

## STRYKER CORPORATION

### SOFTWARE AND HOSTING TERMS AND CONDITIONS (“SOFTWARE AND HOSTING TERMS”)

CUSTOMER AGREES THAT BY PLACING AN ORDER FOR STRYKER SOFTWARE OR HOSTING SERVICES THAT CUSTOMER AGREES TO BE BOUND BY THESE SOFTWARE AND HOSTING TERMS. PLEASE READ THESE SOFTWARE AND HOSTING TERMS CAREFULLY BEFORE INSTALLING, ACTIVATING OR OTHERWISE ACCESSING OR USING ANY STRYKER SOFTWARE OR HOSTING SERVICES, OR ANY SOFTWARE OR SERVICES ACCESSIBLE BY USING ANY STRYKER SOFTWARE OR HOSTING SERVICES. IF YOU ARE PLACING AN ORDER ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT TO STRYKER THAT YOU ARE DULY AUTHORIZED TO AGREE TO THESE SOFTWARE AND HOSTING TERMS ON BEHALF OF CUSTOMER. IF CUSTOMER DOES NOT AGREE TO THESE SOFTWARE TERMS, CUSTOMER MAY NOT INSTALL, ACTIVATE OR OTHERWISE ACCESS OR USE STRYKER SOFTWARE OR HOSTING SERVICES, OR ANY SOFTWARE OR SERVICES ACCESSIBLE BY USING THE STRYKER SOFTWARE OR HOSTING SERVICES.

#### 1. DEFINITIONS

**Agreement** means the Ordering Document that references or is otherwise subject to these Software and Hosting Terms, together with these Software and Hosting Terms and the applicable Product Addendum.

**Customer Hosted Software** means Stryker Software, other than Embedded Software or Stryker Hosted Software, that Customer hosts on Customer’s own equipment or that is separately installed on Equipment in accordance with this Agreement.

**Embedded Software** means Stryker Software that is embedded in or that runs on Equipment and is provided as part of a device and not separately installed, including any documentation, explanatory written materials and files, content, and code.

**Equipment** means instruments, tablets or other computing devices, printers, peripherals and spare parts that are provided to Customer by Stryker under a separate Ordering Document.

**Hosting Services** means data hosting and storage services that Stryker makes available, directly or through its third party hosting provider to Customer, as described in the Product Addendum and set forth in the applicable Ordering Document, and any Updates thereto.

**Ordering Document** means a final quote and/or order for products and/or services as agreed to between Stryker and Customer.

**Other Components** mean applications and software, including open source software, and services that are licensed or provided by entities or individuals other than Stryker, as may be detailed in the Product Addendum or the Product Documentation.

**Party** means Stryker or Customer individually, and **Parties** mean Stryker and Customer collectively.

**Permitted Facility** means the specific facility at the specific address set forth in the Ordering Document or Product Addendum, as applicable.

**Product** means, for the purposes of the Software and Hosting Terms, Stryker Software or Hosting Services.

**Product Addendum** means the then-current additional terms and conditions applicable to a specific Product as referenced in the Ordering Document or otherwise provided by Stryker.

**Product Documentation** means the then-current operational materials and documentation provided by Stryker relating to a Product.

**Service Term** means the subscription, support or hosting services period set forth in the Product Addendum or the Ordering Document, unless terminated earlier or extended in accordance with the terms of this Agreement.

**Stryker** means the Stryker company or division referred to in the Ordering Document.

**Stryker-Hosted Software** means Stryker Software that is not Embedded Software that is hosted by Stryker or its hosting provider and made available to Customer as a service via a Customer-provided internet connection.

**Stryker Software** means firmware, software, web-based or mobile applications or data compilations, and any services that are accessible through the foregoing, that are proprietary to Stryker, as described in the Product Addendum and set forth in the applicable Ordering Document, and any Updates thereto. Stryker Software does not include any open source or third-party licensed software, which are subject to the terms and conditions set out in the relevant open source or third-party license as set forth herein.

**Update** means corrections, updates, upgrades or enhancements to Stryker Software or Hosting Services, as applicable, as made available to Customer by Stryker for use by Customer under this Agreement.

**User** means any employee, contractor or representative of Customer that Customer has authorized to access and/or use a Product. Any installation, activation, access or use by or on behalf of Customer, or that occurs when the Product is in Customer’s or a User’s possession or control, is considered to have been performed by Customer. Users may only use and access the Products at and for the Permitted Facilities.

