



## **END-USER LICENSE AGREEMENT POSAS V2.0**

This End-User License Agreement (hereinafter: the “EULA”) is a legal agreement between you (either an individual or a legal entity) as licensee (hereinafter: “Licensee”) and the Nederlandse Brandwonden Stichting (a foundation under the laws of the Netherlands, having its registered office at Zeestraat 29, 1941 AJ Beverwijk, the Netherlands) as licensor (hereinafter: “Licensor”) that governs your use of the POSAS. Any rights to use the POSAS are only offered upon the condition that you agree to all terms and conditions of this EULA.

By using the POSAS in any way and/or by accepting this EULA on the POSAS Website or otherwise, you agree to be bound by the terms and conditions of this EULA. If you are entering into this EULA on behalf of a legal entity, you represent that you are authorized to bind such legal entity to the terms and conditions of this EULA. If you are not authorized to enter into this EULA or if you do not agree with the terms and conditions of this EULA, do not make use the POSAS and do not accept this EULA.

### **1. Definitions**

1.1. In this EULA, the capitalized terms below shall have the meaning assigned to them in this article:

<b>Approved Purpose</b>	means the approved purpose(s) for the use of the POSAS, as specified in the Order Confirmation;
<b>Confidential Information</b>	means all information in the largest sense, disclosed by a Party to the other Party, regardless of its source, such as (but not limited to) technical and commercial know-how, specifications, software, software source codes, techniques, drawings, samples, specimens, processes, equipment, business information and Intellectual Property Rights, and including also the existence and the terms of this EULA, and any other information (in any form) that has been disclosed by or on behalf of the disclosing Party in confidence, or which by its nature ought to be regarded as confidential;
<b>Copyright Notice</b>	means the copyright notice ‘ <i>Copyright © Prof. Dr. Paul van Zijlen. All rights reserved.</i> ’;
<b>EULA</b>	means this End-User License Agreement, including any future written and executed amendments thereof;

<b>Intellectual Property Rights</b>	means any and all rights, including future rights, in inventions, patents, designs, copyrights, trademarks, service marks, trade names, source codes, object codes, (development) frameworks, content management systems, data structures, (deployment) environments, tiers, documentation, database and topography rights (whether or not any of the foregoing have been registered, and including applications for registration of any of the foregoing), together with all trade secrets, know-how and rights or forms of protection of a similar nature or having a similar effect to any of the foregoing which may exist anywhere in the world;
<b>License</b>	is defined in article 2.1 of this EULA;
<b>Licensee</b>	is defined on the first page of this EULA;
<b>Licensor</b>	means Nederlandse Brandwonden Stichting, a foundation under the laws of the Netherlands, having its registered office at Zeestraat 29, 1941 AJ Beverwijk, the Netherlands;
<b>Party</b>	means Licensor or Licensee;
<b>Parties</b>	means Licensor and Licensee;
<b>Order Confirmation</b>	means the order confirmation sent by Licensee with respect to Licensor’s use of the POSAS, which forms an integral part of this EULA;
<b>POSAS</b>	means the Patient and Observer Scar Assessment Scale v2.0, consisting of an observer scale and a patient scale, including any accompanying documentation (if available);
<b>POSAS Website</b>	means the website of the POSAS ( <a href="http://www.posas.org">www.posas.org</a> );
<b>References</b>	means the reference list as set out in Annex 1, as amended from time to time;
<b>Remuneration</b>	means the remuneration owed by the Licensee to the Licensor for the use of the POSAS;

1.2. The annex(es) specified hereunder (hereinafter: “**Annex(es)**”) will be attached to this EULA and form an integral part thereof.

- Annex 1: Reference list.

