

Intellijoint Capital Equipment Purchase Terms and Conditions

This Capital Equipment Purchase Terms and Conditions (“CEPTC”) Agreement is to be read in conjunction with the Capital Equipment Product Purchase Agreement (“CEPPA”) issued by Intellijoint that references this Agreement and is signed by both Parties. Unless otherwise agreed to in writing, the following terms and conditions apply to Customer’s purchases of Intellijoint products as further defined below. Each of Intellijoint and Customer is a “Party” and together the “Parties”.

Intellijoint manufactures the Intellijoint Navigation System including Intellijoint HIP or Intellijoint KNEE (the “System”). Customer wishes to use the System for use in total joint arthroplasty procedures (“Procedures”). The System comprises the components and parts listed under the heading Purchased Equipment on the CEPPA (the “Components”) as well as the one-time-use products listed on the CEPPA (“Consumables”). The System further comprises access to the cloud-based Intellijoint VIEW product for pre-operative planning (the “Services”). Each System workstation incorporates Intellijoint proprietary software and third-party software (the “Software”) which are licensed to Customer as described further below.

1. TERM, DELIVERY AND PAYMENT

- 1.1. **Term:** The term of this Agreement shall be 12 months from the Effective Date (the “Initial Term”) and will automatically renew for 12 months periods (each a “Subsequent Term” and together with the Initial Term the “Term”) unless terminated by one of the Parties in accordance with this Agreement.
- 1.2. **Termination:** Either Party may terminate this Agreement with or without cause upon 30 days’ written notice to the other Party. Upon termination the following will occur: (a) access to the Services and Software will be terminated; (b) Consumables and Components where title has been transferred to Customer will remain with the Customer; and (c) any Consigned Consumables shall be returned to Intellijoint by Customer at Customer’s cost.
- 1.3. **Delivery:** All Components and Consumables, including Purchased Equipment, ordered under this Agreement will be delivered EX Works (EXW, Incoterms 2020) at Intellijoint’s designated facility. Customer shall bear all freight, insurance, duties, and other costs associated with shipment from Intellijoint’s facility, and risk of loss shall transfer to Customer upon Intellijoint’s tender of the goods at such facility. Title to Consumables shall pass to Customer upon delivery EXW. Without limiting the foregoing, Intellijoint shall remain liable for any damage caused by improper boxing, crating, or packing prior to tender.
- 1.4. **Fee Per Use:** Customer may use the System subject to the Fee Per Use License, outlined further below, and the payment of the Procedure Kit Fee outlined in the CEPPA, for each instance in which the System is used for a Procedure at an Affiliated Facility.
- 1.5. **Payment Terms and Invoicing:** Unless otherwise specified, Intellijoint shall issue invoices to Customer for orders fulfilled or on such other basis as Intellijoint may determine, and each invoice shall state the applicable currency for payment. Customer shall remit full payment to Intellijoint



within thirty (30) days from the invoice date. Late amounts may be subject to a late fee of one-point-five percent (1.5%) per month calculated on a simple non-compounding basis (18% per annum) or the maximum interest rate allowable by law, whichever is the highest. Customer agrees to pay any expenses incurred to process or compel the settlement of any late payments.

Intellijoint, at its sole discretion, reserves the right to discontinue further shipments, without prejudice to any other lawful remedy, until past due payments are made and Intellijoint receives satisfactory assurances of the Customer's credit standing. Should Customer elect to cancel its order, in whole or in part, Customer shall be liable to Intellijoint for reasonable cancellation charges including but not limited to all costs and expenses incurred by Intellijoint in connection with procuring and filling Customer's purchase order up to the date of cancellation.

- 1.6. Invoice Disputes.** If the Customer disputes any amount on an invoice in good faith, the Customer shall pay the undisputed invoice amount when due along with a written explanation specifying the disputed amount. Upon resolution of the dispute, any disputed amount that is determined to be due and owing to Intellijoint by the Customer shall be paid by the Customer to Intellijoint immediately upon such resolution. Any invoice dispute is waived by Customer if such notice is not received by Intellijoint within thirty (30) days of the invoice date. All payments are non-refundable.
- 1.7. Taxes & Gross Up:** All fees are exclusive of taxes, levies or duties imposed by taxing authorities ("Taxes"), and Customer shall be responsible for any applicable taxes, levies or duties (excluding taxes based on Intellijoint's income). If Customer is a tax-exempt entity or claims exemption from any Taxes, Customer shall provide a certificate of exemption, upon execution of this Agreement, and after receipt of valid evidence of exemption, Intellijoint shall not charge any Taxes from which Customer is exempt. All payments to be made by Customer to Intellijoint under this Agreement shall be made free and clear of and without any tax withholding unless Customer is required to do so, in which case the sum payable by Customer shall be increased to the extent necessary to ensure that Intellijoint receives a sum net of any deduction or withholding equal to the sum which it would have received had no such tax withholding been made or required to be made. Customer shall promptly furnish Intellijoint with all official receipts evidencing payment of Taxes due under or in relation to this Agreement.
- 1.8. Price Adjustment:** All prices provided under this Agreement are based on a discount from list price. Intellijoint may, without amendment to this Agreement, adjust the list price to account for inflation for each Subsequent Term by an amount equal to or less than the annual Consumer Price Index published for the United States.

2. WARRANTY

- 2.1. Software Warranty:** Intellijoint warrants that, for a period of one (1) year from their date of delivery to Customer ("Warranty Period"), will function in all material respects in accordance with Intellijoint's published specifications and documentation applicable to the version of the Software made available to Customer at the time of delivery, as updated from time to time to reflect non-material changes, corrections, or enhancements.



