

MEDSTRAT JOINTS - AGREEMENT

1. OVERVIEW.

(a) On and subject to the terms and conditions of this Agreement and timely payments of the fees and charges set forth herein, Medstrat, Inc. ("**Medstrat**") shall provide Customer with license(s) to its proprietary software which provides a digital templating / pre-operative planning system ("**Joints**").

(b) Medstrat's provision of services ("**Joints License Services**") shall include software license(s), access, administration, backup and storage of Customer's digital studies and other services as specified in this Agreement, including the use of Medstrat's proprietary Joints software and other Medstrat proprietary digital imaging software, if applicable. The fee for these license services ("**Joints License Fee**") is due and payable in advance on the first day of each month during the term ("**Joints License Term**" or "**Term**"). The initial Term is one month unless specified otherwise and commences with the first day of the month following the provision of licenses by Medstrat to Customer ("**Installation Date**").

2. SOFTWARE.

(a) Subject to Customer's continuing compliance with the terms and conditions of this Agreement and payment of all fees and charges, beginning on the Installation Date and for the Joints License Term, Medstrat grants to Customer a limited, non-exclusive and non-transferable license to download, install, and use the Joints software provided by Medstrat under this Agreement solely for Customer's own use.

(b) The Joints software, including without limitation, source and object code, algorithms, methods of processing and any modifications or releases, and any originals and copies thereof in whole or in part, and all copyrights, trademarks, patents, trade secrets and other intellectual property rights therein are and shall remain the valuable and exclusive property of Medstrat and its licensors.

3. CUSTOMER RESPONSIBILITIES.

(a) Customer shall ensure that the Joints software is only accessed and used for purposes permitted by this Agreement. Customer shall ensure that the Licensed Users' use of such software shall at all times be in compliance with all applicable laws, regulations and this Agreement. Customer shall remain solely responsible for all access to and use or misuse of the Joints software by any employee, agent, consultant or officer of Customer or any other person who obtains access to the Joints software by or through Customer.

(b) Customer's studies and other content, collectively ("**Content**"), includes all data made available, processed, displayed or transmitted in connection with the Joints software. No actions or inactions by Medstrat or any Medstrat representative shall constitute review or approval of Customer's or Customer's patient's Content. Customer shall be responsible for reviewing all Content after such is formatted and stored on such software. Customer shall promptly notify Medstrat of any errors or mistakes in any such Content. Customer shall implement and be responsible for appropriate review and confirmation procedures to verify and confirm from time to time all Content. If Customer suspects that the Content or the Joints software has been wrongly or fraudulently used, or used in connection with or as part of a fraud or other misrepresentation, Customer shall immediately notify Medstrat in writing.

(c) Customer represents and warrants ("**Customer Warranty**") that Customer has the right and authority to enter into this Agreement and to comply with and perform its obligations under this Agreement, Customer is the author and owner of or has all necessary rights to use and to permit Medstrat to use all Content as necessary in accordance with this Agreement, and the Content complies with all applicable laws and regulations, does not violate any right of privacy, is not libelous or obscene and does not infringe any patent, copyright, trade secret or other third party intellectual property right. The foregoing Customer warranty shall be deemed automatically reaffirmed by Customer each time Customer uses the Joints software.

4. INVOICE AND PAYMENT.

(a) The Joints License Fee is billed monthly and is based upon the Customer's License ("**Distributor License**" or "**Implant Rep License**") and studies received monthly by a Customer's Joints Server ("**Studies**") as given by Schedule A. In addition to the services described above, Distributor Licenses include one license per distributor employee, Joints To Go Software, Joints Relay Software and collaborative physician licenses ("**Collaborative License**"); whereas, Implant Rep Licenses include one (1) licensed user and Joints To Go Software only.

