

## DATAMEDIATOR LICENSE AGREEMENT

This DataMediatOR License Agreement (the “**Agreement**”) is entered into as of the date last written below (the “**Effective Date**”), by and between Stryker Communications, Inc., a Delaware corporation and a division of Stryker Corporation (“**Stryker**”), and you (“**Customer**”). Stryker and Customer are each a “**Party**” hereto and collectively “**Parties**”.

### 1. DEFINITIONS

- a. **Customer Acceptance** means the earlier of (i) the date of execution by Customer of the DataMediatOR Work Order Completion, (ii) Customer’s utilization of the Software, or (iii) ninety (90) days after receipt of the Software by Customer.
- b. **Documentation** means standard operator and user manuals provided by Stryker for use with the Software.
- c. **Enhancement** means any release, improvement, modification, upgrade, update, fix, or revision when made or added to the Software, materially changes its ability, efficiency, functional capability, or application. Enhancement does not include additional functionality that Stryker may elect to license as a stand-alone product.
- d. **Error** means any failure of the Software to conform substantially to the Documentation.
- e. **Error Correction** means a modification or an addition that, when made or added to the Software, establishes material conformity of the Software to the Documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of such nonconformity.
- f. **Services** means the Maintenance and Support services related to the Software.
- g. **Software** means the DataMediatOR software and includes any Error Corrections and Enhancements that may be provided under this Agreement as part of Services.

### 2. SOFTWARE LICENSE

- a. **Grant of License.** Stryker grants to Customer a nontransferable (except as otherwise provided in Section 11(a), nonexclusive, perpetual license to use the Software and Documentation solely on the terms and conditions set forth in this Agreement (the “**License**”).
- b. **Scope of Rights.** Customer may:
  - i. Use and execute the Software on a single- production server only.
  - ii. Use and execute the Software only in connection with the number of connected devices (“**SDC**”) agreed upon.
  - iii. Make one (1) copy of the Software for nonproductive backup and archival purposes only, provided that Stryker’s copyright and other proprietary legends are reproduced on the copy.
  - iv. Make copies of the Documentation for Customer’s internal use only, provided that Stryker’s copyright and other proprietary legends are reproduced on each copy.
  - v. Access Error Correction releases provided by Stryker to ensure the proper functionality of the Software.
- c. **Restrictions.** In addition to other restrictions set forth in this Agreement, Customer may NOT.
  - i. Copy or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof except as expressly authorized under this Agreement;
  - ii. Modify the Software;
  - iii. Reverse engineer, disassemble or decompile the Software or otherwise examine the Software for purposes of reverse engineering; or
  - iv. Remove the labels or any proprietary legends from the Software or its Documentation.
- d. **Stryker Obligations.**
  - i. Stryker will install the Software on Customer’s computer systems.
  - ii. Stryker will assist Customer in testing the Software on its computer systems to ensure that it is functioning in accordance with the terms of this Agreement and the Documentation.
  - iii. Stryker will provide initial training in the Software.
  - iv. Stryker will provide Error Corrections as required.
  - v. If Customer subscribes to the Services, Stryker will receive Software maintenance and support as outlined in Section 3 hereof.
- e. **Title.** Stryker reserves all rights not expressly granted to Customer hereunder. Customer understands that the license granted herein transfers neither title nor proprietary rights to Customer with respect to

the Software, or any copies made by Customer. Customer maintains the right to use the Software in perpetuity free and clear of all liens, security interests and other encumbrances once the Software is paid for in full.

- f. **Right to Audit.** Stryker shall have the right, at any time upon five (5) days prior written notice, to audit Customer's use of the Software to monitor compliance with this Agreement. If an audit reveals that Customer has exceeded the restrictions on use, Customer shall pay for all reasonable fees associated therewith (e.g., pay for additional devices). If the audit is conducted on Customer's premises, Stryker shall give Customer at least ten (10) days' prior written notice and such audit shall be conducted during Customer's normal business hours. Upon request by Stryker, no more than once annually, Customer shall certify in writing that Customer is in full compliance with the terms of this Agreement.

### 3. MAINTENANCE AND SUPPORT SERVICES

- a. **Services.** Customer shall receive the Services purchased in a separate services agreement ("Service Agreement"), which terms are incorporated by reference herein, if so purchased.