- 2.2. Component Warranty:** Intellijoint warrants during the Warranty Period that the Components of the Purchased Equipment will be free from defects in workmanship and materials when used for Procedures in accordance with this Agreement and Intellijoint's instructions.
- 2.3. Consumables Warranty:** Consumables are warranted to be free from defects in workmanship and materials until the earlier of (a) their use in a Procedure, or (b) the expiration date printed on the labeling. Consumables are single-use only and no warranty applies after initial use.
- 2.4. Services Warranty:** Intellijoint warrants that, during any period in which the Customer has access to the Services that the Services will function in all material respects in accordance with Intellijoint's specifications and documentation.
- 2.5. Regulatory Warranty:** Intellijoint warrants that, as of the delivery date, the Purchased Equipment is lawfully marketed, licensed, and cleared (as applicable) for their intended use in the jurisdiction(s) where provided to Customer. If at any time the Purchased Equipment ceases to hold, or cannot maintain, the required regulatory clearances or approvals in a jurisdiction, Intellijoint shall notify Customer promptly in writing and the Parties shall cooperate in good faith to cease use of the affected Purchased Equipment.
- 2.6. Exclusive Remedies:** Customer's sole and exclusive remedy for any breach of the warranties in Sections 2.1-2.4 shall be, at Intellijoint's option, the repair or replacement of the non-conforming Software, Services, Components or Consumables. If the Purchased Equipment must be removed from use under Section 2.5 then Intellijoint will refund Customer a pro-rated portion of the purchase price for any affected Purchased Equipment calculated as purchase price x 0.2 * (5 – years) where years is the number of years since delivery of the Purchased Equipment rounded up to the nearest year and with a maximum value of 5.
- 2.7. Warranty Conditions:** The warranties set out in Sections 2.1-2.5 are contingent upon: (a) the System being used in accordance with approved labeling and directions for use; (b) the System not being altered by Customer; (c) the System being used in conjunction with Consumables provided under this Agreement; (d) the Consumables not being reused, reprocessed, remanufactured, reconstructed, or otherwise altered after their initial single use; and (e) proper maintenance of the System in accordance with Company recommended maintenance procedures. Any warranty claim under this Section 2 must be submitted in writing within ninety (90) days from the date the Customer knew or reasonably should have known of the defect.
- 2.8. No Implied Warranties:** TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET OUT HEREIN, NEITHER PARTY MAKES ANY WARRANTIES, CONDITIONS, ENDORSEMENTS, REPRESENTATIONS OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABILITY QUALITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS ANY WARRANTY OR LIABILITY THAT CANNOT BE EXCLUDED OR



LIMITED UNDER APPLICABLE LAW, INCLUDING LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR ANY STATUTORY WARRANTIES THAT CANNOT BE LAWFULLY EXCLUDED.

3. PRODUCT AVAILABILITY AND SUPPORT

- 3.1. System Availability:** The Purchased Equipment has been purchased by Customer for the sole purpose of performing Procedures in accordance with the quantities outlined in the CEPPA. Consumables must be purchased by Customer in advance of use. Customer shall maintain sufficient quantities of Consumables at each Affiliated Facility to support expected Procedure volumes and shall be solely responsible for monitoring, managing, and replenishing its own inventory. Upon request, Intellijoint may assist Customer in reviewing historical usage or establishing recommended inventor levels; however, Customer remains solely responsible for timely ordering and maintaining adequate stock.
- 3.2. Late Notice Delivery Fee:** If Customer requires delivery of additional Systems, Components, or Consumables, and Customer provides Intellijoint with less than 48 hours' notice prior to the Procedure start time, then an additional Late Delivery Notice Fee will apply as outlined in the CEPPA.
- 3.3. Case Support:** Customer agrees that, on the earlier of (a) sufficient staff training or (b) 120 days after the Effective Date (collectively the "Product Onboarding Period"), all use of the System for Procedures will be performed independently by Customer's staff and physicians. If for any reason a direct sales representative of Intellijoint is requested for Procedure support after the Product Onboarding Period an additional Direct Case Support Fee will apply as outlined in the CEPPA.
- 3.4. Consumable Products:** Consumables must be purchased only through Intellijoint or its authorized distributors to ensure they meet Intellijoint's quality, regulatory, and traceability requirements. Consumables are labeled "For Single Use Only," "Single Use," "Do Not Reuse," or similar, and Customer agrees they will be used only once in connection with delivering patient care. Any reuse, reprocessing, remanufacturing, or reconstruction of Consumables is strictly prohibited. Intellijoint is not responsible for delays, Procedure cancellations, or other consequences arising from Customer's failure to maintain adequate Consumable inventory. In addition to other available remedies, the resale or reuse of any Consumable is subject to the laws and remedies available for patent infringement.
- 3.5. Product Upgrades:** Intellijoint may develop and offer Upgrades to Systems, Software or Services (as further defined in Appendix A), for which Intellijoint generally charges additional license or subscription fees, regardless of version numbering. If the Customer wants to obtain Upgrades, Intellijoint will issue a revised CEPTC to be signed by both Parties to incorporate the Upgrades into this Agreement. Upgrades will be made available to Customer at prices equal to those offered to other similarly situated customers of Intellijoint.
- 3.6. Support and Maintenance:** During the Warranty Period, Intellijoint will provide basic support and maintenance for the System at no additional charge solely as necessary to ensure that the Software, Services and Components continue to conform in all material respects to the warranties in Section 2 ("Standard Support"). Standard Support includes: (a) "Reactive Maintenance",



meaning the repair or replacement of Software or Components that exhibit a verified defect in materials, workmanship, or functionality when used in accordance with this Agreement and Intellijoint documentation; and (b) “Corrective Updates”, meaning software patches or updates required to correct material defects or maintain compliance with applicable law or regulatory guidance. Standard Support does not include: (i) preventive or scheduled maintenance, calibration, cleaning, inspection, or testing; (ii) the replacement of Components or Consumables due to normal wear and tear, loss, or damage due to misuse, accident, negligence, or failure to follow Intellijoint documentation; (iii) Updates or Upgrades as further defined in Appendix A; (iv) on-site support services. Intellijoint may, from time to time and at its sole discretion, implement updates, upgrades, patches, or enhancements to the Services, including security updates, performance improvements, and new features. Such updates shall not materially degrade the core functionality of the Services. To obtain additional support and maintenance services, including Updates and preventative maintenance, Customer must purchase Extended Support and Maintenance (“ESM”), as outlined in Appendix A, on an annual basis.

- 3.7. Expected Service Life:** The Purchased Equipment is designed, validated, and marketed with an expected service life of five (5) years from the date of delivery to Customer (“Initial Service Life”), provided it is maintained and used in accordance with Company documentation and applicable regulatory authorizations. Company may, in its sole discretion, extend the Initial Service Life in successive one (1)-year increments (“Extended Service Life”) upon written notice to Customer, subject to (a) Customer’s purchase and continued payment of the applicable ESM package for the affected Purchased Equipment, and (b) Company’s determination that such Purchased Equipment remains supportable and compliant with applicable regulatory and safety requirements. The pricing of ESM for Purchased Equipment that has been granted an Extended Service Life may be adjusted by Company from time to time to reflect the increased age and cost of supporting such Purchased Equipment. Except where an extension has been granted in accordance with this Section, Company makes no warranty that any Purchased Equipment will remain operational or supported beyond its Initial Service Life. Upon expiration of the Initial Service Life or any Extended Service Life, the affected Purchased Equipment shall be deemed obsolete and shall not be used in clinical practice. Customer shall ensure that all affected Purchased Equipment is withdrawn from clinical use upon expiration of their Initial Service Life or Extended Service Life. Continued use of Purchased Equipment beyond the Initial Service Life or Extended Service Life is at Customer’s sole risk and responsibility, and all warranties, indemnities, and obligations of Company with respect to such Purchased Systems shall automatically cease. Company shall have no responsibility or liability whatsoever for any continued use, maintenance, or servicing of any Purchased Equipment after the expiration of its Initial Service Life or any Extended Service Life. Continued use of any Purchased Equipment that is beyond its Service Life constitutes a material breach of this Agreement and grounds for immediate termination of this Agreement.
- 3.8. Replacement of Components:** Should any System or its Components become lost, damaged or broken due to the actions, misuse, or negligence of a User, Customer, or Customer’s employees, Customer shall be responsible for the replacement of the System or its Components at the then-



current replacement price as maintained by Intellijoint. Customer is also responsible for replacing any Components that require replacement due to normal wear and tear while the System remains within its Service Life unless Customer has purchased ESM.

