

BLUEPRINT™ END USER LICENSE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY AND IN ITS ENTIRETY. BY CLICKING THE “I AGREE” OPTION OR BY INSTALLING, COPYING, ACCESSING OR OTHERWISE USING ALL OR ANY PORTION OF THIS SOFTWARE, YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, WITHOUT LIMITATION OR QUALIFICATION. YOU AGREE THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOURSELF OR ON BEHALF OF YOUR ENTITY. THIS AGREEMENT IS ENFORCEABLE AGAINST YOURSELF OR YOUR ENTITY. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE PRESS THE “CANCEL” OPTION AND DO NOT INSTALL, COPY, ACCESS OR OTHERWISE USE THE SOFTWARE.

This End User License Agreement (“Agreement”) is a legal agreement between you (either an individual or an entity, “you”) and Tornier, Inc. (“Tornier”) for the use of the Tornier Blueprint™ software provided herewith, which may include associated media (including without limitation CDs and DVDs), printed materials, trade names, and “online” or electronic documentation (collectively, the “Software”). This Agreement is enforceable against you and any legal entity that obtained the Software, and/or on whose behalf it is used. Tornier and its suppliers own all intellectual property in the Software. The Software is licensed, not sold. Tornier permits you to download, install, use or otherwise benefit from the functionality or intellectual property of the Software only in accordance with the terms of this Agreement. Use of third party materials and services included in or accessed through the Software may be subject to other terms and conditions found in separate license agreements, terms of use or “read me” files located within or near such materials and services.

The Software may include product activation and other technology designed to prevent unauthorized use or copying. This technology may cause your computer to automatically connect to the internet and may prevent uses of the Software that are not permitted.

1. **Software Functionality and Eligibility.** The Software is designed as an informational and planning tool for certain orthopedic procedures solely in connection with Tornier devices. Accordingly, you are only authorized to install and use the Software if you have been pre-approved by Tornier and have received confirmation of your eligibility from Tornier. As further described below, the Software is not intended or designed to be used for the planning or consideration of procedures with devices other than those Tornier devices specified in the Software. Any use of the Software in connection with any other devices is not authorized by Tornier and may, at Tornier’s sole discretion, result in having your access and use of the Software terminated.
2. **Installation of Software and Login Information.** Once you are pre-approved to use the Software by Tornier, you will receive a username and password (“Login Information”). This Login Information will allow you to download and install the Software on your designated machine. The Login Information will also allow you to transmit implant measurement data regarding your patients (further described below) to Tornier.
3. **Tornier Implant and Custom Implant Tool.** Implant measurement data that you transmit to Tornier can then be used by Tornier to develop a custom implant tool for your procedure for the applicable patient. You acknowledge and agree that the implant tool is

customized for each patient and you will only use an implant tool for the applicable patient. You also acknowledge and agree that the implant tool and any implantable device will be provided to you and your institution or facility pursuant to separate terms and conditions, including terms regarding pricing and payment.

4. **License Grant.** Subject to the terms and conditions of this Agreement, Tornier hereby grants you, during the term of this Agreement (as set forth in Section 10 below), a limited, non-exclusive, revocable, personal, non-transferable, non-sublicensable license to install and use the Software on your designated machine and for use by you solely (a) as authorized in this Agreement; (b) in connection with the planning of implant procedures for your patients using the Tornier implantable devices specified in the Software; and (c) the development of customized implant tools in connection with the foregoing procedures. This license is restricted to the installation for use solely by you and no one else. Each physician or end user must obtain separate authorization from Tornier to install and use the Software.

5. **Restrictions.** Tornier reserves all rights in and to the Software not expressly granted to you, and no other licenses or rights are granted by implication, estoppel or otherwise. In addition, and without limiting the foregoing reservation of rights, your use of the Software is subject to the following restrictions: (a) you may not reverse engineer, decompile, disassemble or attempt to derive the source code of the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law; (b) you may not modify, adapt, alter, translate or create derivative works based upon the Software in whole or in part; (c) you may not copy the Software; (d) you may not remove any proprietary notices or labels on the Software; (e) you may not permit other individuals to use the Software; (f) you may not loan, rent, lease, sublicense, distribute, sell or otherwise transfer all or any portion of the Software to third parties; (g) you may not merge the Software with any other software; and (h) you may not, directly or indirectly, (i) encumber or suffer to exist any lien or security interest of any nature on the Software; or take any action that would cause the Software to be placed in the public domain; or (ii) use the Software in any computer environment other than those recommended by Tornier, as described in the Software or documentation. You will comply with applicable laws, rules, regulations and orders and Tornier's instructions regarding the use of the Software.