- b. **Customer Obligations.**

- i. Customer is responsible for properly preparing its computer system for installation of the Software.
- ii. Customer will develop a mutually agreeable installment plan with Stryker.
- iii. Customer will provide information, data, computer access and personnel and resources otherwise necessary to assist Stryker in completing installation.
- iv. Customer will ensure all SDCs intended for use in conjunction with the Software comply with the minimum platform and network infrastructure specifications as outlined by Stryker.
- v. Customer will implement any required network configuration requirements that pertain to the successful operation of the Software.
- vi. Upon installation, Customer will have (30) days from the date of installation of Software to determine whether it complies in all material respects with the Documentation. Within this period, Customer will notify Stryker whether it has accepted the Software, or whether it has identified discrepancies. On receipt of any discrepancies, Stryker will promptly commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Software. If Customer determines the Software still does not comply in all material respects with the Documentation, the Parties may agree to continue to attempt corrections or terminate the Agreement. In the event of termination under this Section, Stryker will refund to Customer within ten (10) business days, all sums paid to Stryker by Customer under this Agreement for the Software, including all prepaid Support and Maintenance Services fees.
- vii. Customer is responsible for maintaining its computer system and all associated hardware following installation to ensure the Software operates properly.
- viii. Prior to Stryker performing Software installation onsite, Customer will acknowledge the DataMediatOR Instructions for Use and Pre-Installation Information document, and complete all section as outlined in the form.
- ix. Customer is responsible for installation and maintenance of any virus protection software on the Software. Stryker will not be responsible for Software performance degradation due to installed virus protection software. Customer shall be responsible for the protection and backup of all data. This data must reside on Customer-provided storage.
- x. Customer will maintain, at Customer's sole expense, such equipment and software as Stryker may reasonably require to permit Stryker to remotely access the Software.
- xi. Customer will implement and follow the reasonable written instructions of Stryker regarding operation of the Software.

- c. **Term and Termination.** The term for Maintenance and Support Services provided under this Agreement shall begin upon Customer Acceptance and shall continue for the period set forth in the Services Agreement. Although quite unlikely, Stryker may terminate the Services for the Software upon (i) at least six (6) months' written notice to Customer if Stryker discontinues the marketing and ongoing maintenance and support of the Software (i.e., sunsets the Software) or (ii) at least sixty (60) days' written notice effective on or after the fifth anniversary of the date of this Agreement. In such case, Customer will receive a prorata refund for the period in which Services are discontinued.

### 4. FEES AND PAYMENT TERMS

- a. **License Fee.** Customer shall pay Stryker the License Fee set forth in the proposal.
- b. **Maintenance and Support Fee.** If Customer subscribes to Software Maintenance and Support for the Software, Customer agrees to pay Stryker the Maintenance and Support Fee set forth in the Services Agreement.
- c. **Reimbursable Expenses.** In the event that (i) Customer has not met its obligations under Section 3 hereof or elsewhere in this Agreement, or (ii) Stryker determines that the malfunction or issue with the Software occurred due to an act, omission or error by Customer, then Customer agrees to reimburse Stryker for all reasonable and customary out-of-pocket expenses, including, but not limited to travel, lodging and communication expenses incurred by Stryker in connection with any onsite service provide by Stryker for such Services. Stryker shall invoice Customer for reimbursable expenses on a per occurrence basis. Copies of all receipts shall be provided.
- d. **Taxes.** The fees set forth in this Agreement do not include any amounts for taxes. Customer shall pay all applicable taxes levied by any tax authority based upon this Agreement, the Software and/or any Services performed by Stryker, excluding any taxes based upon Stryker's income.
- e. **Reinstatement.** If Maintenance and Support Services are discontinued by Customer or terminated for any period, and Customer desires to reinstate such services, Customer shall pay a reinstatement fee to be negotiated by the Parties, which shall be no greater than the amount then in arrears, in addition to the then-current annual Maintenance and Support Services fee.
- f. **Invoices.** All invoices shall be due and payable within thirty (30) days after the invoice date. Customer agrees to pay a late payment charge at the rate of one percent (1%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. Stryker may apply any payment received to any delinquent amount outstanding.

## 5. WARRANTIES

- a. **Standard Warranty.** Stryker warrants that, for a period of twelve (12) months following Customer Acceptance (the "**Warranty Period**"), that the Software will operate in substantial conformance with its then-current Documentation and be free from defects in materials and workmanship. Stryker agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the Warranty Period. Customer shall provide Stryker with written notice when a nonconformity exists, and Stryker shall have a reasonable period of time, based on the severity of the nonconformity, to correct. Stryker further warrants that to the best of its knowledge, the Software does not contain any viruses.
- b. **Third-Party Software.** STRYKER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES FOR ANY THIRD- PARTY SOFTWARE, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
- c. **Exclusions.** Stryker's warranty obligations and other obligations under this Agreement with respect to the Software are expressly conditioned upon Customer's proper use of the Software and do not include:
  - i. Problems that result from (a) accident, negligence, neglect, abuse, misuse, computer viruses or use other than ordinary use or use in violation of an applicable license; (b) abnormal electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications, repairs or attempted maintenance made to the Software by anyone other than a representative of Stryker or its authorized agents;
  - ii. Problems and errors that Stryker cannot reproduce or verify;
  - iii. Problems relating to or caused by any hardware, network, software or hardware that was not supplied by Stryker or hardware or software that does not meet the Minimum Specifications as defined in the DataMediatOR Pre-Installation Manual;
  - iv. Problems relating to or caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating Software for which the Software is procured; or
  - v. Problems which could have been avoided by Customer's implementation of any prior Error Correction. Errors, defects, and malfunctions that are traceable to Customer's actions or Software changes shall be billed at Stryker's time-and-material charges, including out-of-pocket expenses.
- d. **Disclaimer.** THE WARRANTIES SET FORTH IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. STRYKER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE

WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. STRYKER DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

6. **CONFIDENTIAL INFORMATION**

- a. **Defined.** As used in this Section 6, “Confidential Information” means and includes the Software, Documentation, terms of this Agreement, and any other information regarding (in written or tangible form) either Party’s business, operations or activities that is clearly marked with a confidential, private or proprietary legend, or which is of the nature or type that should reasonable be considered confidential under the circumstances even if unmarked. Such information may include, by way of example and not of limitation, trade secrets, patient information, protected health information, etc.
- b. **Nondisclosure.** Except as otherwise provided in this Agreement, each party agrees that it shall not use or disclose to any third party any Confidential Information of the other Party for any reason, except to its employees who require such knowledge in the ordinary course of their employment. Each Party shall take all necessary action to ensure that its employees comply with the confidentiality provisions of this Section 6. Stryker agrees not to disclose any information obtained performing the services set forth in the Agreement without the express prior written consent of the individual authorized to release such records. The Parties may disclose Confidential Information if so required by law (including court order or subpoena. Each Party shall notify the other Party of any requirement that it disclose the other Party's Confidential Information by operation of law, regulation or other legal process, and shall cooperate fully to protect the Confidential Information. All medical information and/or data concerning specific patients (including, but not limited to, the identity of the patients), derived from or obtained during the course of the Agreement, shall be treated by both Parties as confidential so as to comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws.
- c. **Exceptions.** The obligations set forth in this Section 6 shall not apply to any information that (a) is publicly available; (b) is obtained by the receiving party from a third party as a matter of right; (c) is already known or independently developed by the receiving party; or (d) is required to be disclosed by law.
- d. **Injunctive Relief.** Stryker and Customer agree that in the event of any breach of this Section 6, monetary damages may not be a sufficient remedy or protection for the aggrieved party, and that the aggrieved party shall be entitled to an injunction or other relief as may be deemed proper or necessary by a court of competent jurisdiction.

7. **INTELLECTUAL PROPERTY INDEMNIFICATION**

- a. **Stryker Indemnification of Customer.** Except as otherwise provided in Section 7(d), Stryker agrees to indemnify and defend Customer against any claim or action brought by any third party for actual or alleged infringement of any United States patent, copyright, or trade secret based upon Customer’s own internal use of the Software in accordance with this Agreement and to pay any damages and costs finally awarded against Customer or paid in settlement. Stryker shall have the sole right to conduct the defense of any claim or action and all negotiations for its settlement, unless the parties to this Agreement agree otherwise in writing. Stryker will not be responsible for any settlement entered into without its consent.
- b. **Notice.** The indemnification provided under Section 7(a) above is conditioned upon Customer providing Stryker reasonably prompt written notice of any threat, warning, or notice of any claim or action that could have an adverse impact on Stryker’s rights in the Software.
- c. **Alternatives.** In the event of a third party claim or action for infringement under Section 7(a), Stryker will (a) procure for Customer the right to continue using the Software; (b) provide a substitute, non-infringing Software; or (c) terminate this Agreement and refund the License Fees paid by Customer under Section 4(a), less depreciation using a three-year, straight-line method of calculation.
- d. **Exclusions.** Stryker shall have no obligation under this Section 7 with respect to any claim or action that is based upon (a) Customer’s use of the Software in breach of any term or condition of this Agreement; (b) the use or combination of the Software with any third-party product, software, hardware, process or Software; (c) modification of the Software other than by a representative of Stryker; (d) use of any version of the Software other than the most-current version of the Software, where use of the most-current version would have avoided the claim of infringement and Stryker has

made Customer aware of the need to upgrade to avoid a potential infringement claim; or (e) use of the Software in a process that is protected by U. S. or foreign patent law.