- 3.9. Discontinued Products:** Intellijoint may discontinue any product, product line or business segment and its sole discretion and any such discontinuation shall not constitute a breach of this Agreement.

4. INTELLECTUAL PROPERTY AND LICENSING

- 4.1. Ownership:** Intellijoint shall retain all ownership of the System, and any portion thereof, along with all intellectual property rights in the System unless otherwise explicitly transferred to Customer by this Agreement or an agreement signed by both Parties. In no event shall anything in this Agreement transfer any ownership right, title or interest in the Software, the Services, or any part thereof, to Customer. Customer agrees to ensure that all Users agree and adhere to the provisions of this Section 4. Customer acknowledges that the System may be covered by one or more patents owned by or licensed to Intellijoint. Nothing in this Agreement grants Customer any license or rights under any such patents except as expressly necessary to use the System in accordance with Section 4.2.
- 4.2. Fee Per Use License:** Subject to compliance with this Agreement, Intellijoint hereby provides Customer with a limited, revocable, non-transferable, non-exclusive license to permit its Affiliates, surgeons, and surgical teams (collectively “Users”) to use the System solely to perform Procedures at the Affiliated Facilities. Customer shall ensure that Users do not use the System for any off-label purposes or in any experimental procedure without Intellijoint’s prior written authorization. Customer may publicly display or perform the System, including the capture and publication of any user interfaces, only for academic, research, education and demonstration purposes and in accordance with any branding guidelines published by Intellijoint. Customer shall not, and shall ensure Users do not: (a) publish, share, distribute, rent, lease, lend, alter, modify, adapt, create derivative works of, translate, deface, or reverse engineer the System or any portion thereof, or attempt to do so, or permit, acquiesce, authorize or encourage any other party to do so, without the express written permission of Intellijoint; (b) circumvent, disable, or otherwise interfere with any security-related features, license management, usage tracking, or technical protection measures embedded in the System; (c) remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the System; or (d) reproduce or attempt to reproduce the System, or any portion thereof, without the express written permission of Intellijoint. Only Users at Affiliated Facilities may use the System unless Intellijoint gives its prior written consent (which consent shall not be unreasonably withheld) to have the System used at another location.
- 4.3. Service Access and End-User Terms:** Additional rights and limitations related to the use of the Services are governed by the Intellijoint VIEW Terms of Service located at <https://www.intellijointsurgical.com/view-terms-of-service/> (“Service Terms”). To use the Services a User must create an account and accept the Service Terms. All account information will be



handled by Intellijoint in accordance with the Privacy Notice. Customer is not required to obtain or manage such acceptances, and User acceptance of the Service Terms does not modify Customer's rights or obligations under this Agreement. Customer shall, however, ensure that only its authorized personnel use the Services. In the event of any conflict between the Service Terms and this Agreement, this Agreement governs Customer's enterprise-level rights and obligations, and the Service Terms govern the individual User's conduct and permissible personal use of the Services. Customer retains all ownership rights to any data submitted through the Services including medical imaging data ("Customer Data"). Customer is responsible for ensuring it has appropriate rights to submit Customer Data to the Services.

- 4.4. Customer Data License:** Customer grants Intellijoint a worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, modify, display, and transmit Customer Data solely to: (i) provide, maintain, and support the Services for Customer; (ii) generate de-identified aggregate analytics, benchmarking data, and statistical insights; (iii) improve, develop, and enhance the Services, including training machine learning algorithms and developing new features; and (iv) comply with applicable law or legal process.
- 4.5. Feedback and Innovations:** Customer and its Users may provide Intellijoint with feedback, suggestions, ideas, inventions, or improvements relating to the System ("Feedback"). All Feedback, and all intellectual property rights therein, shall be the sole and exclusive property of Intellijoint, and Customer and its Users hereby irrevocably assign all such rights to Intellijoint. Intellijoint may use, commercialize, distribute, or otherwise exploit the Feedback or any related developments without restriction or obligation. Customer and its Users waive any claims to compensation or recognition and covenant not to assert or permit any claim or action that would restrict or interfere with Intellijoint's or its partners' use, distribution, or commercialization of the System, the Services, or any related developments.
- 4.6. AI Prohibition:** Customer shall not use or permit the use of any System output, device telemetry, log files, imaging, or other signals generated by or processed through the System for training, testing, or tuning any artificial intelligence, machine learning, decision-support, or modeling system, except as expressly authorized in writing by Intellijoint.
- 4.7. Irreparable Harm:** Customer acknowledges that any breach of this Section 4 would cause irreparable harm to Intellijoint for which monetary damages would be inadequate, and Intellijoint shall be entitled to seek injunctive relief without posting bond.

5. REPORTING AND COMPLIANCE

- 5.1. Compliance with Laws and Use:** Customer shall use the Systems solely in accordance with their intended use, labeling, and instructions for use provided by Intellijoint, and in compliance with all applicable laws, regulations, professional standards, and regulatory approvals in the jurisdiction(s) where the Systems are used. This includes, without limitation: (a) compliance with the requirements of the U.S. Food and Drug Administration ("FDA"); (b) Health Canada; and (c) any other comparable regulatory authority with jurisdiction over the Systems (collectively, "Regulatory Authorities").