#### 2. USE RIGHTS

Subject to the terms of this Agreement, Stryker grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable and revocable right to allow Users to use Stryker Software and Hosting Services for internal business purposes as set forth in the Product Documentation. Stryker Software is licensed in read-access, object code form only. Product Documentation only may be used in connection with the specific Product with which it relates, and for no other purpose. In addition, unless otherwise set forth in the Product Addendum (for the avoidance of doubt, more than one category may apply to a Product):

- (a) For Stryker-Hosted Software and Hosting Services, Customer may only connect to the Stryker Software using authorized websites, mobile applications and/or software (“**Authorized Connections**”) as set forth in the Product Documentation and for use for the Permitted Facilities. The license for device-based or user-based software will be specified in the Product Addendum, if applicable.
- (b) For Customer-Hosted Software, Customer may make one copy of the Stryker Software to operate on one computer or device, and one copy for backup or archival purposes and NOT for use in production on one computer or device, as set forth in the Product Documentation, and for each copy at a single location at a Permitted Facility in the United States.

Customer must register, set up, and at all times keep accurate and complete, an authorized account with passwords, authentication keys, or security credentials that enable Users access to the

Products (“**Login Credentials**”). Customer and User’s must maintain the confidentiality and security of all Login Credentials, and Customer responsible for any consequences that may result from the improper disclosure or use of any such Login Credentials. If Customer or any User believes an account has been compromised, including any unauthorized access to or use or disclosure of any Login Credentials, Customer must notify Stryker immediately. As part of any registration or set up process, Stryker may request registration-related information, including a User’s name and e-mail address. By providing this information, Customer consents, and is responsible for obtaining all User consent, to its collection and use by Stryker. Customer is responsible for all acts and omissions of Users, and for ensuring the compliance by all Users with all terms of this Agreement.

If Customer is aware of any violation by a User, Customer immediately must notify Stryker and suspend that User’s access to the Products. Customer is responsible and liable for all acts and omissions by Users or by any other individual or entity to whom Customer or any User provides or allows access, or that accesses the Products through the Login Credentials. Stryker reserves the right to refuse service, terminate accounts, remove or edit content, or cancel logins in its sole and absolute discretion. The Products do not include network equipment or internet connection. Customer is responsible for obtaining equipment, software, supplies and connections sufficient to access and use the Products, and Customer is solely responsible for payment of any third-party fees associated therewith, including internet service-provider charges. Use of the Products may be limited or restricted depending on the capabilities, bandwidth or technical limitations of User’s connection and service. The provision, quality and security of such connectivity are the responsibility of Customer and the party providing such service to Customer, not Stryker. If a Product has remote access capabilities, Customer hereby agrees to make systems available for remote support and consents to Stryker or Stryker’s agents connecting through the internet for remote diagnostic, update, upgrade, and repair purposes.

The Products and the Product Documentation, including all Updates and modifications, enhancements, changes and additions thereto, are the proprietary and confidential property of Stryker or its licensors. Stryker hereby owns (and Customer hereby assigns and will cause all Users to assign to Stryker) all title, copyright, and other worldwide intellectual property rights in the Products and Product Documentation, including all Updates and all modifications, enhancements, changes and additions thereto, and all copies thereof. This Agreement does not grant Customer or any User any rights to trademarks or service marks of Stryker, nor any rights or licenses under any of Stryker’s patents. Customer must not remove, alter, or obscure any proprietary notices contained on or within the Products or the Product Documentation and will reproduce such notices on any back-up copy of the Products or Product Documentation. This is not a sale, and Stryker hereby reserves all rights to the Products and Product Documentation, except for the rights expressly granted herein. No other right or authorization is granted, by implication, reliance or otherwise. Without limiting the foregoing, no right is granted or implied, and Customer is not authorized, to use any Product in combination with any product or method not specifically permitted by Stryker.

### 3. RESTRICTIONS

Customer may not, and will not allow any third party to, do any of the following: (a) access or attempt to access any other Stryker systems, programs, services or data that are not made available for Customer’s use; (b) unless expressly permitted in the Production Documentation, copy, reproduce, alter, merge, modify, adapt, create derivatives of, translate, republish, upload, post, transmit, resell or

distribute in any way the Products or any Product Documentation; (c) decompile, reverse engineer, disassemble, or otherwise reduce Stryker Software to a human perceivable form or to derive the underlying ideas, algorithms, structure or organization from any Product, except to the extent permitted by applicable Law; (d) permit any third party to benefit from the use or functionality of any Product via a rental, lease, timesharing, service bureau, or other arrangement; (e) sublicense, sell or transfer any of the rights granted to Customer unless approved in writing by Stryker; (f) breach, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in any Product, including any mechanism used to restrict or control the functionality of Stryker Software, or enable features or functionalities that are otherwise disabled or not purchased by Customer; (g) perform or attempt to perform any actions that would interfere with the proper working of a Product; or (h) use a Product in or for any manner or purpose that infringes, misappropriates, or otherwise violates any right of any third party or that violates any applicable Law. Customer will, and will ensure that Users will, at all times use Stryker Software in compliance with this Agreement and the Product Documentation. Customer will indemnify Stryker and hold Stryker harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that Stryker suffers or incurs by reason of any such unintended use.