6. **Access Controls.**

a. **Password Security.** You agree that you are solely responsible for ensuring that (i) you do not share your Login Information with other individuals; and (ii) you understand the need and take appropriate measures to keep your Login Information secret and confidential. Tornier will have the right to assume that any individual accessing or using the Software under a given Login Information is the individual associated with such Login Information in its records and will grant access to your data and other capabilities accordingly. You will be entirely responsible for the acts and omissions of anyone using Login Information associated with your name in Tornier's records as though such acts and omissions were the acts and omissions of you, whether or not such acts or omissions or the use of the Login Information were authorized by you. You will notify Tornier immediately of any known or suspected unauthorized use of Login Information registered to you or any other known or suspected breach of security with respect to the Software.

- b. Right to Deny Access. For the protection of Tornier, you and your patients, Tornier reserves the right at its sole discretion (i) to deactivate any Login Information; (ii) to require you to change Login Information; or (iii) to deny, limit or terminate access to the Software or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the Software. Whenever Tornier is able to do so without compromising the security or integrity of the Software, Tornier will use reasonable efforts to give you notice before taking such action. If Tornier determines, in its sole discretion, that it is advisable to take immediate action, without prior notice to you, Tornier will notify you as soon as reasonably practicable of its action and, if it can do so without compromising the security of the Software or any investigation, the reason for the action. Tornier also reserves the right to inspect and audit your use of the Software.

7. **Data.**

- a. Limited Data Sets. In connection with your use of the Software, you will transmit certain information relating to the measurements and anatomy of your patients to Tornier for analysis and development of custom implant tools, which data will be transmitted to Tornier using a key code to identify the patient. You will limit the patient data transmitted to Tornier to a Limited Data Set, as defined in 45 CFR §164.514(e), and will exclude the following direct identifiers of the individual or of relatives, employers, or household members of the individual: postal address information other than city, state and zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet Protocol address numbers; biometric identifiers; and full face photographic images. The Software uses names, birth months, and birth years to ensure the correct plans and guides are delivered to the correct patients.
- b. License Grant to Limited Data Sets. You hereby grant Tornier a license to use the Limited Data Sets as necessary for the analysis of the Limited Data Sets and the generation of custom implant tools requested by you in connection with your use of the Software and for research and health care operations. This Limited Data Set is only accessible by the user, through either the Software or the On-line Management System. Tornier cannot access this data without written permission from the inquiring HCP. You agree that Tornier may de-identify the Limited Data Sets, within the meaning of 45 CFR §164.514(b), and aggregate the de-identified data, which will not be identifiable as yours. Tornier may use such de-identified data for the purposes of benchmarking, research, data analysis and improvement of the Software. You warrant that (a) you have the authority and may freely transmit all Limited Data Sets to Tornier; (b) you have obtained all necessary, prior, written, informed consents from your patients in order to transfer the Limited Data Sets and any personal, sensitive or otherwise confidential data to Tornier and/or any of its third party subcontractors and for Tornier and its subcontractors to use and disclose the Limited Data Sets as described in this Agreement; and (c) such consents, and your transfer of any such data to Tornier, will comply with all applicable laws, regulations, rules, orders and data processing approvals.

- c. **Tornier Responsibilities.** Tornier agrees: (a) to use and/or disclose any Limited Data Sets only for research, public health, and health care operations as permitted or required by this Agreement, or as required by law; (b) to request only the minimum data fields necessary to accomplish these limited purposes; (c) to use appropriate safeguards to prevent use or disclosure of any Limited Data Sets other than as permitted or required by this Agreement; (d) to report to you any use or disclosure of any Limited Data Sets of which it becomes aware that is not permitted by this Agreement; (e) to require all its subcontractors and agents that create, receive, use, disclose or have access to Limited Data Sets to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of Limited Data Sets that apply to Tornier; (f) not to identify any individual included in any Limited Data Set; and (g) not to contact any individual whose PHI is included in any Limited Data Set.

8. **Support.** Tornier, or third parties authorized by Tornier, will provide you with general support with respect to your use of the Software via e-mail and, during standard business hours in the Central (United States) time zone, via telephone at the telephone number(s) identified to you by Tornier or any such third party. You may also obtain general support information via Tornier's website.

