



Partners in Care™

**Welch Allyn Connex® Software Development Kit  
License Agreement**


This Software Development Kit End User License Agreement (“Agreement”) is between Welch Allyn, Inc. (“Welch Allyn”) and the Customer identified in the purchase order (“Customer” or “You”), and it governs the Software Development Kit(s) (“SDK”) identified in such purchase order and any Documentation.

**BY CLICKING ON THE ACCEPTANCE BUTTON BELOW, OR BY DOWNLOADING, INSTALLING, USING OR COPYING ANY PART OF THE SDK OR THE DEVICE INTERFACES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SDK.**

**1. DEFINITIONS.**

For purposes of this Agreement, the following terms have the meanings set forth below.

- 1.1 *Authorized Users* means Your employees and contractors who obtain access to the SDK through You.
- 1.2 *Compatible Device* means a medical device sold by Welch Allyn that is capable of outputting patient data collected by the device in a standard electronic format that can be transferred via a Device Interface to electronic medical record (“EMR”) Software or Integrator Software.
- 1.3 *Device Acquisition Software* means application software and/or software development tools developed by Welch Allyn that collect, consolidate, and store patient data from multiple Compatible Devices in a database and has the functionality to format and transfer such data via a Device Interface to EMR Software or Integrator Software. Device Acquisition Software also has the functionality to receive patient identifier and demographic information from EMR Software or Integrator Software and to associate the data collected by Compatible Devices with the patient from whom the data was collected.
- 1.4 *Device Interface* means object code software owned by Welch Allyn that is designed to be embedded in EMR Software or Integrator Software to create Interfaced Software that can import data directly from Compatible Devices or indirectly from Device Acquisition Software and format that data for use by EMR Software or Integrator Software.
- 1.5 *Documentation* means any technical or other specifications or documentation that Welch Allyn may provide to You for use in connection with the SDK.
- 1.6 *EMR Software* means Your EMR software that is commercially licensed to Your end-user customers.

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- 1.7 *Interfaced Software* a version of EMR Software or Integrator Software that has been modified using the applicable SDK to incorporate Device Interfaces for one (1) or more Compatible Devices or for Device Acquisition Software and is thereby enabled to import data transferred from Compatible Devices and format that data for use by EMR Software or Integrator Software, and includes all revisions, modifications, enhancements, and derivatives thereto made by You from time to time.
- 1.8 *Integrator Software* means Your proprietary software that interfaces Device Interfaces with EMR Software and is commercially licensed to Your end-user customers.
- 1.9 *Open Source Software* means any software that is subject to a condition of distribution that requires the software (and derivative works based on the software) to be made publically available free of charge.
- 1.10 *SDK* means Welch Allyn’s software developer kit containing Device Interfaces for a Compatible Device or Device Acquisition Software, software utility files, and documentation required to incorporate Device Interfaces into EMR Software or Integrator Software.
- 1.12 *Update* means a new release or version of Device Interfaces containing error correction packs or improvements that is generally provided to all licensees of Device Interfaces.

**2. INTERNAL USE LICENSE.**

- 2.1 Subject to the terms and conditions of this Agreement, Welch Allyn hereby grants You a non-exclusive, royalty-free, non-sub-licensable, non-transferable limited license to:
  - (a) Install a reasonable number of copies of the SDK on computers owned or controlled by You, to be used internally by You or Your Authorized Users, and reproduce, modify, and adapt the corresponding Device Interfaces for the sole purpose of incorporating the Device Interfaces into EMR Software or Integrator Software to create Interfaced Software; and
  - (b) Make and distribute a reasonable number of copies of Documentation for Authorized Users’ internal use only and for the sole purpose of incorporating the Device Interfaces into EMR Software or Integrator Software to create Interfaced Software.
- 2.2 You may not use the SDK or Device Interfaces for any purpose not expressly permitted by this Agreement. You may not copy (except as expressly permitted under this Agreement), decompile, reverse engineer, attempt to derive the source code of, modify, decrypt, or create derivative works of the SDK or Device Interfaces or any part thereof (other than Your Interfaced Software). You may not transfer, assign, lease, lend or rent the SDK or Device Interfaces, or otherwise provide or make the functionality thereof available to third parties except as expressly authorized in this Agreement. You agree to retain and reproduce in full the Welch Allyn copyright, disclaimers, and other proprietary notices as they appear in the SDK, Device Interfaces and Documentation in

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all copies of the SDK, Device Interfaces and Documentation that you are permitted to make under this Agreement.

