

## EndoSoft® IT Management SaaS and Cloud based License Agreement & Acceptable Use Policy

This License Agreement & Acceptable Use Policy (" Agreement ") sets forth the terms and conditions upon which you may use Software in connection with EndoSoft Services and is intended to be read in conjunction with the terms and conditions of sale for the products, Services or Software licensed from EndoSoft and any applicable service contract(s), available online at [www.EndoSoft.com](http://www.EndoSoft.com). Software may be provided to or otherwise made available to you in order to facilitate EndoSoft's performance of Services, as a feature of a Service, to enable you to access hosted, online or remote software-enabled Services (e.g. "software-as-a-service" and "cloud-based" offerings), or to enhance your experience with EndoSoft's products (capitalized terms defined below).

### 1. Your Relationship with EndoSoft

#### i. Introduction.

This is a legal agreement between you, the user of the Software (as defined herein), a corporation, partnership, sole proprietor, or other business entity ("you(r)" or "Customer ") and EndoSoft LLC or EndoSoft B.V. or EndoSoft Ltd. or EndoSoft Solutions Pvt. Ltd. or EndoSoft Pty. Ltd., if applicable, the EndoSoft entity identified on Customer's invoice ("EndoSoft " or "Clinical") with whom an order for Software or Services is placed. By placing an order for Software or Service or downloading, installing, activating or otherwise using the Software you agree to be bound by the terms of this Agreement. If you are entering this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you", "your" or "Customer" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, do not accept this Agreement or use the Software. In instances where Customer licenses through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to your use of Software and the performance of Services by EndoSoft.

#### ii. Definitions.

##### "Services"

means any and all services provided by EndoSoft as described in one or more Service Agreements. "Software" means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by EndoSoft to you. Software includes software locally installed on your systems and software accessed by you through the Internet or other remote means (such as websites and "cloud-based" applications). "Deliverables" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures, and recommendations prepared by EndoSoft or its suppliers, licensors, or subcontractors in the course of performing the Services. "Materials" means all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, clinical content, templates, photographs, graphs, videos, typefaces, music, sounds, and software. "Third-Party Products" means any non-EndoSoft-branded products, software, or services.

#### iii. Additional Agreements.

This Agreement, together with the Service Agreements (as defined below), form a legally binding contract between you and EndoSoft in relation to your license and use of Software, and EndoSoft's performance of Services. In the event of a conflict between these

agreements, the terms of these documents will be interpreted in the following order of precedence: (1) Service Agreement; and (2) this Agreement.

iv. **Service Agreements.**

EndoSoft may provide Services, Software, or Deliverables to you in accordance with one or more "Service Agreements". "Service Agreements" are service contracts, including "Service Descriptions" available at [www.EndoSoft.com](http://www.EndoSoft.com), "Statements of Work," and any other such mutually agreed upon documents. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible.

**2. Term; Payment; Auto-Renewal; Cancellation; Refund; Termination.**

i. **Term.**

This Agreement commences on the date you place your order and continues until all Services and Software licenses have expired or been terminated. Each Service and license to Software will continue for the term stated in the Service Agreement, unless otherwise terminated.

ii. **Payment:**

YOU AGREE THAT WE MAY CHARGE THE CREDIT OR DEBIT CARD ACCOUNT OR OTHER PAYMENT DEVICE YOU PROVIDED FOR ALL AMOUNTS YOU OWE UNDER THIS AGREEMENT, INCLUDING ANY RENEWALS. YOU AGREE TO NOTIFY US PROMPTLY OF ANY CHANGE IN YOUR CARD ACCOUNT NUMBER OR EXPIRATION DATE OR OTHER PAYMENT INFORMATION. FOR CREDIT AND DEBIT CARDS, YOU UNDERSTAND AND AGREE THAT WE MAY ALSO UPDATE SUCH INFORMATION WITH THE ASSISTANCE OF YOUR CARD ISSUER AND THE RELEVANT CARD NETWORK AND WE MAY USE THE UPDATED CARD INFORMATION TO CHARGE AMOUNTS YOU OWE US. UNLESS YOU CANCEL YOUR SUBSCRIPTION, THIS WILL SERVE AS YOUR CONSENT FOR YOUR CARD OR PAYMENT DEVICE TO BE CHARGED.