For Stryker-Hosted Software, the Hosting Services or any Stryker Software that is connected to a Stryker system hosted by Stryker, Customer will not, and will ensure that Users do not:

- (a) perform, attempt to perform, or assist others in performing any of the following while accessing or using a Product: (i) use, display, mirror, or frame the Product or any individual element within the Product, including the design of any page; (ii) try to gain unauthorized access to, test the vulnerability of, or disrupt any Product, any other service, device, data, account, or network, including Stryker systems or systems of Stryker providers; or (iii) access any Product through the use of any mechanism other than through the use of an Authorized Connection.
- (b) (i) upload any content that contains software viruses or is designed to interrupt, destroy, or limit the functionality of any software, equipment or services, or that contains other harmful, disruptive, or destructive files or content; (ii) use or attempt to use another User’s account without authorization, or impersonate any person or entity; or (iii) use any Product in any manner that, in Stryker’s sole discretion, is objectionable or restricts or inhibits any other person or entity from using or enjoying a Product, or which may expose Stryker or any third party to any harm or liability of any type.

If a Product is considered a medical device by the U.S. Food and Drug Administration (“**FDA**”), additional terms may be applicable as set forth in the Product Addendum. Unless a Product Addendum expressly sets forth otherwise, no data generated, hosted or stored by or through a Product or Stryker is or should be considered an electronic medical record. Customer is responsible for printing or storing any data as may be necessary or appropriate to include in any medical record maintained by Customer.

Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in subparagraph (b) of FAR 52.227-19, Commercial Computer Software License. A Product may contain applications and software, including open source software, and services that are licensed or provided by entities or individuals other than Stryker as detailed in the Product Addendum or the Product Documentation (“**Other Components**”). Other Components are subject to the terms and conditions of the applicable license agreement that accompanies or applies to such Other Components.

Customer will use the Other Components solely in conjunction with a Product and Customer will have no broader use rights with respect to the Other Components than it has to the Product.

#### 4. UPDATES; OTHER SERVICES

From time to time, Stryker may provide Updates, including for purposes of error correction and improvement of functions. Updates may delete or change the nature of features or other aspects of a Product. Customer acknowledges and agrees that Updates are made at Stryker's sole discretion and that Stryker may condition continued use of a Product upon Customer's complete installation, use or acceptance of an Update. Any Updates will be deemed to be, and will constitute part of, a Product. Customer agrees and consents to install and use any Update if required by Stryker. The Product may require the purchase of an annual maintenance subscription for ongoing training, support, and upgrades, which will be governed by separate terms and conditions.

If Stryker makes a material change to a Product, Stryker will use reasonable efforts to notify Customer prior to the effective date of that change. If any changes are made to a Product by or on behalf of Customer or a User, permitted or otherwise, Customer will promptly notify Stryker thereof and all intellectual property and other rights in such additions or changes will be exclusively owned by Stryker. Customer will timely execute any documents reasonably requested by Stryker to vest in Stryker all rights in and to those changes.

#### 5. USER RESPONSIBILITIES

Customer acknowledges that Customer and Users, acting through licensed medical doctors or other licensed health care professionals who are employed by or otherwise associated with Customer, will be the provider of medical and other health services to patients relating to the review, analysis, and interpretation of any medical data or any related health care services provided to patients based on such review, analysis, and interpretation in connection with any Product or services provided as part of or through any Product. Customer acknowledges and agrees that Stryker is not a provider or supplier of any health-care services and that Stryker will not be deemed to be furnishing any patient health-care services by virtue of providing any Product or in connection with this Agreement. Except as expressly set forth in this Agreement, Customer agrees to reimburse Stryker for and hold Stryker harmless from, any consequences, directly or indirectly, related to any misuse or interpretation of any Product or any other information provided or omitted in connection therewith.

Customer must comply with, and is solely responsible for complying with, all applicable laws, regulatory requirements and rules ("**Laws**") relating to the use of a Product, including Laws in the jurisdiction(s) where a Product is used or accessed. Customer acknowledges Customer's obligation to inform Users of warnings, instructions, notices and other materials regarding proper use of a Product.

Customer retains all rights to the content Customer or a User upload, store, share, send, or display to or via a Product ("**Customer's Content**") subject to the provisions in this Agreement. Customer is solely responsible for ensuring that each Product and its security are appropriate for Customer's intended use. Customer is responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Customer's Content. Those steps include (a) controlling access Customer provides to Users, (b) making appropriate configurations, (c) ensuring the security of Customer's Content while it is in transit, (d) using encryption technology to protect Customer's Content, and (e) backing up Customer's Content. Customer is responsible for providing any necessary notices to Users and obtaining any legally required consents from Users regarding their use of the Products.

