



Salient Standard Terms and Conditions For Evaluation Agreements and Customer Agreements

The below terms and conditions form a part of each Evaluation Agreement and Customer Agreement (each, an “**Agreement**”), as applicable, and, to the extent that any Agreement include terms and conditions inconsistent with those set forth herein, the terms and conditions set forth herein shall govern such Agreement except as otherwise provided herein. Capitalized terms used but not defined herein have the meanings ascribed to them in the affected Agreement.

1. LIMITED TRADEMARK LICENSE. Salient Imaging, Inc. (“**Salient**”), hereby grants Customer a non-exclusive, non-transferable, limited, revocable license to use Salient’s name and Service -related trademarks and trade names (collectively, the “**Marks**”) to the extent (a) necessary for Customer to promote the Service to Customer’s customer, and other third parties and (b) included in Salient’s marketing materials provided to Customer in connection with the Service. As a condition precedent to Customer’s exercise of the foregoing license rights, Customer shall comply with the Agreement and Salient’s guidelines regarding the Marks as same may be provided to Customer from time to time. Salient has the right to unilaterally change all or any portion of its Mark-related guidelines at any time and from time to time. Salient has the right, exercisable at any time and from time to time, to freely access Customer’s facilities in order to review and inspect Customer’s use of the Marks in order to ensure Customer’s compliance with the Mark-related guidelines. Notwithstanding anything to the contrary in this Agreement, Customer shall not (x) use the Marks in the name of Customer’s business or in a manner that damages Salient, the Service or its or the Service’s reputation or otherwise brings Salient or the Service into disrepute, or (y) hold itself out as representing Salient in any other way than as a user of the Service. Customer shall not do anything to challenge or diminish the Marks.

2. WARRANTY.

The warranty applies to the Salient’s software products specified in the Agreement including *Visualize:Vascular*[™], B-CAD[®] and the cloud image transfer service, in each case as applicable.

(a) Except as otherwise provided in the Agreement, during the term of the Agreement, Salient warrants to Customer for 90 days following the date on which the defective Service was performed that the Service will execute the programming instructions input by Customer and that such execution will be free from defects in material and workmanship; provided, however, that Salient does not warrant that Customer’s use or the operation of the Service will be uninterrupted or error free, and the foregoing warranty covers only those defects in the Service that arise as a result of Customer’s normal use of the Service and does not cover any other Service-related problems including, without limitation, those that arise as a result of: (1) improper maintenance or modification of the Service by Customer; (2) software, media, parts or supplies not provided or supported by Salient in connection with the Service; (3) Customer’s operation of the Service outside of the Service’s specifications; or (4)



Customer's unauthorized modification or misuse of the Service. THE WARRANTIES PROVIDED IN THIS SECTION 2(a) CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY SALIENT IN CONNECTION WITH THE SERVICE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION AS TO FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

(b) If Salient receives, during the applicable warranty period, notice from Customer of a defect in the Service, then Salient shall either (in its sole discretion) repair or replace the Service to the extent defective. The foregoing remedy constitutes Salient's sole and exclusive liability and Customer's sole remedy for defects in the Services. Notwithstanding anything to the contrary in Section 2(a), Salient's warranty obligations under this Agreement shall terminate immediately upon termination of this Agreement for Customer breach.

(c) Salient is not responsible for Customer's decision to use the Service or any information derived there from; Customer uses all such information at its sole risk and Salient hereby disclaims all liability therefore. Customer (whether through its licensed practitioner, if any, or otherwise) is directed to use Service-derived results and information as they would for any diagnostic test where final interpretation is based upon the licensed practitioner's judgment and interpretation of all of the diagnostic information pertaining to the affected case.