(b) All monthly fees are due and payable as of the first day of the month. All monthly fees or other amounts due Medstrat but not paid within thirty (30) days of the due date shall accrue interest at the lower of 1.5% per month or the highest rate permitted by applicable law. For amounts due other than monthly fees, the date of any Medstrat invoice to Customer shall be the "**Invoice Date**" and all amounts not paid within thirty (30) days of the Invoice Date shall accrue interest at the lower of 1.5% per month or the highest rate permitted by applicable law. Unless Customer objects in writing to Medstrat concerning a Medstrat invoice within thirty (30) days of Customer's receipt of such invoice, Medstrat's information reflected in such invoice and such invoice itself shall be deemed conclusive and accepted by Customer. Customer shall not add any restrictive wording or similar legends to any monthly fee payment and to the extent Customer does add any such restrictive wording or legends, Customer agrees that Medstrat may ignore the same and any such wording or legends shall be deemed null and void. Customer shall promptly pay Medstrat all fees and charges required under this Agreement in US currency, without deduction, setoff or delay for any reason.

5. CUSTOMER INDEMNITY.

(a) Customer indemnifies, and agrees to defend and hold Medstrat harmless from any and all claims or Damages arising out of Customer's or Customer's employees' or agents' use or misuse of the Joints software or the Joints License Services; the Content or any claim that any Content, or the Customer's access to or use or misuse of any such Content, violates any law, regulation or right of any party, or is defective or hazardous; any claims or Damages caused by Customer's breach of this Agreement or other wrongful action by Customer's employees or contractors, or any other person who gains access to the Joints software through Customer's actions or inactions.

(b) In the event of any such claim or Damage, Medstrat shall have the right in its sole discretion to suspend performance of this Agreement in whole or in part and may require Customer to modify the Content until or unless the claim and Damage is resolved to the satisfaction of Medstrat. The decision by Medstrat to request or not to request Customer to modify or remove Content shall not enlarge or increase Medstrat's duties or liability under this Agreement.

(c) For purposes of all indemnity obligations, exclusive remedies and limitations of liability set forth in this Agreement, "**Medstrat**" shall be defined as Medstrat, its affiliates, licensors and vendors, and its and their employees, directors, officers, agents, representatives, subcontractors and suppliers; "**Customer**" shall be defined as Customer, its affiliates and its and their employees, directors, officers, agents and representatives; and "**Damages**" will refer collectively to all injury, damage, liability, loss, penalty, interest and expense incurred.

6. MEDSTRAT WARRANTY.

(a) Medstrat warrants that it has the right and authority to enter into this Agreement and to comply with and perform its obligations under this Agreement. Medstrat's sole obligation for failure to meet these warranties which are reported by Customer to Medstrat in writing within ninety (90) days after the Installation Date for the Joints software or within thirty (30) days after the performance or failure of such services for Joints License Services is in Medstrat's sole discretion to use reasonable efforts to cure a breach or failure of the Joints software or Joints License Services within fifteen (15) days of Medstrat's reproduction of such

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breach or failure, provided that Customer makes available to Medstrat sufficient data and assistance to enable the failure to be replicated or to re-perform the applicable service.

(b) Neither Medstrat nor its members, affiliates, employees, contractors or licensors shall in any event be liable to Customer or to any third party for any damages, including but not limited to lost profits, revenues, business opportunities or business advantages whatsoever, nor for any special, consequential, indirect or incidental, punitive or exemplary damage, losses or expenses directly or indirectly relating to the Joints software, the Joints License Services, or any other Medstrat service or product, or any portion thereof, or the use or misuse thereof or any telecommunication device or system or other electronic transmission, system or software, the failure, non-compliance or limited availability of same, the accuracy, inaccuracy or completeness of any information provided in or by the Joints software, the Joints License Services, any other Medstrat service or product, or any obligation under or subject matter of this Agreement, whether such claim is based upon breach of contract, breach of warranty, negligence, strict liability in tort or any other theory of relief or whether or not Medstrat is informed in advance of the possibility of such damages.

(c) The Joints software, the Joints License Services, any other Medstrat service or product, and all portions thereof, are provided "AS IS" and without warranty of any kind, either express or implied by operation of law or otherwise. Medstrat hereby expressly disclaims any and all other warranties, conditions or representations expressed or implied, oral or written, including any and all implied warranties or conditions of title, express warranties and representations of non-infringement, merchantability, fitness or suitability for any purpose whether or not Medstrat knows or has reason to know, whether alleged to arise by law, by custom or usage in the trade, to customer or to any other person. Medstrat does not warrant or represent that the Joints software, the Joints License Services, any other Medstrat service or product, or any part thereof, including but not limited to the databases and documentation, will meet Customer requirements, will be uninterrupted or error free or that any defect therein will be or can be corrected. Customer acknowledges that electronic transmissions, communications and databases are subject to errors, tampering and break-ins and that while Medstrat will implement reasonable security precautions to attempt to prevent such occurrences, Medstrat does not guarantee that such events will not take place. Medstrat disclaims responsibilities for any activities of Customer or any other third party.