*Stryker Confidential - Stryker Software and Hosting Terms*

Customer represents and warrants that Customer has the rights to provide Customer's Content to Stryker and to direct and authorize Stryker to use and disclose Customer's Content as contemplated in this Agreement. For Hosting Services, Customer hereby consents to Stryker's hosting and processing of Customer's Content and other related information, including at locations of Stryker and its third-party infrastructure and cloud providers.

Customer agrees to assist Stryker in any implementation process. Customer agrees to have all equipment, connections and facilities prepared and ready for implementation in accordance with the mutually agreed upon schedule. Customer will be responsible for taking all necessary actions prior to Stryker performing the installation/services to remove and/or remediate any hazardous conditions or materials. Further, Customer will maintain an environment that complies with the Product Documentation and will use all Products in accordance with this Agreement and the Product Documentation. Customer is responsible for all hardware, operating systems, network setup, network maintenance and setup required in the support of a Product. Customer may be required to grant Stryker certain limited access rights to Customer's systems or resources in order that Stryker may render services. Customer is responsible for ensuring that Customer's personnel have sufficient training to attain and maintain competence in the operation of a Product.

Should Customer return a Product, sell or otherwise transfer a Product, or if this Agreement or a Service Term is terminated, if requested by Stryker, Customer will uninstall or cease use of Stryker Software (other than Embedded Software) and delete (directly or hereby allows Stryker to delete) any and all accounts Customer may have established for the Product or that are accessible through the Product. If Customer resells or transfer any Product to other hospitals, clinics, wholesalers, dealers or any other third parties, Customer will notify Stryker in advance. Unless Stryker and the successor owner or transferee enter into a separate agreement for the use of or access to a Product (including the use of any Stryker Software or Hosting Services), all representations and warranties with respect to such Product are null and void and Stryker will have no further obligations or liability with respect to the Product or any component thereof.

During the Service Term, and for four years thereafter, both Parties will comply with all applicable requirements of 42 CFR Section 420.302, including: (a) retaining required documents, and (b) giving the U.S. Comptroller General, HHS, and their duly authorized representatives access to its contract, books, documents, and records related to the sale under this Agreement and those of any organizations related to the Parties.

Customer is responsible for (a) Customer's or User's access to or use of a Product, (b) Customer's Content, (c) Customer's breach or alleged breach of this Agreement, (d) Customer's or any User's violation of any Law or the rights of a third party, (e) the actions of any person or entity gaining access under Login Credentials assigned to Customer or a User, (f) the actions of any person or entity using Login Credentials assigned to a User, or (g) Customer's or a User's negligent or willful misconduct.

Customer agrees that Stryker or its agents or representatives may but is not required to audit Customer's use of a Product for compliance with these Software and Hosting Terms at any time. In the event that such audit reveals any use other than in full compliance with the terms of this Agreement, Customer will reimburse Stryker for all reasonable expenses related to such audit in addition to any other liabilities incurred as a result of such non-compliance. Stryker has the right to investigate violations of this Agreement and any conduct that affects any Product and, in response, may take any action Stryker may deem appropriate.

## 6. INFRINGEMENT

Stryker will defend Customer against any action by a third party against Customer to the extent based on a claim that Stryker Software infringes a United States patent, copyright or trade secret of such third party during the Service Term applicable to such Stryker Software (“**Infringement Claim**”), and Stryker will indemnify and hold Customer harmless from and against all settlements to which Stryker has agreed and all final, non-appealable judgments awarded against Customer to the extent arising out of any Infringement Claim, provided that, in each case: Customer promptly notifies Stryker in writing of the existence of any Infringement Claim; Customer is able to, at Stryker’s option, control the defense and settlement of such Infringement Claim; and Customer fully cooperates in the defense of any Infringement Claim. These obligations will not apply to the extent that the alleged infringement or violation arises from: use of non-Stryker furnished equipment, software, or other resources with Products; Customer’s failure to follow Stryker’s installation, operation, repair or maintenance instructions; Customer’s failure to permit Stryker timely access, remote or otherwise, to Products; failure to implement any Updates, including revisions, modifications, updates, patches, “bug fixes” or new versions of or to Stryker Software, provided by Stryker; Products with their serial numbers altered, defaced or deleted; Products that have been altered, serviced or modified by a party other than Stryker; Products that have been subjected to abnormal physical or electrical stress, misuse, negligence or accident by Customer or a third party or any other cause outside of Stryker’s control; or Products and/or Stryker Software not purchased new (collectively “**Exceptions**”). If Stryker Software becomes, or in Stryker’s opinion is likely to become, the subject of an Infringement Claim barring Customer’s use of the Stryker Software, Stryker may, at its option, either: remedy or replace the infringing components of the Stryker Software or terminate Customer’s access to and use of the infringing components of Stryker Software with no further obligation to User. THIS CLAUSE STATES STRYKER’S ENTIRE LIABILITY WITH RESPECT TO ANY LIABILITY FOR ANY THIRD-PARTY CLAIMS OF INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

