



IBED WIRELESS SOFTWARE LICENSE TERMS AND CONDITIONS

The iBed Wireless Software License terms and conditions (“License Terms and Conditions”) shall govern Customer’s use of and access to the Software (defined below). The following License Terms and Conditions are attached to and made a part of the applicable Stryker Quote and Purchase Order (“PO”), Statement of Work (“SOW”), and iBed Activation Service Terms and Conditions (“Service Terms and Conditions”) entered into by and between Stryker and Customer. The PO, SOW, Service Terms and Conditions, and License 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

- (a) **“Authorized Users”** shall mean all authorized officers, employees, and agents of Customer whose duties require access to or use of the Software, and whose legal obligations are to protect all confidential and proprietary information.
- (b) **“Documentation”** shall mean the then current Stryker product specifications, product labeling, service user instructions, release notes, manuals, materials and/or on-line help files in the form generally made available by Stryker, regarding the use of the Software or provided to assist with use of the Software.
- (c) **“Error”** means a material failure of the Software to conform to its functional specifications described in the Documentation that is reported by Customer to and replicable by Stryker.
- (d) **“Software”** (also referred to as “Products”) shall mean Stryker’s proprietary iBed Wireless software as further described in the Documentation (but excluding Third Party Components or infrastructure).
- (e) **“Third Party Components”** means applications, services, and software that are provided by entities or individuals other than Stryker and that interoperate with the Software.

2. License.

- (a) **Grant.** Subject to the terms and conditions of this Agreement, Stryker grants to Customer a limited, non-exclusive, revocable, non-sublicensable, fee-bearing (for activation), non-assignable, non-transferable (subject to Stryker’s termination rights as set forth herein) license in object code only to: (i) use of the Software in the Stryker approved operating environment (“AOE”) for so long as Customer may own or use the accompanying Stryker beds, solely for Customer’s own internal business operations and solely as enabled by the license keys; and (ii) use and follow instructions as set forth in the Documentation in connection with use of the Stryker beds (“License”). Software location and delivery methods shall be set forth in the SOW. This License does not extend to any maintenance or service software shipped to or located at Customer’s premises which is intended to assist Stryker employees or agents in the installation, testing, service and maintenance of any products or Software.
- (b) **Intellectual Property.** Stryker or its suppliers retain all right, title interest in, ownership and intellectual property rights, including patents, trade secrets, confidential information, trademarks, proprietary data and copyrights pertaining to the Software and Documentation and all copies, modifications, improvements and derivative works thereof, and any Stryker product information. Customer is not authorized to remove, modify or amend any copyright notices or brand references made by Stryker.
- (c) **Additional Activation Fees.** The Software may be accessed by or used to manage no more than the number of activated beds specified in the SOW. Additional activation fees may be purchased under an additional SOW at the pricing in effect at the time the additional licenses are purchased unless otherwise detailed in the SOW. Fees are based on licenses purchased and not actual usage.
- (d) **Enforcement.** Customer shall: (i) ensure that all Authorized Users of the Software comply with the terms and conditions of this Agreement, (ii) promptly notify Stryker of any actual or suspected violation thereof, (iii) cooperate with Stryker with respect to investigation and enforcement of this Agreement, and (iv) be solely responsible for all Authorized Users’ use of the Software.
- (e) **Data Device Manager.** If the Data Device Manager is included with an applicable third party integration or with Smart Equipment Management, Stryker will provide Customer with the Data Device Manager connection. To maintain the Data Device Manager service, Customer agrees to pay the data device management fee established by Stryker for the applicable license year (the “Data Device Management Fee”). The Data Device Management Fee is due within thirty (30) days of Customer’s receipt of Stryker’s invoice.
- (f) **Third Party Components.** Customer acknowledges that the Software may contain Third Party Components and such Third Party Components are subject to the terms and conditions of the applicable end user license agreement that accompanies such Third Party Components. Customer shall use the Third Party Components solely in conjunction with the Software. Stryker is not responsible for or liable to Customer for any Third Party Components. Any exchange of data between Customer and any Third Party Components (or by Customer between two or more Third Party Components), is solely between Customer and the applicable provider of the Third Party Components. Stryker makes no warranty or representation with respect to any Third Party Components. Customer is responsible for any dealings with third parties for Third Party Components. Customer’s sole remedy with respect to such Third Party Components shall be pursuant to the original licensor’s warranty, if any, to Stryker, to the extent permitted by the original licensor. To the extent Stryker uses any Third Party Components they are made available by Stryker on an AS IS, AS AVAILABLE BASIS. Customer acknowledges that certain of Stryker’s rights