- 5.2. Cooperation:** Customer shall fully cooperate with Intellijoint in connection with any inspections, inquiries, or requests for information from Regulatory Authorities relating to the Systems, and shall promptly notify Intellijoint of any such contact.
- 5.3. Reporting Obligations:** Customer shall promptly report to Intellijoint, and in no event later than twenty-four (24) hours after becoming aware, any incident or near incident involving the System that resulted in, or could have resulted in, death or serious injury. Customer shall report within five (5) business days any other complaints, notices, or comments relating to the identity, quality, durability, reliability, safety, effectiveness, or performance of the System. Without limiting the foregoing, Customer shall provide Intellijoint with all information necessary to enable Intellijoint to comply with its post-market surveillance and vigilance reporting obligations under applicable law, including without limitation: (a) United States: Medical Device Reporting requirements under 21 C.F.R. Part 803; (b) Canada: Medical Device Regulations, SOR/98-282, including mandatory problem reporting requirements under sections 59–61; or (c) any other comparable regulatory authority with jurisdiction over the Systems. For clarity, Customer’s reporting obligations under this Section 5.3 are in addition to, and not in substitution for, any mandatory reporting obligations Customer or its personnel may have directly to Regulatory Authorities under applicable law.
- 5.4. Intellijoint Notification:** Intellijoint shall promptly notify Customer of any adverse event, field action, recall, correction, or other matter relating to the safety, performance, or regulatory compliance of the System that Intellijoint is required to report to a Regulatory Authority and that may reasonably affect Customer’s use of the System. Such notice shall be provided in writing and in sufficient detail to allow Customer to comply with its own obligations to patients, staff, and applicable Regulatory Authorities.
- 5.5. Investigations:** Customer shall reasonably cooperate with Intellijoint in investigating any incidents, complaints, or reports, including providing timely access to relevant personnel, data, and medical records (subject to applicable privacy laws). Customer shall not file any report with a Regulatory Authority or initiate any recall or corrective action without Intellijoint’s prior written consent, unless such filing or action is legally required. Where local law requires Customer to file directly with a Regulatory Authority, Customer shall provide Intellijoint with advance written notice (where practicable) and a copy of any such filing promptly after submission.
- 5.6. Recall and Field Safety Corrective Action:** Intellijoint shall have sole authority to determine whether a recall or field safety corrective action (“FSCA”) is required and shall be responsible for all related regulatory filings and authority communications. Customer shall fully cooperate with Intellijoint in implementing and completing such recall or FSCA, including identification, segregation, return, or destruction of affected Systems. Unless a recall or FSCA results from Customer’s breach of this Agreement, negligence, willful misconduct, or unauthorized use, Intellijoint shall bear the reasonable costs and expenses of such recall or FSCA.
- 5.7. Failure to Comply:** Failure by Customer to comply with any of the obligations set forth in this Section 4, including timely reporting of incidents, cooperation with investigations, or execution of recall or corrective actions, shall constitute a material breach of this Agreement. In addition, any such failure shall give rise to an indemnity obligation by Customer under Section 9.3, and



Intellijoint shall be entitled to exercise any rights or remedies available under this Agreement or at law, including suspension of Customer's access to the Software or Services until the breach is remedied.

6. PRIVACY AND REGULATORY

- 6.1. Privacy:** The collection, use, retention, disclosure or other processing (collectively "Processing") of any personally identifiable information ("PII") or personal health information ("PHI") for use with the System is governed by the Intellijoint Privacy Notice, accessible at <https://www.intellijointsurgical.com/privacy-notice/>. If either Party wishes to Process PII or PHI in a manner not contemplated by the Privacy Notice, the Party intending to Process the PII or PHI (the "Requesting Party") must provide prior written notice to the other Party (the "Approving Party") regarding its intention(s) and the Requesting Party must further obtain the prior written agreement of the Approving Party prior to Processing the PII or PHI in any manner that would impose legal obligations with respect to the Processing of the PII or PHI of the Approving Party. For clarity, Intellijoint does not require the upload, use, storage or processing of identifiable PHI or PII for any operational or functional purpose related to the System.
- 6.2. De-Identified Data Architecture:** Intellijoint does not require the upload, use, storage or processing of identifiable patient related PHI or PII for any operational or functional purpose related to the Services. The Services are designed to allow surgeons to plan total joint arthroplasty procedures using patient x-rays, implant templates, and modelling. The Services are designed, architected, and operated as a de-identified surgical planning platform. Upon upload to the Services, all patient imaging content is processed through Intellijoint's automated de-identification system, which removes DICOM metadata tags that commonly contain patient PHI or PII and the Services then discard all original files containing such metadata. Because the Services process and store only de-identified patient data through the automated system described above, Intellijoint's position is that this de-identified data does not constitute PHI under HIPAA or PHIPA or Personal Data under the GDPR or any substantially similar privacy legislation.
- 6.3. Privacy Roles:** For purposes of applicable privacy laws, Customer is the "data controller" or "covered entity" with respect to any personal information, personal health information, or protected health information collected or used in connection with the System. Customer shall be responsible for ensuring a valid legal basis for processing, providing required notices, obtaining necessary consents, and complying with all applicable privacy and data protection laws. If the Services are used as intended Intellijoint does not act as a "Business Associate" under HIPAA or a "data processor" under GDPR with respect to standard use of the Services, and no Business Associate Agreement ("BAA") or Data Processing Agreement ("DPA") is required for such standard use. However, if Customer determines, based on its own legal analysis, institutional policies, or interpretation of applicable law, that a BAA or DPA is required or advisable for Customer's use of the Services, Intellijoint will cooperate in good faith to negotiate and execute a separate BAA or DPA on mutually agreeable terms.



- 6.4. Customer Responsibilities:** Intellijoint's automated process removes standard DICOM metadata tags but cannot detect, analyze, or remove patient identifying information that is: (a) burned into or overlaid on image pixels (such as patient names, medical record numbers, or dates visible within the x-ray image itself); (b) contained in non-standard or proprietary DICOM tags; (c) embedded in file names, folder names, or free-text fields; or (d) capable of re-identification when combined with other information. Customer is solely responsible for ensuring that: (i) imaging data uploaded to the Services does not contain burned-in identifiable information; (ii) Users are trained to identify and prevent upload of images with burned-in identifiable information; (iii) file names, case notes, and other User-entered content do not include patient identifying information; (iv) any verification tools provided by Intellijoint are used to check images before upload; and (v) institutional policies and procedures are implemented to support proper use of the Services with de-identified data only.
- 6.5. Security Measures:** Intellijoint shall implement and maintain appropriate technical and organizational measures, consistent with industry standards and applicable privacy laws, designed to protect personal information against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration, or disclosure. Such measures shall include, at a minimum, encryption in transit, access controls, and audit logging.
- 6.6. Breach Notification and Cooperation:** Each Party shall promptly, and in no event later than seventy-two (72) hours after becoming aware, notify the other Party of any actual or suspected unauthorized access to or disclosure of PII or PHI in its possession or control ("Data Breach"). Each Party shall fully cooperate with the other in investigating, mitigating, and complying with any legal or regulatory obligations arising from a Data Breach, including notifying affected individuals or Regulatory Authorities as required.
- 6.7. Canadian Privacy Compliance:** To the extent applicable to this Agreement, Intellijoint shall comply with: (a) the Personal Health Information Protection Act, 2004 (Ontario) ("PHIPA"); (b) the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 ("PIPEDA"), where applicable; and (c) any provincial privacy legislation deemed substantially similar to PIPEDA. Intellijoint agrees not to use or further disclose any Personal Information or Personal Health Information (as defined under PHIPA, PIPEDA, or applicable provincial laws) other than as permitted by applicable law and the terms of this Agreement. Intellijoint shall make its internal practices, books, and records relating to such information available to the extent required by PHIPA, PIPEDA, or other applicable law.
- 6.8. US Privacy Compliance:** To the extent applicable to this Agreement, Intellijoint shall comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d ("HIPAA"), and its implementing regulations, including the Privacy Rule, Security Rule, and Breach Notification Rule. Intellijoint agrees not to use or further disclose any PHI (as defined under HIPAA) other than as permitted by applicable law and the terms of this Agreement. Intellijoint shall make its internal practices, books, and records relating to PHI available to the extent required by HIPAA.
- 6.9. Access to Books and Records (US Only):** The following clause is included herein to address Section 1861(v)(1)(I) of the Social Security Act and corresponding regulations to the extent it applies to