## 7. WARRANTY

Stryker warrants to Customer that the Stryker Software will perform substantially as described in the Product Documentation when first delivered or made available for access or use by Customer. If Customer notifies Stryker of defects within five days after Customer’s first access or use, and those defects are verified by Stryker, as Customer’s sole and exclusive remedy, Stryker will remedy or replace the defective Stryker Software or, at its option, terminate this Agreement with respect to Stryker Software that was defective. Customer’s remedy for breach of this limited warranty will be limited to the foregoing replacement or refund and will not encompass any other damages. No dealer, distributor, agent or employee of Stryker is authorized to make any modification or addition to the warranty and remedies stated herein. Additional terms regarding Product warranties and maintenance may be set forth in the Product Addendum. Notwithstanding these limited warranty provisions, all of Stryker’s obligations with respect to such warranties will be contingent on Customer’s use of a Product in accordance with this Agreement and in accordance with Stryker’s instructions as provided in the Product Documentation, as such instructions may be updated from time to time. Stryker will have no warranty or indemnity obligations if the failure or infringement is caused to or by an Exception.

**EXCEPT AS SPECIFICALLY STATED IN THESE SOFTWARE AND HOSTING TERMS, STRYKER EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED**

**WARRANTIES ARISING OUT OF OR RELATING TO THESE SOFTWARE AND HOSTING TERMS, A PRODUCT OR ANY CONTENT PROCESSED THROUGH OR GENERATED BY A PRODUCT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. STRYKER MAKES NO WARRANTY THAT A PRODUCT WILL MEET CUSTOMER’S REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED OR ERROR-FREE BASIS. CUSTOMER ACKNOWLEDGES THAT, UNLESS OTHERWISE EXPRESSLY SET FORTH IN THE PRODUCT ADDENDUM, ACCESS TO AND USE OF THE SERVICES IS NOT THE EXCLUSIVE METHOD OF TRANSMISSION, STORAGE, OR RETENTION OF ANY APPLICABLE INFORMATION OR DATA.**

## 8. LIMITATION OF LIABILITY

**IN NO EVENT WILL STRYKER BE LIABLE TO CUSTOMER, ANY USER, ANY HEALTHCARE PROFESSIONAL, OR ANY EMPLOYEE, CONTRACTOR, AGENT, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT OR A PRODUCT (WHETHER IN WARRANTY, CONTRACT, OR TORT, INCLUDING NEGLIGENCE, AND REGARDLESS WHETHER STRYKER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE), INCLUDING LOST REVENUE OR PROFITS, LOSS OR CORRUPTION OF DATA OR GOODWILL, SERVICE UNAVAILABILITY, INTERRUPTION, STOPPAGE, OR DELAY, COMPUTER DAMAGE, MEDICAL EXPENSES, SYSTEM FAILURE, OR THE COST OF SUBSTITUTE SERVICES; OR ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY CUSTOMER OR A USER AS A RESULT OF THE SUSPENSION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON, OR THE RELEASE OR THE DECISION NOT TO RELEASE UPDATES. IN NO EVENT WILL STRYKER’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY USE OR INABILITY TO USE A PRODUCT, EXCEED THE TOTAL AMOUNT OF FEES (EXCLUDING AMOUNTS FOR THIRD PARTY SOFTWARE, INSTALLATION, WARRANTY AND MAINTENANCE SERVICES AND TAXES) CUSTOMER PAID STRYKER UNDER THE PURCHASE ORDER FOR THE PRODUCT GIVING RISE TO THE LIABILITY FOR A PERIOD NOT TO EXCEED SIX MONTHS FROM CUSTOMER’S FIRST CLAIM. THIS LIMITATION OF LIABILITY APPLIES EXCEPT AS PROHIBITED BY APPLICABLE LAW.**