- e. **Customer Indemnification of Stryker.** Customer agrees to indemnify and defend Stryker against any claim or action brought by any third party for actual or alleged infringement of a patent, copyright, trade secret or other intellectual property right in the U.S. or a foreign country based upon (a) Customer's use of the Software in breach of any term or condition of this Agreement; (b) the use or combination of the Software with any third-party product, software, hardware, process or Software; (c) modification of the Software other than by a representative of Stryker; (d) use of any version of the Software other than the most-current version of the Software, where use of the most-current version would have avoided the claim of infringement and Stryker has made Customer aware of the need to upgrade to avoid a potential infringement claim; or (e) use of the Software in a process that is protected by U.S. or foreign intellectual property law. Customer further agrees to pay any damages and costs finally awarded against Stryker or paid in settlement. Customer shall have the sole right to conduct the defense of any claim or action and all negotiations for its settlement, unless the parties to this Agreement agree otherwise in writing.

#### 8. GENERAL INDEMNITY

- a. **Indemnification.** Each party agrees to indemnify and hold harmless the other party and its officers, employees and agents from and against all claims, demands, costs, expenses, liabilities and losses, including attorneys' fees and expenses, resulting or arising out of acts or omissions by its employees or agents in the performance of this Agreement.

#### 9. Limitation of Liability

- a. **Limitation.** LIABILITY FOR DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, SHALL BE LIMITED TO DIRECT DAMAGES. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

#### 10. TERM AND TERMINATION

- a. **Term.** This Agreement shall begin on the Effective Date and shall remain in full force and effect until the Service Agreement has expired or has been terminated.
- b. **Termination by Either Party for Cause.** Either party may at its option terminate either the License or the Services immediately upon written notice to the other Party if the other Party:
  - i. Breaches its confidentiality obligations under Section 6;
  - ii. Breaches any material provision in this Agreement (other than Section 6) and fails to cure the breach within thirty (30) days after written notice of the breach from the other party; or
  - iii. Becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization and such proceeding is not dismissed within ninety (90) days after it is commenced.
- c. **Effect of Termination.** Upon termination of the Agreement, Customer shall immediately cease using the Software and shall either destroy or return the original and all copies, in whole or in part, in any form, of the Software and related materials.
- d. **Survival of Certain Obligations.** Obligations and rights in connection with this Agreement which by their nature would continue beyond the termination of this Agreement, including without limitation, Sections 6, 7, and 8, shall survive termination of this Agreement.

#### 11. GENERAL

- a. **Assignment.** Neither Party may assign, sublicense or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may assign this Agreement to any corporate successor of Customer or any corporation that is the sole corporate member of Customer, without consent of Stryker, and Stryker may assign this

Agreement to an affiliate of Stryker (entities at least 50% owned by, under common ownership with or which own at least 50% of Stryker) without consent of Customer.

- b. **Amendments.** No provision of this Agreement may be amended or modified except by a written document signed by duly authorized representatives of both Parties.
- c. **Notices.** Any notice or other communication required or permitted under this Agreement in writing shall be deemed delivered when mailed, by certified mail, return receipt requested, postage prepaid to the address set forth below or such other address as either party by like notice designates to the other party.
- d. **Excusable Delays.** Neither Party shall incur liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement, excluding payment obligations, where such failure is caused in whole or in part by events, occurrences, or causes beyond the reasonable control of the Party, provided that such party has taken reasonable steps to mitigate the effects of such delay.
- e. **Export Restrictions.** Both Parties agree to comply with all export and re-export restrictions and regulations imposed by the United States government, or corresponding or similar laws of other countries where the Software may be used.
- f. **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the State of Michigan without regard to conflicts of law principles.
- g. **Severability.** If any provision of this Agreement is prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of the prohibition of unenforceability, without invalidating any of the remaining provisions.
- h. **Waiver.** The failure or delay of either Party to exercise any right, power or privilege under this Agreement shall not operate as a waiver of such right, power or privilege. The partial exercise of any right, power or privilege under this Agreement shall not operate as a waiver of any right, power or privilege under this Agreement.

## 12. MISCELLANEOUS

- a. **Compliance with Laws.** The Parties agree to comply with all applicable federal and state laws related to the sale of the Software and the provision of Services under this Agreement, to include but not limited to the False Claims Act and to those laws and regulations governing Medicare and Medicaid programs.
- b. **Mediation of Disputes.** The Parties agree to meet and confer in good faith to resolve any disputes arising during the term of this Agreement through informal discussions between the parties. If the Parties are unable to resolve the dispute through such discussions, either Party may submit a written complaint to the other party describing and propose a manner of resolving that dispute. The Party receiving that complaint shall respond by accepting, rejecting, or modifying that proposal in writing, within thirty (30) days of the date that it receives the complaint.