(d) Services related to integrations with Customer's electronic case-handling systems may be made available. Time performing such services, if any, is subject to Customer's approval and will be billed at Medstrat's then-current rates. Medstrat is not responsible for third party charges, if any, which may apply to integrations/interfaces.

7. MEDSTRAT INFRINGEMENT DEFENSE.

(a) At its own expense, Medstrat shall defend or settle any third party claim against Customer and pay claims that a court may award for any third party action against Customer in any suit alleging that the Joints software or the Joints License Services furnished under this Agreement infringes any United States patent, trademark, copyright or trade secret of such third party, provided that Medstrat is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and cooperation by Customer and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise with respect thereto. Medstrat is not responsible for any settlement it does not approve in writing. The foregoing is in lieu of any warranties of non-infringement, which are hereby disclaimed. The foregoing obligation of Medstrat does not apply if the Customer Content is the cause of the infringement, or with respect to any part of the Joints software or the Joints License Services: (i) modified or made in whole or in part to Customer's specifications; (ii) which is modified by or for Customer by any person without Medstrat's knowledge and consent, if the alleged infringement relates to such modifications; (iii) combined with information, products, processes or materials of Customer where the alleged infringement relates to such combination or to the information, products, processes or materials of Customer; (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (v) where Customer's use of the Joints software or the Joints License Services is incident to an infringement not resulting primarily from such system or service or such use is not strictly in accordance with this Agreement and the applicable documentation and operating procedure.

(b) At any time Medstrat may, at its option: (i) procure for Customer the right to continuing use of any allegedly infringing portion of the Joints software or the Joints License Services; (ii) replace at Medstrat's expense any allegedly infringing portion of the Joints software or the Joints License Services, with a suitable non-infringing product or service which substantially functions in accordance with the applicable specifications for any such allegedly infringing product or service; (iii) modify at Medstrat's expense the allegedly infringing portion of the Joints software or the Joints License Services, so that it becomes non-infringing, provided that such system or service as so modified continues to function substantially comparable to any such allegedly infringing system or service; or (iv) terminate the Joints Service Term and Customer's rights to use the Joints License Services and the Joints software, or portion thereof, and upon such termination and Customer's return to Medstrat of the components of the terminated software or services on Customer's premises or otherwise in Customer's control, Medstrat shall refund to Customer a pro-rata portion of the applicable Joints License Fee, if any, as Customer's sole and exclusive remedy against Medstrat.

8. TERM AND TERMINATION.

(a) Notwithstanding anything to the contrary in this Agreement: (i) Medstrat may immediately terminate, restrict or suspend the Joints License Services and Customer's access to or use of the Joints software without notice to Customer; if Customer fails to pay Medstrat any charges when due; if Customer makes any false statements to Medstrat; if Medstrat suspects fraud, abuse or misuse by or through Customer or its users; Medstrat believes that Customer or its users use or Content may violate this Agreement or any laws or regulations or interferes in any way with Medstrat's provision of the Joints software to its customers or its business operations; or if Customer breaches any other material portion of this Agreement or any other agreement between Customer and Medstrat; or if Customer becomes insolvent, does not pay its debts or obligations when due or becomes subject to any proceedings under bankruptcy or similar laws; and (ii) Medstrat may terminate this Agreement and all of its obligations or duties to Customer under this Agreement in any event upon providing Customer with at least sixty (60) days prior written notice if Medstrat closes, terminates or otherwise disposes of any material portion of its business involving the Joints software or if there is a change in applicable laws, rules or regulations which materially and adversely restricts or impacts Medstrat's operation of such business.

(b) Unless specified otherwise in writing, the initial Joints License Term shall be one (1) month commencing on the Installation Date. The Joints License Term shall automatically renew for subsequent one (1) month periods at the end of a Term unless either party provides the other written notice of non-renewal at least thirty (30) days prior to a renewal date. Unless the parties otherwise agree, the Monthly License Fee for each renewal term shall be based on Medstrat's then-current rates for such services based on Customer's License (Distributor or Implant Rep) and Studies. As of the signing date below, Medstrat's current rates are listed in the attached Schedule A to this Agreement.