this Agreement (as well as any prior agreements for the same or similar services). If said section of the Social Security Act is not applicable to this Agreement then this section shall be deemed not to be part of this Agreement and shall be null and void. Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, Intellijoint shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement, books, documents, and records which are necessary to verify the nature and extent of costs incurred by Intellijoint under this Agreement; and if Intellijoint carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve (12) month period (including contracts for both goods and services in which the service component is worth \$10,000 or more over a twelve (12) month period), with a related organization, such subcontract must contain a clause to the effect that until the expiration of four years after the furnishing of services pursuant to such subcontract, the related organization shall make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, the subcontract, books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

- 6.10. Exclusion and Debarment (U.S. Only):** Intellijoint represents and warrants that it has not been debarred, suspended, excluded, or otherwise determined to be ineligible to participate in any U.S. federal healthcare program, including without limitation Medicare and Medicaid (“Debarred”). Intellijoint shall immediately notify Customer if, during the Term, it becomes Debarred or receives notice of actual or threatened action that could result in Debarment. Customer shall have the right to terminate this Agreement immediately upon written notice if Intellijoint becomes Debarred.

7. INSURANCE

- 7.1. Insurance:** Intellijoint shall maintain, at its expense, insurance policies with financially sound and reputable insurers sufficient to cover its potential liabilities under this Agreement and as required by applicable law, including: (a) Commercial general liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence; (b) Worker’s compensation and employer’s liability insurance per statutorily required minimums in the amount of Two Million Dollars (\$2,000,000) for each incident, Two Million Dollars (\$2,000,000) disease-policy limit and Two Million Dollars (\$2,000,000) disease for each employee; (c) Medical device liability insurance in the amount of Ten Million Dollars (\$10,000,000) for products and completed operations; and (d) Cyber liability of Five Million Dollars (\$5,000,000) in coverage for network security and privacy risks including coverage for related regulatory defense and penalties and coverage for data breach expenses.
- 7.2. Subrogation:** All insurance policies shall waive subrogation rights against Customer except to the extent attributable to Customer’s gross negligence or willful misconduct.
- 7.3. Evidence:** Intellijoint shall, upon written request, provide Customer with certificates of insurance evidencing the foregoing coverages.



7.4. Professional Liability: Nothing in this Section 6 shall be construed to relieve Customer, its physicians, or staff of their responsibility to maintain professional liability and malpractice insurance as required by applicable law.

8. CONFIDENTIALITY

- 8.1. Confidentiality:** As used herein, the “Confidential Information” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “Discloser”) to the other Party (the “Recipient”), which may include without limitation: (a) information the Discloser has marked or identified as confidential or proprietary; (b) intellectual property including but not limited to trade secrets, unpublished patent applications, patent strategies, and related documentation; (c) Discloser’s business plans, business methodologies, financial condition, financial projections, or development plans; (d) all pricing, discounts, rebates, payment schedules, and other commercial terms between Intellijoint and Customer (“Pricing Information”) and (e) information that given the nature or circumstances of disclosure, should reasonably be understood to be confidential. Recipient agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third-party any Confidential Information of the Discloser, except as approved in writing by the Discloser, and will use the Confidential Information of the Discloser only as reasonably necessary to fulfill the purposes of this Agreement. The Recipient will also protect such Confidential Information with at least the same degree of care that the Recipient uses to protect its own Confidential Information, but in no case, less than reasonable care. For clarity, the terms of this Agreement are confidential and shall not be disclosed by either Party except to those employees, agents or officers or professional advisors with a need to know.
- 8.2. Access to Confidential Information:** The Recipient will limit access to the Confidential Information of the Discloser to only those of the Recipient’s affiliates, employees, partners, contractors, investors or authorized representatives having a need to know (herein “Representatives”). Prior to a Representative receiving Confidential Information they will be advised of the obligations contained in this Agreement. Recipient undertakes to ensure that all Representatives to whom it discloses the Confidential Information will comply with the confidentiality obligations set out in this Section 8 as if they were parties to this Agreement. Recipient further undertakes to ensure its Representatives enter into written confidentiality and non-disclosure agreements substantially similar to this Agreement. Representatives must either agree in writing to be bound by this Agreement, or have previously entered into a binding confidentiality agreement with the Recipient that affords substantially similar protection of the Confidential Information as this Agreement.
- 8.3. Pricing Information Restrictions:** Customer shall not disclose Pricing Information to any third party except: (a) Customer’s Affiliates under common control; (b) Customer’s professional advisors (attorneys, accountants, auditors, financial advisors, insurance brokers, and consultants) who need the information to provide services to Customer and who are either bound by professional confidentiality obligations or have agreed in writing not to disclose the Pricing Information to their other clients or third parties; (c) group purchasing organizations of which Customer is a member



that maintain member pricing in confidence; (d) acquirers, investors, or lenders in connection with a transaction involving Customer, subject to confidentiality obligations; or (e) as required by law. Customer shall ensure that any party to whom it discloses Pricing Information pursuant to (a) through (d) above maintains the confidentiality of such information and does not disclose it to third parties. Customer specifically agrees to instruct any shared service provider (such as an accounting firm, CFO service, or consulting firm that provides services to multiple healthcare entities) that the Pricing Information is confidential and must not be shared with the service provider's other clients or any other healthcare facilities. Customer shall not disclose Pricing Information: (i) to any non-Affiliated hospital, healthcare facility, or healthcare provider; (ii) to any competitor of Intellijoint or any other medical device manufacturer; or (iii) for the purpose of obtaining competitive bids or negotiating with Intellijoint's competitors. Customer shall be responsible for any unauthorized disclosure of Pricing Information by any party to whom Customer discloses such information under this Section 8.3.