## 2. License

- 2.1. For the duration of the EULA and subject to Licensee meeting its obligations under this EULA, Licensor hereby grants Licensee a limited, non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable right to use the POSAS for the Approved Purpose (the “**License**”).
- 2.2. The Licensee shall:
  - a. not adapt, condense, incorporate, modify, reorganize, revise, supplement or otherwise amend the POSAS in any form, even minor, and on any medium (including, but not limited to, electronic means such as apps or other software) without the express prior written consent of Licensor, in which Licensor is entitled to attach further conditions and/or demand (additional) remuneration;
  - b. not translate the POSAS in any form, in any language and on any medium without the express prior written consent of Licensor, in which Licensor is entitled to attach further conditions (including the transfer and/or assignment of Intellectual Property Rights with respect to a translation and/or demand (additional) remuneration);
  - c. not sub-license, assign, novate, sell, transfer, lease, rent or otherwise dispose the License and/or the POSAS on a temporary or permanent basis;
  - d. not provide, disclose, distribute, divulge or make available to any third party, or permit any third party to use or access the POSAS without the express prior written consent of Licensor, in which Licensor is entitled to attach further conditions and/or demand (additional) remuneration;
  - e. not use any Intellectual Property Rights contained in the POSAS for the purpose of creating or usage in competitive or similar product, service, scale or questionnaire;
  - f. promptly notify Licensor if it becomes aware of any unauthorized use of the POSAS by any person, including any infringement of Intellectual Property Rights;
  - g. include the Copyright Notice in every use of the POSAS;
  - h. cite the References if the POSAS is used in academic or research studies or projects;
  - i. not remove, delete or alter any disclaimers, warning, confidentiality, copyright or other (proprietary) markings accompanying or placed upon the POSAS;
  - j. not use the POSAS for any unlawful or illegal activity; and
  - k. use the POSAS in accordance with all applicable legal requirements.
- 2.3. Licensee acknowledges that the POSAS is provided ‘as is’. Licensor, its affiliates and/or its licensors make no representations or warranties with respect to the POSAS, either express or implied, including, but not limited to availability, fitness for a particular purpose, non-infringement, security or title. Licensor, its affiliates and/or its licensors do not warrant that the POSAS is free of errors, inaccuracies, is accurate, complete or compliant to any specifications, reliable or otherwise valid.

### 3. Intellectual property rights

- 3.1. Licensor, its affiliates and/or its licensors are the owner(s) of the Intellectual Property Rights with respect to POSAS and any other products, documents and materials provided to Licensee under this EULA. Nothing in this EULA shall result in the assignment and/or transfer by Licensor, its affiliates and/or its licensors of any of their Intellectual Property Rights with respect to the POSAS to Licensee or the provision of a license for the use of the POSAS to Licensee, unless expressly agreed otherwise between Parties in this EULA.
- 3.2. Licensee shall respect all Intellectual Property Rights described in article 3.1 and POSAS trademark and logo, and shall not use any such Intellectual Property Rights or the POSAS trademark or logo in any manner whatsoever, except with Licensor's express prior written consent, in which Licensor is entitled to attach further conditions and/or demand (additional) remuneration.
- 3.3. Licensee shall not alter or delete any indications of origin of Licensor, its affiliates or its licensors (including, but not limited to, trademarks, logos and trade names) that are displayed in or accompanied with the POSAS.
- 3.4. Licensee shall promptly notify Licensor of becoming aware of any claim that the POSAS, or any elements thereof, (allegedly) infringe the Intellectual Property Rights of a third party. In the event of such a claim, Licensee:
  - a. shall permit Licensor to conduct any negotiations and/or litigation to settle the claim;
  - b. shall upon Licensor's request provide its full and unconditional cooperation to any investigations, negotiations and/or litigation with respect to the claim;
  - c. shall not make any admission in respect of such claim without Licensor's prior written consent; and
  - d. shall upon Licensor's request immediately cease use of the POSAS.
- 3.5. If the POSAS, or any elements thereof, are alleged to, or are held to, constitute an infringement of the Intellectual Property Rights of a third party, then Licensor may do any or all of the following, at its own option and sole discretion:
  - a. make all reasonable attempts to procure for Licensee the right to continue the use of the alleged infringing elements; or
  - b. modify, replace or remove the infringing elements so as to avoid the infringement.

The obligations in this article 3.5 shall constitute Licensee's sole remedy in relation to any infringement claims made in relation to the POSAS.
- 3.6. Licensor shall have no obligations under article 3.5 if Licensee has not met its obligations under article 3.4 in full or if the (alleged) infringement is caused by (i) any use of the POSAS by Licensee

in breach of the terms and conditions of this EULA, or (ii) any use of the POSAS in any manner for which it was not designed or intended.

