

iBED ACTIVATION SERVICE TERMS AND CONDITIONS

These iBed Activation Service Terms and Conditions shall apply to those services performed by Stryker Sales Corporation on behalf of itself and its affiliates and subsidiaries (“Stryker”) for customer (“Customer”) (also referred to as “Service Terms and Conditions”) pursuant to the Statement of Work for Installation & Activation of iBed Products (“SOW”) (collectively, the Service Terms and Conditions and SOW are referred to herein as this “Agreement”).

- 1. Products.** Each Statement of Work (“SOW”) and any applicable exhibits will set forth the products and/or services provided by Stryker under this Agreement. The products for which the Services are performed are referred to as “Products” or “Solution” in other applicable agreements.
- 2. Services.** Stryker shall perform the services as set forth in the SOW (the “Services”). Unless otherwise provided in the SOW, Stryker shall furnish reasonable materials, equipment, vehicles, tools and supplies as may be necessary to perform the Services. Customer shall have an authorized representative available, to the extent the performance of the Services hereunder requires Customer’s presence during installation and activation. Customer shall obtain all proper authorizations from the medical treatment facility for Stryker to perform the Services. Stryker shall not provide any patient care or treatment, or medical or nursing assistance as part of the Services.
- 3. Software License.** Any software provided by Stryker to Customer as part of providing the Products is subject to the terms of this Agreement and any applicable software license agreement (“iBed Wireless Software License Terms and Conditions, iBed Vision License Terms and Conditions” and/or “Smart Equipment Management License Terms and Conditions,” collectively referred to as “License Terms and Conditions”) which are available on <https://techweb.stryker.com/>.
- 4. Updates to the Agreement Terms.** Stryker may change the terms of the Service Terms and Conditions and License Terms and Conditions at any time, and Stryker will notify Customer as necessary. By installing and activating the Products after the changes become effective means Customer agrees to the new terms and conditions of this Agreement. If Customer does not agree to the new terms, Customer must stop using the Products after installation and activation and notify Stryker.
- 5. Pricing and Payment.** Customer agrees to compensate Stryker according to the Pricing Schedule as set forth in the SOW. Stryker shall provide Customer with an invoice upon completion of the Services. Customer shall pay all such invoices within thirty (30) days of receipt of the invoice. Any amount not paid on time may be subject to a late fee of 1½% per month prorated (18% per annum), or the maximum interest rate allowable by law, whichever is the highest. Additionally, Customer may be subject to a fee of Fifty Dollars (\$50.00) USD for any checks returned unpaid to Stryker for any reason. Customer shall pay all sales, excise, or use taxes due on the transactions hereunder or provide Stryker customary proof that the transactions are exempt from sales taxes. Customer shall reimburse Stryker for those out-of-pocket expenses, without mark-up, (collectively, “Expenses”) actually and reasonably incurred by Stryker’s personnel in connection with Customer-authorized travel and for lodging and meals while away from home providing Services.
- 6. Shipment and Delivery.** Unless otherwise provided, delivery terms are F.O.B. origin, with freight and handling charges prepaid and added to the invoice. Delivery shall be deemed to have been made when Customer’s shipment has been delivered to a carrier, specified by Customer on purchase order or equivalent. In the event that Customer does not specify the carrier, the carrier may be at Stryker’s option. Title of the Products sold hereunder shall pass to Customer upon delivery by Stryker.
- 7. Proper Reporting.** Customer will comply with all applicable laws and regulations relating to the accounting and application of discounts, including but not limited to all Federal and State laws and regulations regarding reimbursement and proper reporting of discounting and pricing, such as the requirements of the discount “safe harbor” located at 42 C.F.R. 1001.952(h). Pricing under this Agreement may constitute discounts on the purchase of Products and must be properly reported and appropriately reflected as required by law or contract, including on all applicable Medicare, Medicaid and state agency cost reports.
- 8. Term and Termination.** This Agreement shall commence on the date set forth in the SOW and shall terminate on the date set forth in the SOW, unless terminated by either party in the event the other party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching party (“Cure Period”). If the breaching party fails to cure such breach within the Cure Period, termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching party. Upon termination of this Agreement, Stryker will promptly cease all work. For clarity, the terms and conditions of the applicable License Terms and Conditions shall commence upon installation and shall continue for so long as Customer has access and/or use of the Products, and/or Solutions. Additionally, each party will deliver to the other all confidential information of the other party in its possession. Customer will promptly pay Stryker, for the Services performed, including any Expenses incurred as of the date of termination. Customer shall uninstall and deactivate the Products and/or Services and certify such in writing upon request from Stryker. Notwithstanding termination or expiration of this Agreement, if Customer continues to use the Product and/or Services, the applicable License Terms and Conditions and any purchasing agreement terms and conditions shall continue and are not affected by such termination.