**EACH PARTY RECOGNIZES AND AGREES THE DISCLAIMERS, LIABILITY, AND REMEDY LIMITATIONS IN THESE SOFTWARE AND HOSTING TERMS ARE MATERIAL BARGAINED-FOR AGREEMENTS, AND HAVE BEEN TAKEN INTO ACCOUNT, REFLECTED IN THE CONSIDERATION GIVEN BY EACH PARTY, AND FACTORED INTO EACH PARTY’S DECISION TO ENTER INTO THESE SOFTWARE AND HOSTING TERMS. STRYKER DISCLAIMS ALL LIABILITY AND IS NOT RESPONSIBLE FOR THE BREACH OF ANY THIRD-PARTY TERMS OR AGREEMENT THAT CUSTOMER MAY HAVE ENTERED INTO OR ACCEPTED BY THE USE OR ACCESS OF A PRODUCT.**

## 9. CONFIDENTIALITY; DATA USAGE AND PROTECTION

In connection with this Agreement, each Party may have access to information that is confidential to the other (“**Confidential Information**”). The Parties each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential Information will be limited to the terms and pricing under this Agreement, Products and Product Documentation and other information clearly identified as confidential at the time of disclosure. A Party’s Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party’s lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third party without restriction on the disclosure; or (d) is independently developed by the other Party.

The Parties each agree to use commercially reasonable efforts not to disclose each other's Confidential Information to any third party (other than as permitted herein) for a period of three years from the date of the disclosing Party's disclosure of the Confidential Information to the receiving Party, except for Confidential Information relating to a Product (including Product Documentation) which may not be disclosed by Customer at any time during or after the Service Term other than as expressly permitted under this Agreement. Stryker may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. Nothing will prevent either Party from disclosing the Confidential Information to a governmental entity as required by Law.

Stryker will employ reasonable and appropriate safeguards and procedures to protect the security of Stryker Software. Customer will secure and protect the Stryker Software and each copy thereof, from unauthorized copying or disclosure.

Customer may provide Stryker with personal data as defined by relevant data protection Laws relating to Customer's personnel or other individuals involved in the use of the Products, including PHI as defined below (together, "**Personal Information**"). Customer will comply with all data protection Laws. Customer consents to the processing of this Personal Information by Stryker, its affiliates and their respective suppliers, and will, to the extent legally required, provide appropriate notice to each individual or obtain requisite consent to such processing of his or her Personal Information for the following specific purposes: (a) performing under this Agreement; (b) providing information about Stryker products and services; (c) transferring Personal Information permitted under this Agreement and the Product Documentation; and (d) satisfying legal or regulatory requirements. Customer is solely responsible for responding to User or patient inquiries or issues.

Where Stryker may process Personal Information stored in Equipment or Stryker Software when performing the Hosting Services, the following provisions will apply, subject to the other provisions in this Agreement:

- (a) Stryker will process such Personal Information only for the purposes of providing the Hosting Services or performing its obligations under this Agreement (such processing is approved by Customer and will be deemed in accordance with Customer instructions) and is prohibited from retaining, using, or disclosing any Personal Information for any other purpose.
- (b) Customer will endeavor to limit the disclosure of Personal Information to Stryker to that which is reasonably necessary to perform the Hosting Services or performing its obligations under this Agreement.
- (c) Customer will keep Personal Information confidential and will implement reasonable administrative, physical, and technical measures to protect it against accidental unlawful or unauthorized destruction, loss, alteration, disclosure or access.

To the extent Stryker creates, receives, maintains, transmits or otherwise has access to any protected health information ("**PHI**") on behalf of US Covered Entities, as defined in HIPAA (defined below) in the course of performing under this Agreement, Stryker will only use and disclose such PHI as permitted by the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act, and the pertinent regulations promulgated thereunder (collectively, "**HIPAA**"). If required by HIPAA, the Parties will execute the standard form of Business Associate Agreement made available by Stryker. Without in any way limiting the foregoing, to the extent applicable to data processed in California

*Stryker Confidential - Stryker Software and Hosting Terms*

under California law, the Parties agree that Stryker is a "Service Provider" under the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100, et seq. (the "**CCPA**") and that nothing about this Agreement or the Products, or the services providing in connection with the Products, involves a "selling" or a "sale" of Personal Information under the CCPA or other applicable Laws.

To the extent data is processed in Europe, Stryker is a "Processor" under the European General Data Protection Regulation and may transfer Personal Information relating to Customer and User's patients, personnel or other individuals involved in the use of Products or related services that is subject to the laws of one or more countries in the European Union or Switzerland (together, the "**EU**") to recipients located in countries outside of the EU and to the extent Customer is the data controller of such data, Customer will (a) provide appropriate notice to the relevant individuals, (b) obtain any requisite consent, (c) provide individuals with applicable choices with respect to the use, disclosure or other processing of their Personal Information, and (d) provide individuals with the opportunity to exercise their right to access their Personal Information. If required, the Parties will execute the EU approved-standard contractual clauses, transfer or similar agreement made available by Stryker as may be required to support the lawful transfer of Personal Information.