#### **4. Remuneration**

- 4.1. In consideration of the License granted to Licensee under this EULA, Licensee shall, if applicable, pay the Remuneration as specified on the POSAS Website and/or the order confirmation sent by Licensor.
- 4.2. The Remuneration shall be in Euros (€) and shall be exclusive of VAT and any other taxes and levies, unless expressly specified otherwise in writing by Licensor.
- 4.3. Licensor shall issue an invoice for the payment of the Remuneration. Licensee shall pay this invoice within thirty (30) days of the invoice date.
- 4.4. If any of the invoices have not been paid by Licensee when due, Licensee shall owe interest to Licensor on the outstanding amount from the original due date until paid at a rate equal to the higher of five (5) percent per annum or the commercial statutory rate (*wettelijke handelsrente*), without any reminder or notice of default being required.

#### **5. Confidentiality**

- 5.1. Licensee shall keep the Confidential Information of Licensor confidential and shall not disclose the Confidential Information to any third party without Licensor's prior written consent.
- 5.2. Licensor's Confidential Information and related documents and materials shall remain the property of Licensor.
- 5.3. Licensee shall:
  - a. use the Confidential Information solely for the purpose of performing its obligations or exercising its rights under this EULA; and
  - b. only make Confidential Information available to its employees, agents, subcontractors and/or (external) advisors on a need-to-know basis, and only after having made sure that such employees, agents, subcontractors and/or (external) advisors are bound by confidentiality obligations that are at least as strict as those in this EULA.

#### **6. Information provision and audit**

- 6.1. On first request by Licensor, Licensee shall promptly provide Licensor with all information necessary to demonstrate that Licensee is compliant with its obligations under this EULA.

- 6.2. Licensee shall allow, and shall provide its full cooperation thereto, Licensor and/or internal or external persons appointed by Licensor to conduct audits in order assess whether Licensee is compliant with its obligations under this EULA.
- 6.3. Licensee shall allow, and shall provide its full cooperation thereto, Licensor and/or internal or external auditors appointed by Licensor access to its premises as well as to any records, documentation, staff members and systems that are (in Licensor's reasonable opinion) relevant for conducting an audit as set out in article 6.2, at any reasonable time during (and, in an emergency, outside) normal working hours. Licensee shall ensure that Licensor and and/or internal or external auditors appointed by Licensor are provided with all information required for the audit, and that the information provided to Licensor and/or internal or external auditors appointed by Licensor shall be accurate and complete.
- 6.4. Parties shall each bear their own costs and expenses incurred as a result of complying with this article 6, unless the information provided and/or an audit reveals a breach by Licensee of its obligations under this EULA, in which case Licensee shall reimburse Licensor all costs incurred by reviewing the information provided and/or in the course of the audit.
- 6.5. If the information provided and/or an audit pursuant to this article 6 reveals, or it is revealed or Licensor becomes aware in any other way that Licensee is using the POSAS beyond or not in accordance with the Approved Use, Licensee shall retroactively owe (additional) Remuneration for such use and Licensor shall invoice this additionally owed Remuneration pursuant to article 4, without prejudice to any other rights or remedies that Licensor may have.

## **7. Term, termination and consequences of termination**

- 7.1. This EULA shall remain in force for the term of as specified in the Order Confirmation, unless terminated in accordance with this article 7.
- 7.2. If Licensee makes use of the POSAS on a subscription basis as specified in the Order Confirmation, this EULA shall be renewed tacitly with the subscription term originally agreed, unless a Party terminates (*opzeggen*) this EULA in writing with due observance of a notice period of at least three (3) months prior to the end of the current term.
- 7.3. Notwithstanding articles 7.1 and 7.2, if no term has been agreed between the Parties and/or has been specified in the Order Confirmation, a term of five (5) years shall apply. In the event of a subscription for the use of the POSAS and in derogation of the foregoing, a term of one (1) year shall apply in such event.