You are responsible for any charges incurred with your data- or mobile-service provider in connection with your use of the Software, including any overage and penalties assessed for exceeding your data or minute allowance, or use of domestic or international short message service.

- iii. **Automatic Renewal:** YOU AGREE TO ALLOW US TO AUTOMATICALLY RENEW YOUR PAID SUBSCRIPTION. BEFORE YOUR TERM EXPIRES, WE WILL SEND A NOTICE TO THE E-MAIL ADDRESS IDENTIFIED IN YOUR ACCOUNT PROFILE, INFORMING YOU OF THE UPCOMING RENEWAL. YOU WILL BE CHARGED THE UNDISCOUNTED SUBSCRIPTION PRICE FOR THE SOFTWARE OR SERVICE AS LISTED ON OUR WEBSITE AT THE TIME OF RENEWAL, EXCLUDING ANY PROMOTIONAL OR DISCOUNT PRICING ("UNDISCOUNTED SUBSCRIPTION PRICE"). SUCH UNDISCOUNTED PRICING MAY BE FOUND ON OUR WEBSITE. THIS PRICE MAY CHANGE DURING A SUBSCRIPTION TERM, AND MAY BE HIGHER THAN THE PRICE PAID FOR AN INITIAL SUBSCRIPTION OR MANUAL RENEWAL AND HIGHER THAN PROMOTIONAL OR DISCOUNTED PRICES THAT MAY BE AVAILABLE AS OF THE DATE OF AUTOMATIC RENEWAL. WE WILL SEND YOU VIA EMAIL A RECEIPT CONFIRMING THE RENEWAL DATE, PRICE, TERM AND ANY APPLICABLE TAXES. IF, AT THE TIME OF RENEWAL, THE SOFTWARE OR SERVICE HAS BEEN RENAMED, UPGRADED OR REPLACED BY A NEW OFFERING WITH REASONABLY COMPARABLE FEATURES ("REPLACEMENT"), WE MAY, AT OUR DISCRETION, AUTOMATICALLY RENEW YOUR SUBSCRIPTION WITH THE REPLACEMENT FOR NO MORE THAN THE UNDISCOUNTED SUBSCRIPTION PRICE OF THE REPLACEMENT.

UPON RENEWAL, THE NEW TERM WILL BE THE SAME LENGTH AS THE EXPIRED TERM UNLESS OTHERWISE SPECIFIED BY US AT THE TIME OF RENEWAL. FOR SUBSCRIPTIONS OF ONE YEAR OR MORE, THE RENEWAL AND YOUR PAYMENT WILL BE PROCESSED WITHIN 30 DAYS OF THE CURRENT TERM EXPIRATION DATE AND EACH ANNIVERSARY THEREAFTER. WE WILL INFORM YOU OF YOUR ACCOUNT STATUS AND COMMUNICATE

TO YOU THE AGREEMENT THEN IN EFFECT (FOR EXAMPLE BY PROVIDING A LINK TO THE AGREEMENT). ANY TIME AFTER PURCHASING A SUBSCRIPTION, YOU MAY TURN OFF AUTOMATIC RENEWAL BY ACCESSING YOUR ONLINE ACCOUNT PAGE OR CONTACTING CUSTOMER SERVICE.

IF YOU DO NOT WISH TO BE AUTOMATICALLY RENEWED, YOU MUST TURN OFF AUTO-RENEWAL AT LEAST THIRTY DAYS BEFORE YOUR SUBSCRIPTION EXPIRES. IF YOU DO NOT TURN OFF AUTO-RENEWAL, YOUR SUBSCRIPTION WILL CONTINUE FOR THE RENEWAL TERM UNDER THE AGREEMENT IN EFFECT AT THE TIME OF EACH RENEWAL UNLESS IT IS CANCELED BY YOU (OR TERMINATED BY US PURSUANT TO THIS AGREEMENT).