may be derived from license agreements with third parties and, as such, Customer agrees to preserve the confidentiality of information imparted to Stryker under such third party license agreements.

- (g) **Copies.** Customer is not authorized to reproduce, distribute, copy, or create any derivative works from the Software or Documentation without Stryker's permission.

3. Customer Obligations.

- (a) Customer acknowledges that Customer is solely responsible for complying with, and covenants to comply with, all laws applicable to Customer and to Customer's use of the Software.
- (b) Customer agrees to provide Stryker with such cooperation, materials, information, data, access and support to which Stryker deems to be reasonably required to allow Stryker to successfully provide the Software and License to Customer. Customer understands and agrees that Stryker's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information, data, access and support.
- (c) Customer is responsible for timely applying security patches as instructed and provided by Stryker. Customer must fully cooperate with Stryker in permitting Stryker to take any action necessary to apply security patches or any other security measures Stryker deems necessary.
- (d) Customer is solely responsible for its network, customer-provided systems or resources any and all activities that occur under Customer's account. Customer agrees to immediately notify Stryker of any unauthorized use of Customer's account or any other breach of security known to Customer. Stryker shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements. Customer is responsible for taking all precautions necessary to ensure that any content obtained from Stryker is free of viruses and any other potentially destructive computer code.
- (e) It is Customer's responsibility to ensure that all Authorized Users receive initial training services sufficient to enable Customer to effectively use the Software. Customer shall ensure that Stryker's assigned technical personnel are able to access the system remotely and Stryker alone shall decide whether access to the Software and any applicable hardware is sufficient for maintenance or any other purposes. Customer shall be responsible for providing access through any security measures necessary.
- (f) Customer shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, transfer, distribute, host, lease, rent, license or sublicense, in whole or in part, the Software or Documentation; (ii) decipher, decompile, disassemble, decrypt, reverse assemble, modify, translate, reverse engineer, identify the source code emulate, exploit or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Software, including the license keys, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Software or Documentation to any third party or user other than Authorized Users who have a need to such access and who shall be bound by a nondisclosure agreement with provisions that are at least as restrictive as the terms of this Agreement and be bound by the terms and conditions of this Agreement; (iv) write or develop any derivative works based upon the Software or Documentation; (v) modify, adapt, translate or otherwise make any changes to the Software or Documentation or any part thereof; (vi) use the Software to provide processing services to third parties, or otherwise use the same on a 'service bureau' or hosting provider basis; (vii) disclose or publish, without Stryker's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Software; (viii) store or transmit virus or other malicious code through the Software (ix) separate components of the Software for use on different products or systems; or (x) otherwise use or copy the Software or Documentation except as expressly permitted herein. The right of use regarding the previous version(s) ends with the installation of an update or upgrade. Customer is not authorized to use the previous version(s) on a different computer system anymore or to make available the use of the previous version(s) to any third party.
- (g) Further, Customer is prohibited from (i) attempting to use or gain unauthorized access to Stryker or to any third party's networks or equipment; (ii) permitting other individuals or entities other than Authorized Users to access or use the Software (iii) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of Stryker, its licensors or any of its customers or suppliers; (iv) disrupting, interfering, or attempting to interfere with the (a) integrity or performance of third party products or data contained therein or (b) service to any user, host, or network; (v) engaging in fraudulent activity of any nature; (vi) transmitting unsolicited bulk or commercial messages; (vii) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (viii) using the Software in violation of the Documentation, the Agreement or any other applicable Stryker terms and conditions.
- (h) Customer shall defend, indemnify and hold harmless Stryker from and against any and all proceedings, claims, suits, actions, demands ("Claims") liabilities, losses, payments, costs, penalties, fines, reasonable attorneys' fees and expenses, judgments or damages, ("Damages"), incurred by or assessed against any of the foregoing to the extent the same arise out of, are in connection with, or are caused by Claims relating to, or in any way connected with: (i) Customer's infringement upon, misappropriation or violation of any patent, copyright, trademark, trade secret or proprietary right; (ii) Customer's use of any Third Party Components not supplied by Stryker; (iii) Customer's violation of any federal or state law, regulation, statute or ordinance applicable to the performance of the Software; (iv) Customer's failure to comply with the confidentiality obligations (including security breaches) set forth herein; (v) any loss or damage to persons (including death) or property, to the extent caused by any act or omission of Customer or, where applicable, by its employees, agents, representatives, subcontractors or invitees;

