

## IBED WIRELESS SOFTWARE MAINTENANCE TERMS & CONDITIONS

The iBed Wireless Software Maintenance Terms and Conditions ("Maintenance Terms and Conditions") shall govern the maintenance of the Software (defined below) for those Customers that purchase Maintenance (defined below). The following Maintenance Terms and Conditions are attached to and made a part of the applicable Stryker Quote and Purchase Order ("PO") entered into by and between Stryker and Customer. The Quote, PO and these Maintenance Terms and Conditions are collectively referred to as the "Agreement" or "terms and conditions of the Agreement." Stryker and Customer may be collectively referred to as the "Parties" and each as a "Party."

### 1. Definitions.

- 1.1 **"Affiliates"** with respect to an entity, means any other entity directly or indirectly controlling, controlled by or under common control with such entity, where "control" means, with respect to an entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.
- 1.2 **"Business Day"** means a day other than Saturday, Sunday or a US public holiday.
- 1.3 **"Business Hours"** means between 9:00am and 5:00pm ET on any Business Day.
- 1.4 **"Confidential Information"** means: all information that relates to the provisions of the Agreement, the negotiations relating to the Agreement or the subject matter of the Agreement; information disclosed to the Recipient by or on behalf of the Disclosing Party, whether before or after the Effective Date, which comprises or relates to know-how, secret processes and/or inventions of the Disclosing Party; and all other information disclosed to the Recipient by or on behalf of the Disclosing Party, whether before or after the date of the Agreement, which is marked as or has been otherwise indicated to be confidential or which derives value from being confidential or which would reasonably be regarded as confidential.
- 1.5 **"Disclosing Party"** means the Party disclosing Confidential Information.
- 1.6 **"Effective Date"** means the date Customer signs the applicable PO, which includes the purchase of Maintenance.
- 1.7 **"Maintenance"** means the Software maintenance services Stryker provides under these Maintenance Terms and Conditions.
- 1.8 **"Maintenance Term"** means the term of this Agreement which shall be twelve (12) months (unless otherwise stated in the purchase order). With regard to new installations, the twelve (12) months shall run from the installation date.
- 1.9 **"Patches"** means additional programming code to be integrated with the Software to correct an error, enhance security or alleviate its effects.
- 1.10 **"Recipient"** means the Party receiving Confidential Information.
- 1.11 **"Software"** means the Stryker iBed Wireless software product licensed to Customer for which the Customer has paid the applicable license fees.
- 1.12 **"Software License Agreement"** means the Stryker license agreement pursuant to which Customer initially licensed the Software.
- 1.13 **"Updates"** means corrections and modifications and minor improvements to the existing features contained in the iBed Wireless server and wi-fi module and Stryker provides to its customers for no additional license fee. For the avoidance of doubt, "Updates" do not include material modifications to the functions, features or design of the Software, or any modification to the Software for which Stryker customarily charges a separate or additional fee. "Updates" do not include new versions of the Software or Upgrades (defined below in Section 1.14).
- 1.14 **"Upgrades"** means an enhancement or addition to the Software that Stryker does not make generally available to its customers as part of maintenance but is rather only made commercially available for certain products subject to payment of a separate license fee or upgrade charge.

### 2. Maintenance. During the Maintenance Term, subject to timely payment of the applicable maintenance fees, compliance with the terms of the Agreement and any other applicable agreement, Stryker agrees to provide the following services to support the Software:

- 2.1 **Product Support:** Customer shall have access to Stryker technical support personnel for support of the Software. Customer may request support at Stryker's online support site. Telephone support is available Business Hours. Customer shall have access to obtain Maintenance Updates according to procedures established by Stryker.
- 2.2 **Maintenance Updates:** A "Maintenance Update" is a patch or updated version of the Software which addresses code errors or provides minor improvements in functionality or performance of the Software. Maintenance Updates are typically developed by Stryker in the normal course of business. A Maintenance Update may or may not repair "bugs" which have been reported by the Customer. Stryker will determine, in its sole discretion, the content and timing of any such Maintenance Updates. Maintenance Updates do not include versions of the Software which contain material improvements in functionality or performance ("Software Version Release").

Stryker will determine in its sole discretion whether a release constitutes a Maintenance Update or a Software Version Release. Software Version Releases may be made available to Customer at an additional charge.