(c) Medstrat's offsite automated backup service includes retention of patient studies for a period of the greater of five (5) years or the amount required by HIPAA/HITECH regulations from the date of receipt of the study's files or until the termination of this Agreement. Additional monthly charges may apply to studies retained beyond this retention period or may be purchased at any time at the then-current rate.

(d) The respective obligations of Customer and Medstrat, which by their nature would continue beyond the termination of this Agreement, such as the obligations regarding confidentiality and limitations of liability, shall survive termination.

9. CONFIDENTIALITY.

(a) All information including, but not limited to, specifications, drawings, computer programs, technical or business information or other data or information concerning the

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Joints software, the Joints License Services, the operation or structure of Medstrat, any Medstrat customer or any other Medstrat product or service, in whatever form (**hereinafter "Confidential Information"**), furnished by Medstrat to Customer, or otherwise obtained by Customer whether in writing, orally or visually, or to which Customer has access under this Agreement or as part of its use of and access to the Joints software or the Joints License Services shall be considered Medstrat confidential information, and shall be subject to the following: (i) Customer shall restrict disclosure of the Confidential Information to such of its employees with a "need to know" (i.e., employees that require the Confidential Information to perform their responsibilities in connection with the Customer's use of and access to the Joints software or the Joints License Services in accordance with this Agreement) and shall not disclose Confidential Information to any other person or entity without the prior written consent of Medstrat; (ii) Customer shall use the Confidential Information only for purposes of using the Joints software in accordance with this Agreement; (iii) Customer shall advise those employees who access the Confidential Information of their obligations with respect thereto; (iv) Customer shall copy the Confidential Information only as necessary for those employees who are entitled to receive it and ensure that all confidentiality notices are reproduced in full on such copies; and (v) Customer shall return all copies of such Confidential Information to Medstrat upon Medstrat's written request.

(b) Customer recognizes and agrees that the unauthorized use or disclosure of the Confidential Information would cause irreparable injury to Medstrat for which it would have no adequate remedy at law, and that a breach of this Section shall entitle Medstrat to obtain immediate injunctive relief prohibiting such breach, in addition to any other rights and remedies available to Medstrat. The obligations herein contained shall expressly survive the termination or expiration of this Agreement.

10. GENERAL.

(a) This Agreement and all attachments and schedules hereto, is the complete and exclusive statement of the agreement between the parties related to the subject matter hereto and supersedes any prior agreement, promise, representation, proposal or other communication, oral or written, between the parties. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement is sought. If any provision of this Agreement or any other agreement with Customer with respect to the Joints software or the Joints License Services shall be held to be invalid, illegal or unenforceable, such provision shall be modified to reflect the fullest legal and enforceable expression of the intent of the parties, or if not possible, severed, and the remainder of such agreement shall not be affected thereby. This Agreement and all rights and obligations of the parties under the Agreement shall be governed by the substantive laws, excluding conflicts rules, of the State of Illinois. Any legal action arising in connection with this Agreement must be commenced within two (2) years after the cause of action arises. Venue for all disputes arising out of or relating to this Agreement shall be in the State courts situated in DuPage County, Illinois, and the Northern District of Illinois federal courts.

(b) Neither Customer nor Medstrat shall be liable for any delay, failure in performance, loss or damage due to fire, explosion, power blackout, earthquake, volcanic action, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond their reasonable control, except that Customer's obligation to pay for the charges incurred for the Joints software or the Joints License Services received by Customer shall not be excused.

(c) This Agreement is subject to acceptance in Illinois by Medstrat.

CUSTOMER:

BY: _____ DATE: _____

PRINT NAME & TITLE: _____

ACCEPTED BY MEDSTRAT:

BY: _____ DATE: _____

PRINT NAME & TITLE: _____

(Rev 3/1/2012)

SCHEDULE A

	<u>Amount</u>	<u>Studies</u>
Distributor License:	\$2,500 / Month	250
Implant Rep License:	\$150 / Month	15
Additional Studies:	\$5 / Study	