9. **Fees and Other Charges.** In consideration of the rights granted to you under this Agreement, you will pay Tornier any fees and other charges as specified by Tornier from time-to-time when you sign up or renew your access to the Software. If applicable, any such fees will be communicated to you by a Tornier representative at the time you sign up or renew your access to the Software. If you do not pay any such fees, Tornier may deny you permission to access and use the Software and may exercise its rights under Section 10 of this Agreement.

10. **Term and Termination.**

- a. **Trial License.** The term of this Agreement will begin on the date you accept this Agreement. If you are permitted to install and use the Software on a trial basis, as communicated to you when signing up for the Software by a Tornier representative, then the term of this Agreement, and your access and use of the Software, will continue for a period of three (3) months or such period as communicated to you by a Tornier representative. Unless such trial license is extended by Tornier, this Agreement, and your access and use of the Software, will automatically terminate without further notice, act or deed by Tornier at the end of such period.
- b. **Annual License.** The term of this Agreement will begin on the date you accept this Agreement and, unless your license is a trial license as described above, will (subject to Section 10(c) below) continue for successive one (1) year periods, which periods will automatically renew.
- c. **Termination.**
 - (i) Tornier may, at its sole discretion, terminate this Agreement at any time (1) for any reason or no reason by not renewing the trial license or annual license periods as provided above, (2) if you are in breach of this Agreement, or (3) you use the Software other than as permitted in this Agreement, including by using the Software in connection with procedures involving any implantable device not specified in the Software.

- (ii) You may terminate this Agreement at any time for any reason or no reason by not renewing the trial license or annual license periods as provided above; provided that you will not be entitled to a refund of any unused portions of any fees paid to Tornier.
 - (iii) Tornier may terminate this Agreement at any time upon written notice to you, if Tornier is ceasing generally to provide the Software to end users.
- d. Your Obligations Upon Termination. Upon the expiration or termination of this Agreement for any reason,
 - (i) you will cease all use of the Software; and
 - (ii) you will return or destroy in a secure manner all copies of the Software in your possession or under your control (including all copies of the documentation relating to the Software) and, upon request, will certify to Tornier that you have done so.
- e. Survival. Sections 5, 7, 10(d), 10(e) and 11-16 of this Agreement will survive the termination of this Agreement.

11. **Intellectual Property.** You acknowledge and agree that, as between Tornier and you, Tornier owns all right, title and interest in and to the Software, including all intellectual property rights therein or appurtenant thereto. You further acknowledge and agree that the Software contains the valuable trade secrets of Tornier and third parties. You will not acquire any right, title or interest in the Software or any portion or component thereof pursuant to this Agreement, other than the right to access and use the Software as expressly granted in this Agreement, subject to the terms and conditions of this Agreement.

12. **Right to Modify Software.** Tornier retains the right, in its sole and absolute discretion, to modify, alter or enhance the operation and functionality of the Software without prior notice to you.

13. **Representations and Warranties; Disclaimer.** Tornier represents and warrants that the Software will, for a period of sixty (60) days following delivery of the Software, conform and function, in all material respects, with its documentation. In the event of a breach of the foregoing warranty, Tornier's sole and exclusive responsibility, and your sole and exclusive remedy, is for Tornier to correct or replace, at no additional charge to you, any functionality of the Software found to be defective. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE AND ANY RELATED PRODUCTS AND SERVICES PROVIDED TO YOU HEREUNDER ARE PROVIDED TO YOU WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TORNIER, ITS AFFILIATES, ITS LICENSORS AND ITS SERVICE PROVIDERS MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR ARISING BY COURSE OF DEALING, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, IN CONNECTION WITH THE SOFTWARE OR ANY RELATED PRODUCTS AND SERVICES PROVIDED TO YOU HEREUNDER, OR ANY REPRESENTATIONS OR WARRANTIES THAT (i) THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, (ii) ANY MEASUREMENTS OR INFORMATION

GENERATED BY THE SOFTWARE WILL BE ACCURATE, AND (iii) THAT THE SOFTWARE IS A REPLACEMENT FOR YOUR MEDICAL JUDGMENT. YOU ACKNOWLEDGE AND AGREE THAT TORNIER AND THE SOFTWARE DO NOT PROVIDE MEDICAL ADVICE OR RECOMMENDATIONS AND, AS BETWEEN THE PARTIES, YOU ARE SOLELY RESPONSIBLE FOR ALL MEDICAL TREATMENT OR OTHER SERVICES PROVIDED TO YOUR PATIENTS. TORNIER FURTHER DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO ANY AND ALL USE OF THE SOFTWARE IN CONNECTION WITH ANY IMPLANTABLE DEVICE OR TOOL THAT IS NOT SPECIFIED IN THE SOFTWARE AND SUPPLIED BY TORNIER.