9. Representations and Warranties.

a. Stryker warrants that the Services shall be performed in a workmanlike manner in conformance with generally accepted industry standards. For any breach of the foregoing warranty, Stryker's entire liability to Customer and Customer's exclusive remedy against Stryker will be the correction of the deficiency that caused the breach of warranty. Customer shall promptly provide Stryker with written notification describing in reasonable detail the nature of the deficiency and a reasonable opportunity to correct the deficiency, unless the parties agree otherwise in writing.

b. Each party represents and warrants that its execution, delivery and performance of this Agreement does not and will not (i) conflict with or result in a material breach of any material agreement, judgment or court decree by which such party is bound, or (ii) violate any known copyright, patent, trade secret, trademark or other intellectual property or proprietary right of any third party.

c. Each party shall in its performance of this Agreement comply with all applicable laws.

d. Each party represents that to the best of its knowledge, it is not currently debarred, suspended or otherwise excluded by any governmental agency from receiving federal contracts. Each party further represents, to the best of its knowledge and information, such party's employees, agents, representatives or subcontractors are not debarred, suspended or proposed for debarment by the federal government.

10. Independent Contractor. Stryker will perform this Agreement as an independent contractor, and this Agreement will not be construed to create between the parties the relationship of principal and agent, joint-venturers, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each party. Customer will have no right to control the manner, means, or method by which Stryker performs the Services.

11. Limitation of Liability. **STRYKER'S LIABILITY ON ANY CLAIM WHETHER IN CONTRACT OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE SERVICES OR THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO STRYKER UNDER THE APPLICABLE SOW. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER HEREUNDER AND ARISING FROM THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS.**

12. Confidentiality. The parties hereto shall hold in confidence any non-public information and materials that are related to the business of the other party hereto or are designated by any such party as proprietary and confidential, herein or otherwise. The parties agree that any breach or threatened breach of this clause may cause irreparable harm to the other party, that a remedy at law may be inadequate to remedy such a breach or threatened breach, and that either party is entitled to seek a restraining order or injunction in addition to any other available legal remedies.

13. Inspection and Acceptance. Upon receipt of the Products and/or Services, Customer agrees to inspect and/or test the Products and/or Services. The Products and/or Services shall be deemed accepted by Customer unless Customer provides Stryker a timely written notice specifically noting any defects or discrepancies in the quality or quantity of the Products and/or Services received. All notices regarding nonconforming Product and/or Services, shortages, rejection or revocation of acceptance must be made in writing and received by Stryker no later than thirty (30) days from the date of Stryker's invoice, which Customer agrees is a reasonable time frame within which to diligently inspect and provide notice to Stryker. Customer waives any right to reject the shipment or revoke acceptance thereafter.

14. Force Majeure. Neither party will be liable to the other for any delay or failure of performance that is the result of any happening or event that is beyond its control. The party hindered or delayed shall promptly notify the other party with the circumstances causing delay. Such events include, but are not limited to, terrorism, acts of war, riots, civil disorder, rebellions, fire, flood, earthquake, explosion, action of the elements, acts of God, inability to obtain or shortage of material, equipment or transportation, governmental orders, restrictions, priorities or rationing, accidents and strikes, lockouts or other labor trouble or shortage or failures by internet service companies, data centers, server hosting companies and telecommunication companies).

15. General Terms. Except as provided below, neither party may assign this Agreement without the prior written consent of the other party, except that Stryker will have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker. All of the terms and provisions of this Agreement will be binding upon, will inure to the benefit of, and be enforceable by successors and assigns of the parties to this Agreement. This Agreement will not confer any right or remedy upon any person other than the parties hereto and their respective successors and permitted assigns. If any provision of this Agreement is deemed illegal, invalid or unenforceable the parties will endeavor to replace it by another provision that will as closely as possible reflect their original intention. Except as otherwise provided herein, no right or remedy conferred in this Agreement is intended to be exclusive of any other right or remedy. This Agreement and all matters arising out of or related to this Agreement will be governed by and construed in accordance with the laws of the State of Michigan, as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles, and the parties hereby consent to the exclusive jurisdiction of the state or federal courts of in the State of Michigan to adjudicate any dispute arising under or in connection with this Agreement. Any such dispute shall be brought before

the Circuit Court for Kalamazoo County, Michigan or the United States District Court for the Western District of Michigan, Southern Division. The parties hereby waive any objection based on inconvenient forum. Stryker or its suppliers retain all right, title interest in, ownership and intellectual property rights, including copyrights pertaining to the Products and Services and documentation and all copies, modifications and derivative works thereof. Customer is not authorized to remove, modify or amend any copyright notices or brand references made by Stryker.

16. **Entire Agreement.** The provisions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 and 17 shall survive any expiration or termination of this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and any modification or amendments to this Agreement must be in writing and signed by both parties. No waiver, alteration, or modification of the terms and conditions set forth herein shall be binding unless Stryker expressly agrees in writing. Stryker expressly rejects any different, additional or conflicting terms or conditions set forth in Customer's purchase order or any other document issued by Customer; the terms of the invoice, these Service Terms and Conditions and SOW shall exclusively govern the Services.
17. **Disclaimer of Warranties.** STRYKER AND ITS AFFILIATES MAKE NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO CUSTOMER'S USE OF THE SERVICES OR PRODUCTS OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. THE WARRANTIES STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.