- 2.3 The SDK and Device Interfaces are the proprietary information of Welch Allyn and Welch Allyn retains exclusive right, title, and interest in and to the SDK and Device Interfaces. Your rights to the SDK and Device Interfaces are limited to those expressly granted in this Agreement and Welch Allyn reserves all rights not expressly granted in this Agreement. You agree to cooperate with Welch Allyn to maintain Welch Allyn’s ownership of the SDK and Device Interfaces, and, to the extent that you become aware of any claims relating to the SDK and Device Interfaces, You agree to use reasonable efforts to promptly provide notice of any such claims to Welch Allyn. The parties acknowledge that this Agreement does not give Welch Allyn any ownership interest in Your Interfaced Software.
- 2.4 If any Update is made available by Welch Allyn, the terms of this Agreement will govern such Update unless such Update is accompanied by a separate license agreement, in which case the terms of that separate license agreement will govern. An Update may have provide features or functionality different from those found in Device Interfaces licensed under this Agreement.
- 2.5 This Agreement does not grant You any rights to use any trademarks, logos, or service marks belonging to Welch Allyn.
- 2.6 Welch Allyn is not obligated to provide any maintenance or technical support for the SDK or Device Interfaces hereunder. You are solely responsible for any maintenance and technical support of Interfaced Software.
- 2.7 You agree to maintain records of systems and/or procedures that accurately document the number of copies of the SDK that have been installed and are in use on computers owned or controlled by You, as well as the number of copies of Documentation You have distributed to Authorized Users, and will keep such records for two (2) years from the date Your license to use the SDK and Device Interfaces, and Documentation, ends. Welch Allyn may conduct an audit (remotely or at Your facility) to verify that Your use of the SDK and Device Interfaces, and Documentation, conforms with this Agreement. Welch Allyn will not conduct more than one (1) audit per year. If an audit results in a finding that Your or Your Authorized Users’ use of the SDK and Device Interfaces, and/or Documentation, materially breaches this Agreement (e.g., is outside of the scope of the license grant set forth in this Section 2 or violates any restriction set forth in this Section 2), then Welch Allyn may, in accordance with Section 5.2, terminate the license grant and this Agreement.

**3. COMMERCIALIZATION OF INTERFACED SOFTWARE.**

- 3.1 Upon Your completion of Interfaced Software, and before, during or after validation of the Device Interfaces in accordance with the Documentation, Welch Allyn and You may enter into an agreement under which You will market and sell the Interfaced Software to end-user customers and pay to Welch Allyn a royalty or other fee(s) based on such sales of Interfaced Software (the

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“Software License and Marketing Agreement”). You acknowledge and agree that this Agreement does not create any obligation by Welch Allyn to enter into the Software License and Marketing Agreement with You, or any further agreements or business relationship of any kind.

- 3.2 Under the Software License and Marketing Agreement, You will be required to ensure that each end-user customer to whom You sell the Interfaced Software enters into a sublicense in a form approved by Welch Allyn granting such end-user customer the right to use Interfaced Software.
- 3.3 You are solely responsible for ensuring that Interfaced Software is safe, free from defects in design and operation, and in compliance with applicable laws and regulations. The fact that Welch Allyn may review and approve Interfaced Software will not relieve You of any of these responsibilities.
- 3.4 Welch Allyn shall not be responsible for any costs, expenses, damages, losses (including, without limitation, lost business opportunities or lost profits) or other liabilities You may incur as a result of developing Interfaced Software, including, without limitation, Welch Allyn’s election not to enter into the Software Marketing and License Agreement, or any further agreements or business relationship of any kind, with You.

**4. CONFIDENTIALITY.**

- 4.1 You agree that the SDK and Device Interfaces are the confidential information of Welch Allyn (“Welch Allyn Confidential Information”). Other non-public, commercially sensitive, proprietary, trade secret or confidential information disclosed by Welch Allyn to You in connection with this Agreement will be deemed Welch Allyn Confidential Information if at the time of its disclosure it is marked or otherwise designated in writing as confidential or similar, or, if disclosed orally or visually, is identified as confidential at the time of disclosure. Notwithstanding the foregoing, Welch Allyn Confidential Information does not include information that: (a) was in Your rightful possession on or before receipt from Welch Allyn, free of any obligation to keep it confidential; (b) is or becomes a matter of public knowledge through no action or inaction of Yours; (c) is rightfully received by You from a third party without a duty of confidentiality; or (d) is independently developed by You without use of or reference to Welch Allyn Confidential Information.
- 4.2 You agree to protect Welch Allyn Confidential Information using at least the same degree of care that you use to protect Your own confidential information of similar importance, but no less than a reasonable degree of care. You agree to use Welch Allyn Confidential Information solely for the purpose of exercising Your rights and performing Your obligations under this Agreement and for no other purpose. You further agree not to disclose Welch Allyn Confidential Information to anyone other than Your Authorized Users who are bound by obligations of confidentiality at least as restrictive as those contained in this Agreement.
- 4.3 Welch Allyn works with other software developers whose products may be similar to or competitive with Your Interfaced Software. Welch Allyn may also be developing products that