- 8.4. Exceptions to Confidentiality:** Recipient will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Discloser if the Recipient can demonstrate that such portion of Confidential Information: (a) was in the public domain at the time it was disclosed to the Recipient; (b) entered the public domain subsequent to the time it was disclosed to the Recipient, through no fault of the Recipient; (c) was already lawfully in the Recipient's possession at the time it was disclosed to the Recipient; (d) was communicated to the Recipient free of any obligation of confidence subsequent to the time it was disclosed to the Recipient; or (e) was independently developed by employees or agents of the Recipient without reference to the Confidential Information. Notwithstanding the above, the Recipient may disclose certain Confidential Information of the Discloser, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the Recipient uses all reasonable efforts to provide sufficient notice of this requirement to the Discloser to enable the Discloser to seek an order limiting or preventing the disclosure of the Confidential Information.
- 8.5. Survival:** The obligations in respect of Confidential Information shall survive for five (5) years following the expiration of this Agreement, or in the case of trade secrets, for so long as the information remains a trade secret. Upon termination or expiration of this Agreement, the Recipient shall return or destroy all Confidential Information of the Discloser in the Recipient's possession or control. Notwithstanding any other term of this Agreement, neither Party is obligated to delete confidential information archived by their automated security or disaster recovery systems. Any such retained copy shall remain subject to the confidentiality and non-use obligations of this Agreement.
- 8.6. Equitable Relief:** Each Party acknowledges that any breach or threatened breach of this Section 8 would give rise to irreparable harm for which monetary damages would be inadequate, and in such event the non-breaching Party shall be entitled to seek equitable relief, in addition to any other remedy available under this Agreement or at law or in equity, without the posting of a bond.



9. INDEMNIFICATION AND LIMITATIONS OF LIABILITY

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SYSTEM IS AN ADJUNCT TO, AND NOT A REPLACEMENT FOR, A SURGEON'S KNOWLEDGE, EXPERTISE, AND JUDGMENT AND AS SUCH, RESPONSIBILITY FOR THE USE OF THE SYSTEM IN SURGERY REMAINS WITH THE SURGEON.

- 9.1. General Indemnification by Intellijoint:** Intellijoint shall, at its expense, indemnify, defend and hold harmless Customer and its Affiliates and their respective directors, officers, employees, surgeons, and representatives (collectively "Customer Indemnitees") from and against any third-party claim, action or regulatory proceeding brought against a Customer Indemnitee to the extent the claim or action is based upon a claim that: (a) Consumables manufactured by or on behalf of Intellijoint are faulty, or when used in accordance with the instructions provided by Intellijoint, have caused damage to a patient that is not the result of the surgeon's judgment and expertise; or (b) the System failed to operate strictly in accordance with the documentation provided by Intellijoint during a Procedure and caused damage to a patient that is not the result of the surgeon's judgment and expertise; (c) Intellijoint failed to comply with applicable regulatory requirements in connection with the manufacture, labeling, marketing, sale, or distribution of the System supplied under this Agreement; (d) that PII or PHI was disclosed due to Intellijoint's negligence, willful misconduct, or failure to comply with its privacy or data protection obligations under this Agreement; or (e) damage was caused by Intellijoint's gross negligence, willful misconduct, or material and wilful violation of law in the performance of this Agreement by Intellijoint, its employees, or its subcontractors. Intellijoint shall indemnify each Customer Indemnitee for all losses, damages, costs, and expenses, including reasonable legal fees, arising from any matter described in this Section 9.1.
- 9.2. Intellectual Property Indemnification by Intellijoint:** Intellijoint shall, at its expense, indemnify, defend, and hold harmless the Customer Indemnitees from and against any and all third-party claims, actions, suits, or proceedings alleging that the System infringes or misappropriates any copyright, trade secret, patent, or trademark right of a third party in the territory where Affiliated Facilities operate, and from and against all losses, damages, costs, and expenses (including reasonable legal fees) arising out of or relating to any such claim.
- 9.3. Indemnification by Customer:** Customer shall defend Intellijoint and its Affiliates and their respective directors, officers, employees and representatives (collectively "Intellijoint Indemnitees") from and against any third-party claim, action or regulatory proceeding brought against an Intellijoint Indemnitee to the extent the claim or action is based upon a claim that: (a) Customer materially breached any of its representations, warranties, or obligations under this Agreement; (b) Customer breached applicable laws in connection with its use of the System; (c) the System caused bodily injury, death, or property damage during a Procedure, to the extent not caused by a defect in the System or Intellijoint's negligence or willful misconduct; (d) Customer's failure to comply with the reporting obligations or regulatory cooperation provisions under this Agreement caused damages; or (e) any modification, alteration, or misuse of the System by



Customer or its Users caused damages, including without limitation: (i) use of the System other than as permitted by this Agreement or the applicable documentation; (ii) use in connection with any third-party products, software, hardware, data, or services not provided or approved in writing by Intellijoint; or (iii) use for off-label or experimental purposes without the prior written consent of Intellijoint; or

- 9.4. Indemnification Exclusions:** Intellijoint shall have no obligation to indemnify the Customer Indemnitees under this Section 9 to the extent any claim arises from: (a) use of the System in combination with products, services, or data not provided by Intellijoint, if the claim would not have arisen but for such combination; (b) modifications to the System made by any party other than Intellijoint; (c) Customer's failure to use updated or modified versions of the System provided by Intellijoint; (d) use of the System outside jurisdictions in which Intellijoint has represented the System as cleared or approved; (e) compliance by Intellijoint with designs, specifications, or instructions provided by Customer; (f) use of the System in a manner inconsistent with the documentation; or (g) any content, information, or data provided by Customer or other third parties.
- 9.5. Indemnification Procedure:** A Party seeking indemnification under this Section 9 (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") in writing of any claim for which indemnification is sought, provided that failure to give prompt notice will not relieve the Indemnifying Party of its obligations except to the extent it is materially prejudiced by the delay. The Indemnifying Party shall have the right to assume control of the defense and settlement of such claim, provided that: (a) the Indemnified Party may participate in the defense with counsel of its choosing at its own expense; and (b) the Indemnifying Party may not settle any claim without the Indemnified Party's prior written consent if such settlement (i) admits liability or fault on behalf of the Indemnified Party, (ii) imposes any monetary or other obligation on the Indemnified Party, or (iii) does not include a full release of the Indemnified Party from all liability with respect to such claim. The Indemnified Party shall reasonably cooperate in the defense at the Indemnifying Party's expense.
- 9.6. IP Infringement Remedy:** If the System infringes or may be alleged to infringe a third party's copyright, registered patent or registered trademark in the territory or country where Affiliated Facilities operate, then Intellijoint may: (a) obtain the right for Customer, at Intellijoint's expense, to continue using the System; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the System so that they no longer infringe. If Intellijoint does not believe that the options described in this Section 9.6 are reasonable, then Intellijoint may elect to terminate this agreement upon 30 days written notice and refund Customer a pro-rated portion of the purchase price for any affected Purchased Equipment calculated as purchase price x 0.2 * (5 – years) where years is the number of years since delivery of the Purchased Equipment rounded up to the nearest year and with a maximum value of 5. For clarity, this Section 9.6 provides additional remedies and does not limit Intellijoint's indemnification obligations under Section 9.2, which remain in full force and effect.
- 9.7. Limitation of Liability:** Except as expressly provided below, each Party's total aggregate liability arising out of or in connection with this Agreement, whether in contract, tort (including