3. **LIMITATION OF LIABILITY.** NEITHER SALIENT NOR ANY OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS SHALL BE LIABLE IN ANY WAY TO CUSTOMER FOR (A) SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TORT OR SIMILAR DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY OR LOSS OF PROFITS, BUSINESS OR GOODWILL, WHETHER OR NOT THEY HAVE BEEN ADVISED OF OR ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY CLAIM THAT AROSE MORE THAN ONE YEAR PRIOR TO THE INSTITUTION OF A CLAIM AGAINST SALIENT THEREON. SALIENT'S AGGREGATE LIABILITY TO CUSTOMER FOR ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT THAT CUSTOMER HAS ACTUALLY PAID TO SALIENT UNDER THIS AGREEMENT. IN ADDITION, SALIENT IS NOT RESPONSIBLE FOR ERRORS OR OMISSIONS IN CUSTOMER DATA.

4. **INTELLECTUAL PROPERTY.** Customer has no rights to the Intellectual Property except to the extent necessary to use the Services and as otherwise specifically provided in Section 1 hereof. Customer agrees to perform, during and after the term of the Agreement, all acts reasonably deemed necessary by Salient to permit and assist it in evidencing, perfecting, obtaining, maintaining, defending and enforcing Salient's Intellectual Property-related rights and the licenses granted to Customer herein.

5. **NON-WAIVER OF RIGHTS.** No right of Salient may be waived except as expressly set forth in a writing signed by an authorized representative of Salient waiving



such right. No waiver of any provision shall be implied by Salient's failure to enforce any of its rights or remedies herein provided, and no express waiver shall affect any provision other than that to which the waiver is applicable and only for that occurrence.

6. **COMPLIANCE WITH LAW.** Customer shall ensure that it complies with applicable law, including without limitation HIPAA and Stark requirements, at all times. In particular:

(a) Customer hereby agrees to observe and otherwise comply with all applicable State and federal HIPAA privacy regulations and laws applicable to the Company relative to its Company's customers; and

(b) Customer agrees that the Service shall be prescribed and used on patients only when directed by a licensed medical practitioner

7. **SUSPENSION OF PERFORMANCE.** Salient may at any time, and from time to time, following any Customer breach of this Agreement (whether or not in the process of being cured) by notice to Customer, suspend further performance of all or any portion of the Services. Salient may at any time withdraw the suspension as to all or part of the suspended performance by notice to Customer specifying the effective date and scope of withdrawal.

8. **RIGHT TO OFFSET.** Salient, without waiver or limitation of any rights or remedies of Salient, shall be entitled from time to time to deduct from any amounts due or owing by Salient to Customer any and all amounts owed by Customer to Salient.

9. **REMEDIES CUMULATIVE.** Each of Salient's rights and remedies hereunder and under the Agreement including, without limitation, the right to consequential damages, shall be cumulative and additional to any other or further rights or remedies provided in law or equity or hereunder.

10. **VENUE.** Each Party agrees that any action seeking to enforce any provision of or any right arising out of this Agreement shall be brought in the state courts in the Borough of Manhattan, New York, or if they have or can acquire jurisdiction, the federal courts of the Southern District of New York, and each Party hereby submits to personal jurisdiction before such courts and waives any and all objections to the jurisdiction and proper venue of such courts.

11. **ASSIGNMENT.** This Agreement is personal to Customer and Customer shall not assign or transfer (directly or indirectly) all or any portion of the rights, claims, or duties under, or related to, this Agreement without the prior written consent of Salient, which consent may be granted or withheld in Salient's sole discretion. Salient has the right to freely assign, novate or otherwise transfer all or any portion of this Agreement or its interests in this Agreement to an affiliate or successor or to any person or entity (including without limitation banks or financial institutions providing loans to the Salient or its affiliates) without limitation and without the need for the Customer's consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. Any assignment by Customer in breach of this Agreement shall be voidable by Salient.

12. **NOTICES.**

(a) Any notice or other communication required, permitted or contemplated hereunder (including billing statements and related communications) shall be in writing, and shall be addressed to the Party to be notified at the address set forth in the Agreement or at such other address as a Party may designate for itself from time to time by notice hereunder:

(b) Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic mail with an attachment in .PDF format and if concurrently with the transmittal of such electronic mail the sending Party contacts the receiving Party at 603-249-3069 to indicate such electronic mail has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such electronic mail is delivered to the receiving Party as shown by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party; provided, however, that deliveries under clause (c) shall be deemed to have been made upon the next business day if made after the close of business on any business day or any other day.