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may be similar to or competitive with Your Interfaced Software, or may develop same in the future. To avoid potential misunderstandings, Welch Allyn cannot agree to, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement, including information about Your Interfaced Software, whether or not Your information is marked or otherwise designated in writing as confidential or similar. You acknowledge and agree that any disclosures of information by You will be non-confidential and that Welch Allyn is free to develop, or have developed, products that are similar to or competitive with Your Interfaced Software without any liability or obligation to You.

**5. TERM AND TERMINATION.**

- 5.1 The term of this Agreement shall commence upon Your initial download, installation or use of the SDK and will terminate automatically without notice from Welch Allyn upon Your download, installation or use of an Update to the SDK subject to a separate license agreement.
- 5.2 Welch Allyn may terminate the license grant and this Agreement in writing with immediate effect upon Your material breach of any terms of this Agreement by You or any of Your Authorized Users. Upon Your material breach of this Agreement, Welch Allyn will be entitled to exercise any and all rights and remedies available to it at law or in equity. Welch Allyn’s remedies may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy or to preclude the exercise of any other remedy.
- 5.3 Either party may terminate this Agreement for its convenience upon ten (10) days’ prior written notice to the other party.
- 5.4 Upon termination of this Agreement, You shall return to Welch Allyn, or destroy, the SDK and all Welch Allyn Confidential Information in Your and Your Authorized Users’ possession, custody, or control, and provide written certification to Welch Allyn of such return or destruction. Return or destruction of the SDK and all Welch Allyn Confidential Information includes expunging and destroying all copies thereof in electronic form residing on any computer, server, or other device or medium.

**6. NO WARRANTY.**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SDK AND DEVICE INTERFACES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS SOLELY WITH YOU. THE SDK AND DEVICE INTERFACES ARE PROVIDED “AS IS” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. WELCH ALLYN HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SDK AND DEVICE INTERFACES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

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**7. LIMITATION OF LIABILITY.**

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL WELCH ALLYN BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE SDK OR DEVICE INTERFACES, OR YOUR DEVELOPMENT EFFORTS, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF WELCH ALLYN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

**8. GENERAL TERMS.**

8.1 This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means, without Welch Allyn’s express prior written consent, and any attempted assignment in contravention of the foregoing will be null and void.

8.2 This Agreement will not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between You and Welch Allyn, and You will not represent to the contrary, whether expressly, by implication, appearance, or otherwise.

8.3 You may not use, export, re-export, import, sell or transfer the SDK and Device Interfaces except as authorized by United States law, the laws of the jurisdiction in which You obtained the SDK and Device Interfaces, and any other applicable laws and regulations. In particular, but without limitation, the SDK and Device Interfaces may not be exported or re-exported: (a) into any United States- embargoed countries (“Embargoed Countries”); or (b) to anyone on the United States Treasury Department’s List of Specially Designated Nationals or the United States Department of Commerce Denied Person’s List or Entity List (each, a “Prohibited List”). By using the SDK and Device Interfaces, You represent and warrant that You are not located in any Embargoed Country or listed on any Prohibited List.

8.4 The SDK and Device Interfaces, and Documentation, are provided with restricted rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 C.F.R. 52.227-19, as applicable. The manufacturer for purposes of such restrictions is Welch Allyn, Inc., 4341 State Street Road, Skaneateles Falls, New York 13153.

8.5 This Agreement constitutes the entire agreement between the parties with respect to the use of the SDK and Device Interfaces licensed hereunder and supersedes all previous communications,

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representations, agreements and understandings relating to the subject matter hereof. No representations, promises, or agreements between the parties which are not contained herein or incorporated herein by reference will be of any force or effect. This Agreement may be modified only by a written amendment signed by both parties.

8.7 All provisions of this Agreement will be considered as separate terms and conditions and in the event any one will be held illegal, invalid, or unenforceable, all the other provisions hereof will remain in full force and effect as if the illegal, invalid, or unenforceable provisions were not a part of this Agreement.

8.7 This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without regard to principles of choice of law or conflicts of laws.

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