- 7.4. In addition to articles 7.1 and 7.2, Licensor may terminate (*opzeggen*) this EULA, immediately or with effect from a later date at Licensor's option, without prior written notice being required, if:
- a. Licensee is in default (*verzuim*);
  - b. Licensor does not have the applicable licenses and/or rights anymore to use and/or (sub)license the POSAS to Licensee;
  - c. an insolvency event has occurred with respect to Licensee, or serious doubts arise as to the Licensee's solvency; or
  - d. a force majeure (*overmacht*) event continues for a period of more than thirty (30) days,
- without being liable for any compensation with respect to the Licensee.
- 7.5. On the effective date of termination of this EULA:
- a. the License shall terminate;
  - b. any other rights granted to Licensee under this EULA shall immediately be relinquished by Licensee;
  - c. Licensee shall promptly, at the choice of Licensor, irrevocably delete or return all copies of the POSAS; and
  - d. Licensee shall promptly, at the choice of Licensor, irrevocably delete or return all of Licensor's Confidential Information in its or any of its employees', affiliates', subcontractors' or (external) advisors' possession to Licensor, without withholding any copies.
- 7.6. Termination of this EULA in accordance with this article 7 does not affect any Remuneration owed by the Licensee to Licensor as set out in article 4.1 and any Remuneration shall immediately become due and payable in full.
- 7.7. Terms of this EULA that by their nature should survive termination shall survive termination. This includes, but is not limited to, the articles 2.2, 5, 7.6 and 10 of this EULA.

## **8. Limitation of liability**

- 8.1. POSAS is provided 'as-is'. In no event shall Licensor be liable for any loss or any damage under or in connection with this EULA, except for loss or damage resulting from the intent (*opzet*) or willful misconduct (*grove schuld*) by (management of) Licensor.
- 8.2. To the extent that Licensor is liable any loss or any damage, Licensor's entire liability for loss or damage under or in connection with this EULA, whether for negligence, breach of contract, misrepresentation or otherwise, is, in relation to all events occurring in a given calendar year, limited to an amount equal to the amount of charges paid by Licensee to Licensor under this EULA in the calendar year in which the cause of action arose, with a maximum of € 1,000.00 (one thousand Euros).

- 8.3. The limitation of liability in this article 8 also applies for the benefit of Licensor's affiliates, board of directors, directors, management, employees, agents, representatives, contributors, licensors, suppliers or legal successors.

## 9. Miscellaneous

- 9.1. This EULA sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof. Any general terms and conditions (*algemene voorwaarden*) of Licensee shall not form part of this EULA and are hereby expressly rejected by Licensor.
- 9.2. Licensee may not assign or subcontract any of its rights or obligations under this EULA without Licensor's prior written consent. Licensor may assign or subcontract any of its rights or obligations under this EULA, to which Licensee hereby irrevocably consents in advance.
- 9.3. Except as expressly provided in this EULA, only a Party and/or a Party's permitted assignees or successors may enforce the terms of this EULA.
- 9.4. No modification or amendment of this EULA shall be effective unless in writing and signed by authorized representatives of all Parties.
- 9.5. In the event that any provision of this EULA is held to be unenforceable or invalid, such provision shall (to the extent it is unenforceable or invalid) be given no effect and shall be deemed not to be included without making unenforceable or invalidating any of the remaining provisions of this EULA. In such event the Parties shall replace the unenforceable or invalid provision by an enforceable and valid substitute provision, with an effect that is as close as possible to the effect intended with the unenforceable or invalid provision.
- 9.6. The failure of a Party to give notice to the other Party of any breach or non-fulfillment of any provision, term or clause of this EULA shall not constitute a waiver thereof, nor shall the waiver of any breach or non-fulfillment of any provision, term or clause hereof constitute a waiver of any other provision, term or clause thereof.
- 9.7. This EULA does not create a joint venture, partnership, relationship of employer and employee, or relationship of principal and agent between Licensor and Licensee.

## 10. Applicable law and jurisdiction

- 10.1. This EULA shall be exclusively governed by and construed in accordance with the laws of the Netherlands, without having regard to the conflict of law provisions. The provisions of the United Convention on Contracts for the International Sale of Goods are excluded.
- 10.2. Any and all disputes between Parties arising from or in connection with this EULA or any agreement, arrangement or undertaking arising therefrom shall be submitted to the exclusive jurisdiction of the competent court Noord-Holland, location Haarlem, the Netherlands.

## **11. Annex 1: Reference list**

- **Van de Kar et al. 2005 Plast Reconstr Surg.**  
Van de Kar, AL, Corion, LU, Smeulders, MJ, Draaijers, LJ, van der Horst, CM, van Zuijlen, PP. Reliable and feasible evaluation of linear scars by the Patient and Observer Scar Assessment Scale. *Plast Reconstr Surg.* 2005;116:514-522.