Customer agrees that Stryker may monitor use of the Products, and services provided through the Products, by Customer and Users and collect and use Stryker Data, including to compile information related to the provision, operation or use of a Product, facilitate the provision of support, consulting, training and other services, and verify compliance with the terms of this Agreement. Stryker may use and make publicly available, Stryker Data to the extent and in the manner permitted under applicable Law. Stryker owns Stryker Data, and Customer grants Stryker a non-exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer's Content incorporated within the Stryker Data. "**Stryker Data**" means any data relating to or arising from the business operations or plans, services and products of Stryker or the performance or use of the Products or that may aid Stryker in optimizing resources and support; may be used to improve products or services; may be used in research and development regarding products or services; may be used in verification of security and data integrity of products or services or in resource planning, industry trends, benchmarking, or contract administration (e.g., data used for sales compensation), and any Personal Information that is aggregated and not identified or identifiable to any individual.

Customer is responsible for Customer's Content. Customer represents and warrants that Customer owns Customer's Content or that Customer has all rights necessary to use and allow use of Customer's Content as described in this Agreement. If Stryker believes a problem may be attributable to Customer's Content or to Customer's use of a Product, Customer must cooperate with Stryker to identify the source of, and to resolve, the problem. If Customer becomes aware that any of Customer's Content violates this Agreement or Law, Customer must immediately remove such parts of Customer's Content from a Product or any services provided under this Agreement.

If Customer or a User submits comments, ideas, or feedback to Stryker, Customer agrees that Stryker can use, disclose, reproduce, distribute, and exploit them without any restriction or compensation to Customer or any User. Stryker does not waive any rights to use similar or related ideas or feedback previously known to or developed by Stryker or obtained from sources other than Customer.

Prior to returning any equipment to Stryker, Customer will decontaminate it and ensure that all Personal Information, including PHI stored in such equipment is deleted. Customer acknowledges that, in any case, all data and settings stored in the returned equipment may be deleted by Stryker.

If Stryker is required by subpoena, court order or any other legal or regulatory requirement to disclose any of Customer's Content, Stryker will provide Customer with notice and a copy of the demand as soon as practicable, unless Stryker is prohibited from doing so pursuant to applicable Law. If Customer requests, Stryker will, at Customer's expense, take reasonable steps to contest any required disclosure.

## **10. EXPORT CONTROL; GOVERNMENT REQUIREMENTS**

The Laws of the United States and any other relevant jurisdictions may apply to the Products. Customer agrees that such Laws, if applicable, govern Customer's use of the Products (including technical data), and Customer agrees to comply with all Laws (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, Product and/or materials resulting from the use of any Product will be exported, directly or indirectly, in violation of these Laws, or will be used for any purpose prohibited by these Laws.

Each of the documentation and the software components that constitute a Product is a "commercial item" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212 ("Computer Software"). If acquired by or on behalf of a civilian agency, the U.S. Government acquires the software and any associated software documentation and/or technical data subject to the terms herein as specified in FAR 12.212 ("Computer Software") and 12.211 ("Technical Data"). If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires the software, software documentation and technical data subject to the terms herein as specified in DFARS 227.7202-3. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data under these terms and conditions.

## **11. TERM; TERMINATION; SUSPENSION**

For subscription, support or hosting services, the provision of such services is limited to the applicable Service Term. Stryker may, at its option, immediately suspend Customer's use of any Stryker Software if: (a) Customer is in breach of this Agreement (including the Software and Hosting Terms or a Product Addendum); (b) Stryker believes that Customer's use of a Product poses a security risk; or (c) Stryker suspects fraud or abuse. Stryker will give Customer notice before suspending Customer's use if permitted by Law or unless Stryker reasonably determines that providing notice presents a risk of harm, in which case Stryker will notify Customer as soon as feasible or permitted. Stryker will promptly reinstate Customer's access once Stryker has determined that the issue causing the suspension has been resolved. Customer will remain responsible for all fees incurred before and during any suspension.

If either Party breaches a material term of this Agreement and fails to correct the breach within thirty days (except for failure by Customer to pay amounts under this Agreement, in which case the cure period will be ten days) of written specification of the breach, then the breaching Party is in default and the non-breaching Party may terminate this Agreement. If Stryker terminates this Agreement as specified in the preceding sentence, Customer must pay within ten days all amounts, which have accrued prior to such termination, as well as all sums remaining unpaid for Products ordered and/or received under this Agreement plus related taxes and expenses.