(vi) the negligent acts or omissions or willful misconduct of Customer or, where applicable, its employees, agents, representatives, subcontractors or invitees; or (vii) any security breach involving any Stryker confidential information, Stryker data and/or protected health information.

4. Product Availability. The Software may be unavailable from time to time, may be offered for a limited time, or may vary depending on Customer's region or network systems. Although Stryker strives to keep the Software up and running; however, all wireless products/systems suffer occasional disruptions and outages for which Stryker is not liable for any disruption or loss Customer may suffer as a result.

5. Support. Support is provided for the Software, provided however that with respect to Third Party Components (if any), Stryker's obligation is limited to using commercially reasonable efforts to obtain support or maintenance from the owner of such Third Party Components. As used in this Agreement, "Support" shall mean: (i) reasonable assistance and consultation via telephone or electronic mail to assist Customer in resolving problems with the use of the Software; and (ii) Updates if there is a security and/or safety risk associated with Software (but not Upgrades) to the then current release of the Software and related Documentation that Stryker makes generally available to its other customers receiving Support for the Software. Updates are provided if and when available, and Stryker is under no obligation to develop any future programs or functionality. For purposes of this Agreement, the term "Upgrade" means (a) any module of Software which offers discrete new functionality in addition to the module originally licensed by Licensee or (b) new software products released by Stryker, which may provide functionality comparable to those originally licensed by Customer but are thereafter marketed as separate and discrete products by Stryker. "Update" shall mean a release of the Software that incorporate error corrections, minor enhancements or bug fixes. Stryker is under no obligation to provide Support with respect to: (i) Software that has been altered or modified by anyone other than Stryker or its licensors; (ii) a release for which Support has been discontinued; (iii) Software used other than in accordance with Documentation or other than on the AOE; (iv) discrepancies that do not significantly impair or affect the operation of the Software; or (v) any systems or programs not supplied by Stryker. Stryker does not provide any maintenance or support for Third Party Components. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Stryker regarding future functionality or features. Stryker reserves the right to change and modify the terms of this Agreement as it deems necessary and Customer shall comply with all terms and conditions and Documentation during the term.

6. Warranties/Disclaimers. Stryker warrants that, for a period of 30 days from the activation and validation of the Software, as updated and used in accordance with the Software and Documentation, will operate in all material respects in conformity with the Documentation. If the Software does not perform as warranted, Stryker shall use commercially reasonable efforts to correct Errors. As Customer's sole and exclusive remedy for any claim under this Software warranty, Customer shall promptly notify Stryker in writing of its claim within the warranty period. Provided that such claim is determined by Stryker to be Stryker's responsibility, Stryker shall, within 30 days of its receipt of Customer's written notice, (i) correct such Error; (ii) provide Customer with a plan reasonably acceptable to Customer for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Stryker, then Stryker or Customer may terminate this Agreement and Customer will be entitled to a refund of the license fees paid for the affected Software. The preceding remedy shall constitute Stryker's entire liability and Customer's exclusive remedy for cure of the Software warranty set forth herein. Stryker is not responsible for any claimed breach of any warranty set forth in this section caused by: (a) modifications made to the Software by anyone other than Stryker; (b) the combination, operation or use of the Software with any items that are not provided by Stryker; (c) Customer's failure to use any new or corrected versions of the Software made available by Stryker; (d) Stryker's adherence to Customer's specifications or instructions; (e) Customer deviating from the Software operating procedures described in the Documentation or any other Customer misuse; (f) any Force Majeure event or (g) use for a purpose or in a manner for which the Software were not designed.

THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF, AND STRYKER, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT ANY SOFTWARE ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED; (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; (iii) ANY WARRANTY THAT CONTENT OR THIRD PARTY SOFTWARE WILL BE ACCURATE, RELIABLE, UNINTERRUPTED AND ERROR-FREE; AND (iv) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THE SOFTWARE AND ANY THIRD PARTY COMPONENTS ARE BEING PROVIDED ON AN AS-IS BASIS WITH ALL FAULTS AND AS AVAILABLE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY STRYKER, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.

7. Exporting. Customer hereby acknowledges that the Software is or may be subject to one (1) or more export control laws or regulations, and agrees that it will not transfer, export or re-export the Software without complying with all applicable export control laws and regulations. Customer agrees it will not export or re-export the Software to a national of a country listed in "Country Groups" D:1 or E:2 (as defined in the Export Administration Regulations), nor will Customer export or re-export the direct product of the Software to such Country Groups without first obtaining a license from the U.S. Department of Commerce. The obligations in this paragraph shall survive the expiration or termination of this Agreement.

8. Term/Suspension/Termination. Subject to Customer's payment of all applicable fees, the term for the Software shall be perpetual. After Customer invoices for use of Software or any services become thirty (30) days past due, Stryker may suspend access or terminate this Agreement pursuant to this Section 8 at its option. In addition to its other rights under this Section 8, Stryker may suspend or terminate Customer's access to the Software or any applicable services upon written notice in order to: (a) prevent damage to or degradation of the Software caused by Customer; or (b) comply with any law, regulation, court order, or other governmental request or order which requires immediate action. If suspended, Stryker will promptly restore use of the Software or other applicable services to Customer as soon as the event giving rise to the suspension or termination has been resolved to Stryker's satisfaction. In addition, Stryker may terminate this Agreement upon notice to Customer if Customer materially violates the terms of this Agreement. Upon expiration termination of this Agreement or license, Customer shall destroy all copies of the Software from Customer's systems and destroy all physical copies of the Software. The Customer shall certify in writing that the Software has been uninstalled successfully and all copies destroyed.

9. Confidentiality. Stryker and Customer: (a) shall hold in confidence the terms and conditions of the Agreement and the information derived from the Software, the Software, and any information and materials which are related to the business of the other or are designated as proprietary or confidential, herein or otherwise, or which a reasonable person would consider to be proprietary or confidential information; and (b) hereby covenant that they shall not disclose such information to any third party without prior written authorization of the one to whom such information relates. Notwithstanding anything contained herein to the contrary, Customer acknowledges that information, data and/or content collected by the Software or any feedback from Customer may be used by Stryker for its business purposes without any further consent in the development and maintenance of the Software as well as other Stryker products and services. Stryker shall not sell, release, disclose, disseminate, make available, transfer or otherwise communicate such information, data and/or content for monetary or other valuable consideration. Customer acknowledges that Stryker may, if necessary, reproduce any such information and prepare derivative works based upon such information. The rights and remedies available to a party hereunder shall not limit or preclude any other available equitable or legal remedies.

10. Audits. Stryker shall have the right, on its own or through its designated agent or third party accounting firm, to conduct an on-premises audit of Customer's use and deployment of the Software for compliance with this Agreement no more than once per calendar year. Stryker's written request for audit will be submitted to Customer at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Customer's business. If such audit discloses that Customer is not in material compliance with the terms of this Agreement, then Customer shall be responsible for purchasing additional licenses to bring Customer into compliance including any back Maintenance on such licenses.

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 THIS AGREEMENT FOR THE APPLICABLE SOFTWARE. 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. 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.

13. Miscellaneous. The provisions of Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 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 and these License Terms and Conditions shall exclusively govern the license of the Products.