negligence), strict liability, or otherwise, shall not exceed the greater of (a) any amounts paid by Customer to Intellijoint under this Agreement in the twelve (12) months immediately preceding the event giving rise to the claim; (b) the limits of insurance coverage actually carried and applicable to the claim; or (c) USD \$500,000. Notwithstanding the foregoing, nothing in this Agreement shall limit or exclude liability for: (i) death or personal injury caused by a Party's negligence; (ii) a Party's gross negligence, willful misconduct, or fraud; (iii) breach of confidentiality obligations; (iv) willful infringement of the other Party's intellectual property rights; or (v) Customer's payment obligations. The existence of more than one claim will not enlarge this limit, and the limitation in this Section will apply regardless of the form of action or theory of liability.

- 9.8. Exclusion of Consequential Damages:** EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, REVENUES, GOODWILL, OR BUSINESS INTERRUPTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. OTHER TERMS

- 10.1. Independent Contractor:** In the performance of this Agreement, it is mutually understood and agreed that Intellijoint is at all times acting and performing as an independent contractor with, and not an employee or joint venturer of, Customer.
- 10.2. Survival:** The provisions that by their nature are intended to survive the termination or expiration of this Agreement shall continue to be in effect after the termination or expiration of the Agreement.
- 10.3. Severability:** Should any provision of this Agreement be deemed illegal or unenforceable, the remainder shall nonetheless be given full force and effect.
- 10.4. Assignment:** Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, except that either Party may assign this Agreement without the other Party's consent (a) to any of its Affiliates, (b) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its business or assets, or (c) to any successor entity by operation of law. For purposes of this Agreement, an "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with Intellijoint. Any permitted assignee shall assume all assigned obligations, and this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Any assignment in violation of this Section 10.4 shall be null and void.
- 10.5. Waiver:** No failure by any party to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No



waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

- 10.6. Governing Law:** If the Customer is located in Canada, this Agreement shall be governed by and construed in accordance with the laws of the province of Ontario, and any applicable federal laws of Canada, without giving effect to its choice of law principles. If the Customer is located in the United States, this Agreement shall be governed by and construed in accordance with the laws of the state of New York, and any applicable laws of the United States of America, without giving effect to its choice of law principles.
- 10.7. Amendment:** This Agreement may only be amended by a written instrument executed by each of the Parties.
- 10.8. Notices:** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, or (c) sent by facsimile or email, upon oral confirmation of receipt.
- 10.9. Counterparts:** This Agreement may be executed in counterparts each of which when executed by any of the parties shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement.



APPENDIX A Extended Support and Maintenance

- 1. BACKGROUND:** This Appendix A applies to Customers with Purchased Equipment or Purchased Equipment who have purchased an Extended Support and Maintenance (“ESM”) plan. ESM is designed to keep the Purchased Equipment in working condition through both (a) **preventive services**, such as the provision and implementation of Software Updates, replacement of Components showing wear, and other measures reasonably necessary to avoid the failure of Purchased Equipment, and (b) **reactive services**, and support, such as corrective maintenance or replacement of defective Components if a failure of Purchased Equipment occurs. Furthermore, Customers who purchase ESM will received preferential pricing on Components not covered under ESM.
- 2. PREVENTIVE MAINTENANCE:** Under ESM, preventive maintenance is not tied to a fixed calendar schedule or time interval. Preventive maintenance under ESM is limited to measures reasonably necessary to ensure continued safe and effective operation of the System, which may include, at Customer’s request and Intellijoint’s reasonable discretion, periodic remote reviews of System performance and configuration. This includes:
 - (a) the provision and implementation of Software Updates;
 - (b) the replacement of Components showing normal wear, as determined by Customer and confirmed by Intellijoint;
 - (c) remote diagnostic checks, where applicable; and
 - (d) recommendations to the Customer for care and handling in accordance with Intellijoint’s instructions for use and operations manuals.

Preventative maintenance includes one (1) on-site visit by Intellijoint staff per calendar year to perform in-person preventative maintenance including additional inspection, testing, and recalibration of Systems as required. Additional in-person support may be purchased separately.

Unless otherwise agreed in writing, routine preventive maintenance activities such as cleaning, inspection, or functional testing of the System are the responsibility of Customer’s personnel. These activities must be performed in accordance with Intellijoint’s instructions for use and operations manuals.

- 3. SOFTWARE COVERAGE:** For purposes of this Agreement, an “Update” means a Software release that: (a) corrects defects; (b) addresses regulatory-driven modifications; (c) improves performance or stability; or (d) provides enhancements to existing functionality that Intellijoint elects to make generally available to other similarly situated customers under ESM without additional charge. An “Upgrade” means a release that introduces substantial new functionality, modules, workflows, or requires hardware changes for which Intellijoint generally charges additional license or subscription



fees, regardless of version numbering. Under ESM, Intellijoint shall provide Updates for each System in order to maintain the Software in good working order and in accordance with Intellijoint's then current documentation. Upgrades may be purchased separately.

- 4. HARDWARE COVERAGE:** Intellijoint shall provide Customer with the necessary maintenance and replacement Components required to keep each System in working condition where the Components show wear and tear from normal use. This hardware service is ancillary to and is not a substitute for the routine maintenance of Systems as documented in Intellijoint instructions for use, operations manuals, labels, or inserts for the Purchased Equipment. Intellijoint reserves the right to determine if wear and tear of components is normal or if it suggests misuse of the System for which the Customer shall remain liable. ESM for hardware does not include Upgrades.

In addition to the replacement of Components showing normal wear under this Section 4, Customers purchasing ESM shall receive preferential pricing on any replacement Components not covered under ESM, including without limitation Components requiring replacement due to misuse, abnormal wear, improper handling, theft, loss, or accidental damage. Such preferential pricing shall be materially lower than Intellijoint's standard replacement pricing and shall be consistent with pricing offered to other similarly situated ESM customers. Intellijoint shall maintain a schedule of ESM replacement pricing and will make it available to Customer upon request.

- 5. SERVICE REQUESTS:** All service requests must be submitted by Customer through Intellijoint's designated support channels (telephone, email, or online portal, as identified by Intellijoint). Customer shall provide sufficient details to allow Intellijoint to classify the issue, including:
- (a) system identification number and software version;
 - (b) description of the issue and observable symptoms;
 - (c) date and time of occurrence; and
 - (d) any steps already taken by Customer personnel.