14. **Limitations on Liability.**

- a. IN NO EVENT WILL TORNIER, ITS AFFILIATES, LICENSORS, OR SERVICE PROVIDERS, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU (NOR TO ANY THIRD PARTY CLAIMING THROUGH YOU) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING LOSS OF PROFITS, REVENUES, SAVINGS, OR GOODWILL OR LOSS, CORRUPTION OR THEFT OF DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING IN CONNECTION WITH (i) THE SOFTWARE OR ANY RELATED PRODUCTS OR SERVICES PROVIDED TO YOU HEREUNDER, (ii) YOUR USE OF OR INABILITY TO USE THE SOFTWARE OR ANY RELATED PRODUCTS OR SERVICES PROVIDED TO YOU HEREUNDER, OR (iii) YOUR DATA.
- b. IN NO EVENT WILL TORNIER, ITS LICENSORS', ITS SERVICE PROVIDERS', OR ITS OR THEIR DIRECTORS', OFFICERS', EMPLOYEES', OR AGENTS' COMBINED AGGREGATE LIABILITY HEREUNDER TO YOU OR ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING IN CONNECTION WITH (i) THE SOFTWARE OR ANY RELATED PRODUCTS OR SERVICES PROVIDED TO YOU HEREUNDER, (ii) YOUR USE OF OR INABILITY TO USE THE SOFTWARE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (iii) YOUR DATA, EXCEED THE GREATER OF (1) FEES ACTUALLY PAID TO TORNIER, AND (2) ONE THOUSAND DOLLARS (\$1,000.00).
- c. THE FOREGOING LIMITATIONS OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF THE PARTY RELYING ON THIS LIMITATION OF LIABILITY OR ITS LICENSORS OR SERVICE PROVIDERS HAD BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

15. **Indemnification.** You will indemnify Tornier and hold Tornier harmless from any and all claims (including reasonable attorneys' fees and costs) resulting from your acts, omissions, or

representations in any way related to your access to and use of the Software or your breach of this Agreement.

16. **General Terms.**

- a. **Independent Relationship Of The Parties; No Authority to Bind Other Party.** The parties are and intend to be independent contractors. In executing and implementing this Agreement and performing their respective obligations hereunder, the parties intend and agree that nothing in this Agreement is intended to or will create a partnership, joint venture, agency or any other legal entity or employment relationship between them or otherwise constitute either party as the legal representative of the other. Neither party has the authority to bind or commit the other party to any contract or obligation whatsoever, and neither party will represent or hold itself out as having any right or authority to do so.
- b. **Third-Party Service Providers.** Tornier reserves the right to subcontract its obligations under this Agreement to selected third-party service providers. The subcontracted services may include maintenance and support services. Tornier will remain responsible, however, for the proper performance of all of its obligations under this Agreement, whether Tornier performs those obligations directly or through a third-party service provider. You hereby grant to Tornier your express consent to subcontract any obligations of Tornier under this Agreement, including, without limitation, any data processing obligations in accordance with the intended use of the data as set forth in this Agreement.
- c. **Assignment.** You may not assign this Agreement (in whole or in part) at any time without the prior written consent of Tornier and any assignment without such consent will be void and of no force or effect.
- d. **Successors and Assigns.** The terms, conditions and obligations of this Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.
- e. **Governing Law; Personal Jurisdiction.** This Agreement will be governed under the laws of Minnesota, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All actions or proceedings arising out of or relating to this Agreement will be venued exclusively in state or federal court in Minnesota, and the parties hereby irrevocably consent and submit themselves to the personal and exclusive jurisdiction of said courts for all such purposes.
- f. **No Waiver.** The failure of either party at any time to require performance of any provision of this Agreement or to exercise any right provided for herein will not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by a party of any breach of any provision of this Agreement or of any right provided for herein will be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

- g. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.
- h. Rules of Interpretation. As used in this Agreement, the word “or” is not exclusive and the words “including” or “include” are not limiting.
- i. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between such parties.

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