TURNING OFF AUTOMATIC RENEWAL WILL DISCONTINUE ANY PREMIUM FEATURES AND/OR SERVICES THAT WE OFFER EXCLUSIVELY TO SUBSCRIPTION CUSTOMERS WHO HAVE SIGNED UP FOR AUTOMATIC RENEWAL AND HAVE PROVIDED A VALID CREDIT OR DEBIT CARD ACCOUNT OR OTHER PAYMENT DEVICE.

iv. **Cancellation:**

If you have a monthly subscription, cancelling will not result in a retroactive refund of subscription payments, and previously charged subscription fees will not be pro-rated based on cancellation date. Cancelling a monthly subscription will stop the recurring fee going forward, and you will have access to your subscription until the end of the month in which you notified us of your cancellation.

v. **Refund:**

We offer a money-back guarantee on most Software and Services if you are not satisfied with your product for any reason. However, eligibility for a refund depends on a number of factors including, but not limited to, the type of product, subscription term, duration since purchase, and where it was purchased. Shipping, handling, and any applicable tax are not refundable except in certain states and countries where these items are refundable. If you receive a refund for your purchase, you are obligated to uninstall the software. In addition the Software might, at our sole discretion, be disabled to prevent further use.

If you purchased an annual subscription to Software or a Service you must request a refund within 30 days of the subscription purchase. We do not provide partial refunds. The 30-day money back guarantee is not available for monthly subscribers.

If your annual subscription has been automatically renewed, we will provide you a full refund if your request is made within 60 days of being charged.

vi. **Termination of Services and Software License.**

Unless renewed in accordance with this Agreement, this Agreement will terminate automatically upon the expiration of the agreed term of Services and Software license. EndoSoft may terminate this Agreement immediately, including prior to the expiration of the term of Services or Software license, if (1) you fail to make any payment when due; (2) you declare bankruptcy or are adjudicated bankrupt; or (3) a receiver or trustee is appointed for you or substantially all of your assets. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

3. **Proprietary Rights.**

All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Materials, including the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to EndoSoft or its licensors, and you shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement. The Materials are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Materials, in whole or in part.

4. **Deliverables.**

EndoSoft and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, EndoSoft grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services as stated in the applicable Service Documents.

**Suspension or Modification of Software or Services.** EndoSoft may suspend, terminate, withdraw, or discontinue all or part of the Services or your access or one or more users' access to the Software upon receipt of a subpoena or law-enforcement request, or when EndoSoft believes, in its sole discretion, that you (or your users) have breached any term of this Agreement or an applicable Service Agreement, or are involved in any fraudulent, misleading, or illegal activities.

EndoSoft may modify the Software or Services, at any time, with or without prior notice to you. You agree that EndoSoft shall not be liable to you or any third party for any modification of the Software or Services.

It may be necessary for EndoSoft to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the software installed on its and your computer system(s), which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. EndoSoft provides no assurance that you will receive advance notification of such activities or that the Software or Services will be uninterrupted or error-free. Unless otherwise agreed to in writing between you and EndoSoft, any degradation or interruption in the Software or Services shall not give rise to a refund or credit of any fees paid by you.

YOU AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING COMMUNICATION BY PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS, PRIVATE COMPUTER NETWORKS, AND BY OTHER PUBLIC ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS' NETWORKS, OR TO TRANSMIT INFORMATION, WHETHER OR NOT SUPPLIED BY YOU OR ENDOSOFT, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. ENDOSOFT SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF YOUR ACCESS TO OR USE OF THE SOFTWARE.

## **5. Software License from EndoSoft.**

### **i. License:**

Software is subject to the separate software license agreement(s) accompanying the software media, along with any product guides, operating manuals, or other documentation presented to Customer during the installation or use of the Software. In the absence of such terms, EndoSoft hereby grants Customer a personal, non-exclusive license to access and use the Software provided by EndoSoft. Software provided or otherwise made available to Customer by EndoSoft may be used only during the term of the Services and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements.

### **ii. Restrictions:**

Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Documents. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.