If Intellijoint does not resolve the issue within the Resolution or Workaround Target specified in Section 7, the issue will be escalated to Intellijoint's Customer Excellence Manager (or equivalent role). Issues that remain unresolved after escalation may be further escalated to Intellijoint's executive-level management (e.g. VP of Sales or equivalent).

Customer shall provide timely access to systems, personnel, and documentation reasonably necessary for Intellijoint to investigate and resolve service requests.

Where necessary, Customer shall act in accordance with Intellijoint's instructions to implement Updates and deliver and install replacement Components where physical access to the affected System is required to resolve a service request.



- 6. SUPPORT HOURS:** Intellijoint will provide the Customer with remote technical support services for covered Systems during the hours of 8:00 a.m. to 5:00 p.m. Eastern Standard Time (GMT – 5), Monday through Friday, excluding Intellijoint-observed holidays (“Support Hours”). Support will be available by telephone, email, or other electronic -means designated by Intellijoint. Any in-person support will be scheduled with Customer in advance.
- 7. SERVICE LEVELS:** Intellijoint will use commercially reasonable efforts to respond to and resolve service issues reported by Customer in accordance with the severity levels set out below. Resolution may include providing a workaround, corrective maintenance, a Software Update, a replacement Component, or a replacement System, as applicable. For clarity, the resolution timeframes set forth below refer to the dispatch of replacement items by Intellijoint. Transit times, including delays related to carrier performance, customs clearance, or other factors outside Intellijoint’s reasonable control, are excluded from these timeframes.

| Service Level Priority | Description | Remote Support Response Time | Resolution / Workaround Target |
|------------------------|--|--|--|
| Priority 1 – Critical | Complete System failure or defect that prevents use of the System during a surgical procedure, with no available workaround. | Within 4 hours (during Support Hours). | Resolution or dispatch of replacement Component or loaner System within 1 business days. |
| Priority 2 - Major | Defect that materially impairs System performance or functionality, but a workaround is available and surgery can proceed. | Within 1 business day. | Resolution or dispatch of replacement Component or loaner System within 3 business days. |
| Priority 3 - Minor | Defect that does not materially impair System functionality, or cosmetic/documentation issues. | Within 2 business days. | Resolution through regularly schedule Updates that are made available to all Customers. |

- 8. SERVICE FAILURE:** If Intellijoint fails to meet the resolution or workaround targets specified in Section 7 for a material number of service requests within any rolling three (3) month period, Customer shall have the right to terminate this Appendix A upon thirty (30) days’ prior written notice. For purposes of this Section 8, a “material number” shall mean: (a) more than two (2) Priority 1 service requests; (b) more than three (3) Priority 2 service requests; or (c) more than five (5) Priority 3 service requests. Upon termination by Customer pursuant to this Section 8, Intellijoint shall refund to Customer any prepaid fees for the remaining portion of the ESM term, prorated on a monthly basis. The remedies set forth in this Section 8 shall be Customer’s sole and exclusive remedy, and Intellijoint’s sole liability, for failure to meet the service levels described in Section 7.



- 9. LOANERS AND PARTS.** Any loaner or replacement System or Component provided by Intellijoint under this Appendix A shall remain the sole property of Intellijoint at all times. Customer shall hold such loaner or replacement System or Component as a bailee only, shall not transfer or encumber it in any way, and shall return it to Intellijoint promptly upon Intellijoint's request or upon completion of repairs to the original System. All shipping, freight, and insurance costs incurred in transporting Systems, Components, or loaners under this Appendix A, whether to or from Customer, shall be borne solely by Intellijoint. Customer shall reasonably cooperate with Intellijoint's shipping instructions and ensure safe packaging and handling of Systems in its custody.
- 10. SERVICE LIMITATIONS:** Intellijoint represents and warrants that services contemplated by this Appendix A shall be performed in a workmanlike manner and with professional diligence and skill and will comply with all applicable laws and regulations. Notwithstanding any other provision of this Appendix A, the services shall not include repairs, exchange, or other services made necessary by or related to the following: (i) Misuse / Improper Handling: Abnormal wear, damage, or malfunction caused by misuse, mishandling, negligence, accident, or failure to follow Intellijoint's documentation, equipment manuals, or labeling; (ii) External Events: Catastrophic events, acts of God, fire, flood, earthquake, power surge, or other causes beyond Intellijoint's reasonable control; (iii) Unauthorized Service: Any repair, alteration, or modification performed by non-Intellijoint personnel or by parties not expressly authorized in writing by Intellijoint; (iv) Non-Intellijoint Components: Systems or Components that have been repaired or modified using non-Intellijoint approved parts or consumables; (v) Tampering: Systems on which original serial numbers or identification marks have been removed, defaced, or altered; (vi) Cosmetic Damage: Cosmetic issues that do not affect System performance, including scratches, dents, or discoloration; (vii) Loss or Misplacement: Any loss, theft, or misplacement of Systems or Components while in the custody of Customer or its customers; or (viii) End-of-Life Systems: Systems that have reached the end of their Service Life or have been declared end-of-support by Intellijoint. To the fullest extent permitted by law, the express warranties set forth in this Appendix A are the only warranties applicable to the services provided under this Appendix A.
- 11. REGULATORY:** Nothing in this Appendix A limits or modifies Intellijoint's obligations under the Agreement with respect to regulatory compliance, including obligations to carry out field safety corrective actions, recalls, or other legally mandated activities.
- 12. TERMINATION:** Intellijoint reserves the right to terminate this Appendix A if a System is repaired with non-Intellijoint components or by non-Intellijoint authorized personnel or if Customer fails to pay for the applicable Annual Service Package. In the event of such termination any prepaid fees for ESM will not be refunded.
- 13. CUSTOMER OBLIGATIONS:** Customer shall use reasonable efforts to cooperate with Intellijoint in connection with Intellijoint's performance of this Appendix A. Customer understands and





acknowledges that Intellijoint employees will not provide surgical or medical advice, will not practice surgery or medicine, will not come in physical contact with the patient, will not enter the “sterile field” at any time, and will not direct equipment or instruments that come in contact with the patient during surgery. Customer’s personnel will refrain from requesting Intellijoint’s employees to take any actions in violation of these requirements or in violation of applicable laws, rules or regulations, Customer policies, or the patient’s informed consent. A refusal by Intellijoint employees to engage in such activities shall not be a breach of the Appendix A. Customer is to make every reasonable effort to clean and disinfect equipment prior to providing it for maintenance or inspection. Intellijoint reserves the right to deny service until Systems are offered in a safe and sterile condition.