13. **ENTIRE AGREEMENT.** Any reference to Customer's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document. No change, amendment or modification of any of the provisions of the Agreement shall be binding unless in writing and executed by both Parties. Any receipt, invoice, acknowledgement or other communication issued by Customer in connection with the Agreement shall be construed to be for record and accounting purposes only. Any terms and conditions stated in such communication shall not be applicable to the Agreement and shall not be considered to be Customer's exceptions to the provisions of the Agreement. Trade custom and/or trade usage is superseded by the Agreement and shall not be applicable in the interpretation of the Agreement.

14. **WAIVER OF JURY TRIAL.** Should any dispute result in a judicial proceeding, EACH PARTY HEREBY KNOWINGLY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. FURTHERMORE, EACH PARTY HEREBY WAIVES ALL RIGHTS TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCMENT FOR THE PARTIES TO ENTER INTO THE AGREEMENT.



15. **INDEMNIFICATION.** Customer shall indemnify, hold harmless, and upon Salient's request, defend Salient and its affiliates and its and their respective representatives, successors, and assigns (collectively, the "**Indemnitees**") from and against all losses arising from demands, claims, suits, proceedings, judgments or actions of any kind and nature (collectively, "**Claims**") (a) for any damage, injuries, or death to any person (including Customer's employees or any subcontractor's employees) arising from Customer's use of the Services or caused by the acts or omissions of Customer except to the extent caused solely by the gross negligence of Salient or any of its employees (collectively, "**Salient Actors**"), (b) for damage or loss to any property except to the extent caused solely by the gross negligence of the Salient Actors, (c) involving Customer's breach of the Agreement, (d) made by governmental authorities or others (including Customer's subcontractors and the employees of Customer, said subcontractors, or Salient) of any actual or asserted failure by Customer or any of Customer's representatives or subcontractors to comply with applicable law, (e) arising from or related to Customer's acts or omissions in connection with its use of the Services or performance of its obligations under the Agreement, (f) involving liens and lien claims made, recorded, asserted, or filed on Salient or on any of its property in connection with Customer's use of the Services, and (g) for all Claims that Customer's use of the Services (including of the Marks), directly or indirectly, constitutes an infringement of any third party's intellectual property rights, except to the extent solely caused by Salient.

16. **SEVERABILITY.** The invalidity, illegality or unenforceability of any provision of the Agreement shall in no way affect the validity, legality or enforceability of any other provision.

17. **NO THIRD PARTY BENEFICIARIES.** Except with respect to the rights of the Indemnitees under Section 15, there are no third party beneficiaries to the Agreement.

18. **FURTHER ASSURANCES.** Each Party agrees to provide such information, execute and deliver such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of the Agreement and which do not involve the assumption of obligations other than those provided for in the Agreement in order to give full effect to the Agreement and to carry out the intent of the Parties (including the issuance of estoppel certificates).

19. **HEADINGS; CAPTIONS.** All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning, content or scope of the Agreement.

20. **JOINT PREPARATION.** The Parties have jointly prepared the Agreement with access to counsel, and none of the provisions hereof or thereof shall be construed against one Party on the ground that such Party is the author of the Agreement or any part hereof. Because both Parties have, or will have, participated in the negotiation and drafting of the Agreement the usual rule of contract construction that resolves ambiguities against the drafter shall not apply. Unless otherwise expressly provided in the Agreement, all amounts are in U.S. dollars.



21. **IMAGED DOCUMENTS.** Each document generated by the Parties regarding the Agreement, including the Agreement and these Standard Terms and Conditions, may be imaged and stored electronically and (a) such imaged documents may be introduced as evidence in any proceeding as if such were original business records, and (b) no Party shall contest the admissibility of such imaged documents as evidence in any proceeding.

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