*Stryker Confidential - Stryker Software and Hosting Terms*

Except for nonpayment of fees, the non-breaching Party may agree in its sole discretion to extend the thirty-day period for so long as the breaching Party continues reasonable efforts to cure the breach. Customer agrees that if Customer is in default under this Agreement, Customer may not use those Products which Customer ordered. Upon termination or expiration of this Agreement or a Service Term, all of Customer's rights to use Stryker Software (other than Embedded Software) and the Hosting Services expire, and Customer will immediately cease use and return to Stryker any copies of any use Stryker Software (other than Embedded Software) any accompanying documentation. For Embedded Software, upon termination or expiration of this Agreement, or upon termination or expiration of the Services Term applicable to the support or subscription of such Embedded Software (i.e., the applicable Embedded Software must be under a current support or subscription agreement with Stryker), then Customer must uninstall the Stryker Software if possible, and any continued use of the Embedded Software is as-is with no representations or warranties of any kind and with Supplier being under no obligation, and having no liability, to Customer, any Users or any party relating to any such use.

Upon the termination or expiration of any Hosting Services, Stryker will make Customer's Content (as it existed at the end of the date of termination or expiration) available for retrieval by Customer for up to thirty days (or such different period set out in the Product Addendum). At the end of such retrieval period, and except as required by Law or as otherwise set forth in this Agreement, Stryker will delete or otherwise render unrecoverable Customer's Content that remains in the environments hosted by Stryker for Customer. If Stryker hosts or stores Customer's Content beyond the Service Term, Customer will pay to Stryker, and will be responsible to Stryker for, Stryker's hosting and storage fees.

Any terms that should survive termination by their nature will so survive, including limitations of liability and ownership rights of Stryker. Termination by any means will not affect the provisions of this Agreement relating to the payment of amounts due or the survival provision of this Agreement, regardless of the reason for termination.

## **12. GENERAL TERMS**

Customer agrees that this Agreement and the information which is incorporated into this Agreement or Product Documentation by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Ordering Document, are the complete agreement for the Products ordered by Customer and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products. It is expressly agreed that the terms of this Agreement will supersede the terms in any purchase order, procurement internet portal or any other similar non-Stryker document and no terms included in any such purchase order, portal or other non-Stryker document will apply to the Products ordered. Stryker may refer to Customer as a customer of the ordered Products in sales presentations, marketing vehicles and activities.

Except for the obligation to pay fees when due, neither Party will be liable to the other Party in respect of any hindrance, delay, or failure to perform that results from any event or cause that is beyond the reasonable control of the Party obligated to perform, including acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Stryker's inability to obtain goods from their usual sources. If for any reason a court or competent jurisdiction finds any provision of this Agreement invalid or unenforceable, the provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will

remain in full force and effect. Stryker's failure to enforce any right or provision of this Agreement will not be considered a waiver of such right or provision. Except as expressly set forth in this Agreement, the exercise by Stryker of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

Stryker is an independent contractor, and nothing in this Agreement is intended to create a partnership or joint venture between the Parties. Customer has no power to bind or obligate Stryker in any manner. Except with respect to persons and entities that Customer agrees to indemnify as set forth above, nothing express or implied in this Agreement is intended to confer, or will confer, upon any person or entity other than Customer and Customer's permitted assigns any rights, remedies, obligations, or liabilities whatsoever. Customer may not assign, delegate, or transfer this Agreement (in whole or in part), by operation of Law or otherwise, without Stryker's prior written consent. Stryker may assign, delegate, or transfer this Agreement to any of its affiliated entities. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their successors and permitted assigns.

Stryker reserves the right to amend any of the terms of this Agreement by posting notice on a Stryker designated web site, by email notification to an email address provided by Customer, by

providing notice as part of the process in which Customer obtains updates, or by any other legally recognizable form of notice. If Customer does not agree to the amendment, Customer should promptly contact Stryker for instructions. Customer's continued use of a Product after the effective date of any such notice will be deemed Customer's agreement to be bound by such amendments. Except as otherwise set forth in this paragraph, no amendments may be made to this Agreement except in writing signed by both Parties, and any notice required under this Agreement must be provided to the other Party in writing.

Except to the extent preempted by federal Law, the Laws of Michigan, other than its conflict-of-Laws principles, govern this Agreement and any claims and disputes (whether contract, tort, or otherwise) arising out of or relating to this Agreement or the Products. The Uniform Computer Information Transactions Act does not apply to this Agreement or any Products. EXCEPT TO THE EXTENT PROHIBITED BY LAW, STRYKER AND CUSTOMER EXPRESSLY WAIVE TRIAL BY JURY WITH RESPECT TO ANY MATTERS OR DISPUTES ARISING UNDER OR RELATING TO THIS AGREEMENT. Any claim or cause of action arising under this Agreement must be commenced within one year after the claim or cause of action arises.