Customer is further prohibited from (1) attempting to use or gain unauthorized access to EndoSoft or to any third party's networks or equipment; (2) permitting other individuals or entities to use the Software or copy the Software or Services; (3) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of EndoSoft or any of its customers or suppliers; (4) interfering or attempting to interfere with service to any user, host, or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (8) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any EndoSoft (or EndoSoft Service supplier) facilities used to deliver the Services.

### **iii. Audit.**

You hereby grant EndoSoft, or an agent designated by EndoSoft, the right to perform an audit of your use of the Software during normal business hours; you agree to cooperate with EndoSoft in such audit; and you agree to provide EndoSoft with all records reasonably related to your use of the Software. The audit will be limited to verification of your compliance with the terms of this Agreement.

iv. **Open Source Software**

A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL ENDOSOFT, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6. **Privacy**

For information about EndoSoft's privacy practices, please read EndoSoft's global and country-specific privacy policies at [www.EndoSoft.com/Privacy](http://www.EndoSoft.com/Privacy). These policies explain how EndoSoft treats your personal information and protects your privacy.

7. **Customer Data**

In EndoSoft's performance of the Services or in connection with your use of the Software, it may be necessary for EndoSoft to obtain, receive, or collect data or information, including system-specific data (collectively, the "Data"). In such cases, you grant EndoSoft a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to facilitate the performance of Services by EndoSoft or your use of the Software. In addition, you grant EndoSoft a license to aggregate the Data for use in an anonymous manner in support of EndoSoft's clinical research, benchmarking, marketing, sales and for profit other business activities. You also grant EndoSoft the right to copy and maintain such material and content on EndoSoft's servers (or the servers of its suppliers) during the term of this Agreement. You represent and warrant that you have obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which you are located in conjunction with EndoSoft's performance of the Services or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consent from your patients, customers, employees, agents, and contractors).

8. **High-Risk Disclaimer .**

The Products, Software, and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Products, Software, or Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities" ). EndoSoft expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

9. **Important Additional Information**

NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT ENDOSOFT'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY TO YOU, AND ENDOSOFT'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. **Limited Warranty.**

THE LIMITED WARRANTIES FOR ENDOSOFT-BRANDED PRODUCTS CAN BE FOUND IN THE DOCUMENTATION ENDOSOFT PROVIDES WITH SUCH PRODUCTS. ENDOSOFT WARRANTS THAT THE SERVICES WILL BE PROVIDED IN MATERIAL ACCORDANCE WITH THE SERVICE AGREEMENTS. IN THE ABSENCE OF A SERVICE AGREEMENT, THE SERVICES WILL BE PROVIDED IN A GOOD AND SKILLFUL MANNER. ENDOSOFT HAS THE RIGHT TO GRANT THE LICENSES TO THE SOFTWARE LICENSED UNDER THIS AGREEMENT, AND SUCH SOFTWARE WILL SUBSTANTIALLY CONFORM TO THE FUNCTIONAL SPECIFICATIONS AND CURRENT DOCUMENTATION PROVIDED BY ENDOSOFT. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCES OF THIS PARAGRAPH, ENDOSOFT, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE



EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS (COLLECTIVELY, THE “ENDOSOFT PARTIES”) MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE, OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE, OR ENDOSOFT’S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS TO BE OBTAINED FROM THE SOFTWARE, SERVICES, OR THE RESULTS OF ANY RECOMMENDATION BY ENDOSOFT.

WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY ENDOSOFT (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH PRODUCT OR SOFTWARE INSTRUCTIONS, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS, SOFTWARE, OR SERVICES. THESE WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED “AS IS.”

WITH RESPECT TO YOUR USE OF THE SOFTWARE (1) NEITHER ENDOSOFT NOR ANY OF THE ENDOSOFT PARTIES MAKES ANY EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE PROVIDED TO YOU IN CONNECTION WITH THIS AGREEMENT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED; (2) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF ENDOSOFT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (3) ENDOSOFT AND THE ENDOSOFT PARTIES, JOINTLY AND SEVERALLY, DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS, OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE; AND (4) USE OF THE SOFTWARE IS ENTIRELY AT YOUR OWN RISK AND NEITHER ENDOSOFT NOR THE ENDOSOFT PARTIES SHALL HAVE ANY LIABILITY RELATING TO SUCH USE.

