stored on Products used by Customer. This data will be stored anonymous and used exclusively for internal purposes.

3. Brainlab undertakes to observe the applicable data protection regulations.

4. Customer agrees that Brainlab may remotely access the systems at Customer's site within the scope of this agreement, and may process and store data in order to perform the iHelp remote service

X. Disclaimer of Warranty, Limitations of Liability; Indemnification

1. The Products are provided without warranty and ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE, OR APPLICATION, ARE HEREBY EXPRESSLY DISCLAIMED AND WAIVED.

2. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS ARE OF A SIZE, DESIGN, TYPE AND MANUFACTURE SELECTED BY CUSTOMER AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, BRAINLAB HAS NOT MADE AND DOES NOT HEREBY MAKE ANY AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY OR SUITABILITY OF THE PRODUCTS IN ANY RESPECT OR IN CONNECTION THEREWITH FOR THE PURPOSES AND USES OF CUSTOMER, OR ANY OTHER AGREEMENT, REPRESENTATION OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.

3. No representation is made as to the accounting validity, adequacy or compliance with the standards set forth in the criteria found within, but not limited to, the industry accounting standards as defined by the Financial Accounting Standards Board (FASB), Generally Accepted Accounting Principles (GAAP), the International Accounting Standards Board (IASB), or any other accounting standard defined by an independent third party or government agency. If desired, Customer should consult a Certified Public Accountant (CPA) and/or attorney before entering into this Agreement.

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4. The total liability of Brainlab arising under this Agreement for any reason shall not exceed the Fees received by Brainlab for the Products giving rise to the claim, provided, however that in no event shall Brainlab's liability hereunder exceed the actual loss or damage sustained by Customer.

5. Brainlab shall not be liable for any loss of use, revenue or anticipated profits, loss of stored or transmitted data, or for incidental, unforeseen, special, punitive or consequential damages arising out of or in connection with this Agreement or the use of the Products.

6. Brainlab shall not be liable for any damages whatsoever caused by (i) the use of the Products prior to successful performance of the acceptance test if the Products are used without Brainlab personnel present; (ii) any use of the Products prior to applicable training; (iii) any use, operation, service, modification of the Products contrary to relevant manuals, written warnings, automated warnings, or instructions of Brainlab personnel; or (iv) the use of the Products in conjunction with third party products, unless this use has been expressly authorized in writing by Brainlab.

7. Except as prohibited by applicable law, Brainlab's liability shall be restricted to an equitable proportion as reflects its relative fault in relation to Customer's contribution to the damage, injury or death of the third party.

8. Customer shall indemnify, defend and hold Brainlab, its affiliates and their respective shareholders, directors, officers, employees, subcontractors, and agents harmless from all liabilities, claims, demands, damages, settlements, losses and expenses (including attorneys' fees and costs) incurred in connection with any claim against Brainlab arising from (a) the tortious acts, negligent or willful actions or omissions of Customer, Customer affiliate's and their respective directors, officers, employees, subcontractors or (b) any of the actions set forth in Section X.6(i) – (iii).

XI. Governing Law, Jurisdiction

1. This Agreement shall be governed by the laws of the state of Illinois.

2. Any claim or controversy arising out of or relating to this Agreement shall be settled by arbitration in Chicago, Illinois in accordance with the arbitration rules of the American Arbitration Association. The dispute shall be heard and determined by one arbitrator, unless any party's claim exceeds USD 1 million, exclusive of interest and attorneys' fees, in which case the dispute shall be heard and determined by three arbitrators. The arbitration tribunal shall not award punitive damages. The arbitration shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement. Each party shall bear its own costs and

expenses and an equal share of the arbitrators' and administrative fees of arbitration.

3. Nothing in this agreement shall prevent Brainlab from seeking injunctive relief or other legal remedy to prevent unauthorized copying, disclosure, use, retention, or distribution of Brainlab's intellectual property or for breach of Sections VII (Intellectual Property), VIII (Ownership and Title), or X (Confidentiality).

XII. General Provisions

1. No right or remedy conferred herein is exclusive of any other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time.

2. Any notice, consent or approval required under this Agreement shall be sent in writing by first class mail, postage prepaid, or by facsimile, and addressed as to the respective addresses set forth in an Equipment Order Form. All notices shall be deemed to be effective five days after the date of mailing. In case any party changes its address at which notice is to be received, written notice of such change shall be given to the other party without delay.

3. The provisions of Sections I (Definitions), VII.1 (Intellectual Property), VIII.1 (Ownership and Title), X (Confidentiality), XI (Disclaimer of Warranty, Limitations of Liability, Indemnification), XII (Governing Law, Jurisdiction), and XIII (General Provisions) shall survive the expiration or termination of this Agreement; The waiver by either party of any term or condition of this Agreement or any Equipment Use in any one instance shall not be deemed or construed to be a waiver of such term or condition for any similar instance in the future or any subsequent breach hereof. All rights, remedies, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be a limitation of any other remedy, right, undertaking, obligation or agreement of either party.

4. If and solely to the extent that any provision of this Agreement shall be invalid or unenforceable or shall render this entire Agreement to be unenforceable or invalid, such offending provision shall be of no effect and shall not affect the validity of the remainder of this Agreement or any of its provisions. The invalid or unenforceable clause will be replaced by the valid clause that generally comes closest to the commercial intention of the invalid clause.

5. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof, and has priority over all documents, oral consents or understandings, express or implied, between the parties before the conclusion of this Agreement with respect to the subject matter hereof. None of the terms of this Agreement shall be amended or modified except in a written instrument signed by the parties hereto