**3. Maintenance Limitations and Exclusions.**

- 3.1 **Exclusions.** The Customer is responsible for the interface between the Software and the Customer's other software and equipment, and for installing, managing and operating any Maintenance Updates. Stryker will be under no obligation to provide any modifications, assistance or support requested by Customer but not specifically included in the Maintenance, but may, at its discretion, agree to provide the additional Maintenance at Stryker's then-current fee structure. Maintenance under this Agreement does NOT include repair or service of the hardware on which the software resides or troubleshooting of systems or networks of which the Software or the hardware upon which it resides may be a part. Software installations or licenses not covered by this Agreement are not entitled to telephone Support or to Maintenance Updates. Nothing herein shall assure uninterrupted operation of the Software.
- 3.2 **Software Versions.** Stryker Updates, Patches and Maintenance are only effective on the latest version of the Software. If Customer has not incorporated all available Updates, Patches and bug fixes to the Software, any subsequently released Patches, Updates or bug fixes may not be effective or usable on such Software.
- 3.3 Stryker has no obligations to provide any Maintenance to Customers' licensees, end-users, customers or any other third party.
- 3.4 Stryker has no obligation to provide support for any Stryker professional services deliverables provided to Customer.
- 3.5 Stryker has no obligation to investigate or correct problems (including Errors) that cannot be reproduced by Stryker based on information provided by Customer; or that are due to a breach by Customer of the terms of the Software License Agreement; or to modifications to the Software made by Customer or any third party; or that cannot be remedied due either to the operational characteristics of the computer equipment on which the Software is used. Customer acknowledges that Stryker cannot guarantee that every question, issue, problem or error reported by Customer can or will be resolved. Stryker will use commercially reasonable efforts to provide the Maintenance under this Agreement. Except as otherwise agreed to in writing, this Agreement shall not apply to, or obligate Stryker to provide any maintenance or support services for Stryker products that a customer obtains from or through any source other than Stryker, including, but not limited to, a distributor.

**4. Termination.**

- 4.1 If the Customer or any third party modifies any covered Software, Stryker may immediately terminate support for the modified Software by giving written notice of termination under this provision.
- 4.2 Either Party may withdraw from these Maintenance Terms and Conditions at any time upon written notice of default if the other Party fails to cure within thirty (30) days after receipt of such notice of default.
- 4.3 These Maintenance Terms and Conditions shall terminate automatically for any specific Software upon the termination or expiration of the Customer's license for the use of such Software.
- 4.4 No refund or credit of any fees or charges will be due to Customer if Maintenance is terminated before the end of the specified term.

**5. Fees and Payment.** Customer shall pay to Stryker the applicable Maintenance fees for the Software. Following issuance of a purchase order by Customer, Maintenance fees shall be payable within thirty (30) days after the date of the applicable Stryker invoice.

**6. Ownership/Intellectual Property/Source Code.** All software and Maintenance delivered hereunder (including Updates, Patches, and Upgrades, as applicable) and any modifications thereto, including all title and intellectual property rights shall be owned by Stryker.

**7. Confidential Information.** All Maintenance and any software provided by Stryker under this Agreement shall be deemed the Confidential Information and proprietary information of Stryker and Customer shall not disclose any such information without Stryker's prior written consent.

**8. Force Majeure.** Stryker shall not be liable for any delay in delivery or performance of Maintenance due to any cause beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, acts of terrorism, governmental priority, strikes or other labor disturbances, floods, epidemics, war, riot, delay in transportation, or Customer's actions or inaction. In the event of any such delay, the date of delivery or of performance shall be extended for a like period of time.

**9. Disclaimer.** MAINTENANCE IS PROVIDED "AS IS" AND STRYKER MAKES NO WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY STRYKER, ITS DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL IN ANY WAY MODIFY THE SCOPE OF THIS DISCLAIMER.

- 10. Limitation of Liability.** STRYKER AND ITS AGENTS SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, REVENUE OR GOODWILL, COSTS OF PROCUREMENT OR SUBSTITUTE GOODS OR SERVICES, LOSS OF INTERRUPTION OF BUSINESS, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF DATA, OR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING FROM OR RELATED TO THE AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF STRYKER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL STRYKER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID TO STRYKER BY CUSTOMER HEREUNDER FOR THE THEN-CURRENT MAINTENANCE TERM.
- 11. General.** The Agreement will be governed in all respects by the laws of the State of Michigan without regard to conflict of principles of laws. All disputes arising under this Agreement shall be brought exclusively in the State of Michigan or of the Federal Courts sitting therein. If any provision or provisions of the Agreement are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired. The Agreement may not be assigned, sub-licensed or otherwise transferred by Customer without Stryker's prior written consent and any assignment or attempted assignment by Customer in violation of this Section 11 shall be null and void. Nothing herein shall be construed as creating any agency, employment relationship, partnership, or other form of enterprise between the parties. The Agreement constitutes the complete, final and exclusive statement of the agreement between Customer and Stryker, which supersedes all proposals, oral or written, and all other communication between the Parties relating to the subject matter of the Agreement. No waiver, alteration or modification of this provisions of the Agreement will be valid unless made in writing and signed by an authorized representative of Stryker. Each Party agrees that use of pre-printed forms such as purchase orders or acknowledgements, is for convenience only and all terms and conditions stated thereon are void and of no effect. 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 and these Maintenance Terms and Conditions shall exclusively govern the Maintenance.