#### **11. Limitation of Liability**

ENDOSOFT WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, OR SERVICES PROVIDED HEREUNDER. WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) SERVICES, ENDOSOFT PRODUCTS, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

ENDOSOFT’S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) IN ANY 12-MONTH PERIOD SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER DURING THE PRIOR 12 MONTHS OF THIS AGREEMENT FOR THE SPECIFIC SOFTWARE OR SERVICE GIVING RISE TO SUCH CLAIM(S).

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATION OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ENDOSOFT’S SALE OF SOFTWARE OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.



**12. Confidentiality**

In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, “know-how,” or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, “Confidential Information”). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party’s personnel, including employees, agents, and subcontractors, on a “need-to-know” basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party’s Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall, subject to any applicable lawful restrictions, provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure.

**13. Indemnification.**

EndoSoft shall defend and indemnify you against any third-party claim or action that Products, Software, or Services (excluding Third-Party Products and open source software) prepared or produced by EndoSoft and delivered pursuant to this Agreement infringe or misappropriate that third party’s patent, copyright, trade secret, or other intellectual property rights enforceable in the country in which such Software or Services are sold to you by EndoSoft (“Indemnified Claims”). In addition, if EndoSoft receives prompt notice of a claim that, in EndoSoft’s reasonable opinion, is likely to result in an adverse ruling, then EndoSoft shall at its option, (1) obtain a right for you to continue using such Products or Software or allow EndoSoft to continue performing the Services; (2) modify such Software or Services to make them non-infringing; (3) replace such Software or Services with a non-infringing equivalent; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Software. Notwithstanding the foregoing, EndoSoft shall have no obligation under this Section for any claim resulting or arising from (1) modifications of the Software or Services that were not performed by or on behalf of EndoSoft; (2) the combination, operation, or use of the Software or Services in connection with a third-party product, software, or service (the combination of which causes the claimed infringement); or (3) EndoSoft’s compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you. This Section states Customer’s exclusive remedies for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate EndoSoft to provide any greater indemnity to Customer.

**14. Independent Contractor Relationship; Assignment; Subcontracting.**

The parties are independent contractors. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. EndoSoft has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that EndoSoft shall remain responsible for the performance of Services under this Agreement. Otherwise, neither party may assign this Agreement without the

permission of the other.

15. **Force Majeure**

Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Service Agreement by giving written notice to the delayed party.

16. **Export Compliance** You acknowledge that the Software and Services provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which you or your system is located, and may also be subject to the customs and export laws and regulations of the country in which the Software or Services are rendered or received. You agree to abide by those laws and regulations. You further represent that any software provided by you and used as part of the Software or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If you cannot make the preceding representation, you agree to provide EndoSoft with all of the information needed for EndoSoft to obtain export licenses from the U.S. Government or any other applicable national government and to provide EndoSoft with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, you are solely responsible for obtaining any necessary licenses relating to the export of software. EndoSoft also may require export certifications from you for software. EndoSoft's acceptance of any order for Software or Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; EndoSoft is not liable for delays or failure to deliver Software or Services resulting from your failure to obtain such license or to provide such certification. Each Party agrees to indemnify, defend and hold the other harmless from any third-party claims, demands, or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations or orders.

17. **Regulatory Requirements** EndoSoft is not responsible for determining whether any Third-Party Product to be used in the Products, Software, or performance of the Services, satisfies the local regulatory requirements of the country to which such Products, Software, or Services are to be delivered, and EndoSoft shall not be obligated to provide any Product or Software or perform any Services where the resulting Products, Software, or Services do not satisfy the local regulatory requirements.

18. **Entire Agreement; Severability .**

This Agreement is the entire agreement between you and EndoSoft with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and EndoSoft. No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.

i. **Updates**

EndoSoft reserves the right to update this Agreement at any time, effective upon posting an updated version at [www.endosoft.com](http://www.endosoft.com); however, your rights and obligations shall be as

provided in the version of this Agreement executed by you or available to you at the time of your purchase of Software or Services or, when applicable, renewal of Software or Services.

**19. U.S. Government Restricted Rights**

The software and documentation provided with the Software and Services are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer is EndoSoft LLC., 135 Broadway, Schenectady, NY 12305 USA.

**20. DATA PROTECTION & PROCESSING PROVISIONS APPLICABLE ONLY TO CUSTOMERS WITH OPERATIONS IN THE EUROPEAN ECONOMIC AREA (EEA)**

**i. Data Protection & Processing of Personal Data**

The terms used in this Section shall have the same meanings as defined in Article 2 of the European Data Protection Directive 95/46/EC and the following terms shall have a more specific meaning:

“Data Protection Law” means the Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof together with any other applicable data protection legislation.

“EndoSoft Personnel” means any employee, officer, agent or consultant of EndoSoft engaged to provide the Services.

You shall provide personal data to EndoSoft Personnel together with such other information as may reasonably be required in order to provide the Services. EndoSoft shall (A) ensure that only EndoSoft Personnel who may be required to assist in meeting EndoSoft’s obligations under this Agreement shall have access to the personal data; (B) process the personal data only in accordance with the Data Protection Law and the terms of this Agreement; and (C) if it shall become necessary to transfer personal data from one location to another within its own organization or to third parties contracted to provide the Services, undertake such transfer with appropriate security measures being implemented in compliance with Data Protection Law.

EndoSoft will maintain appropriate organizational and technical processes and procedures to safeguard against unauthorized access, accidental loss, destruction, theft, use or disclosure of the personal data. You acknowledge that EndoSoft is reliant on you for direction as to the extent to which EndoSoft is entitled to use and process the personal data. Consequently, EndoSoft will not be liable for any claim brought by you or a data subject arising from any action or omission by EndoSoft Personnel to the extent that such action or omission resulted from your instructions.

**21. Employment Indemnity**

You shall keep EndoSoft or any of its subcontractors fully indemnified against any claims, costs, demands, awards, compensation or other liability of any nature arising out of the termination of the employment rights (by way of redundancy or otherwise) or deemed transfer of any employment rights of any employees of you, or the previous supplier providing the Services for you, resulting from the entering into or termination of any Services Agreement (in whole or in part) for whatsoever reason.

In the event that any member of EndoSoft personnel (whether employed or engaged by EndoSoft or one of its contractors, agents or consultants) brings a claim against EndoSoft as a result of any act or omission of you or any of your employees, contractors, agents or consultants (including any claim arising from a request by you that the individual be removed from providing any part of the Services), you shall cooperate with EndoSoft in defending any such proceedings and shall indemnify and hold EndoSoft harmless in respect of any award of

compensation or other payment made by a court or tribunal or any monies paid in respect of any settlement and all legal costs and any disbursements incurred by EndoSoft in dealing with any such claim.

## 22. GENERAL PROVISIONS APPLICABLE TO ENDOSOFT CUSTOMERS

### i. **Governing Law**

This Agreement, any related Service Agreement, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ENDOSOFT, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), EndoSoft's advertising, or any related purchase (a "Dispute" ) shall be governed by the laws of the State of New York, without regard to conflicts of law.

### ii. **Venue**

The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Schenectady County, New York. Customer and EndoSoft agree to submit to the personal jurisdiction of the state and federal courts located within Schenectady County, New York, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

### iii. **Bench Trial**

The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

### iv. **No Class Actions**

NEITHER CUSTOMER NOR ENDOSOFT SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

### v. **Limitation Period**

ENDOSOFT SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

### vi. **Dispute Resolution**

Customer and EndoSoft will attempt to resolve any Dispute through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential.

Notwithstanding the foregoing, either party will have the right to obtain from a state or federal court in Schenectady County a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.

### vii. **Notices**

Notice to EndoSoft under this Agreement or any related Service Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt. EndoSoft LLC. Attn: Chief Operating Officer 135 Broadway Schenectady NY 12305.



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Attn: Chief Operating Officer  
135 Broadway  
Schenectady NY 12305