# Olympus MedPresence Evaluation

| **Olympus** | **Olympus America Inc.**<br>**3500 Corporate Parkway**<br>**Center Valley, PA 18034** | **Customer:** | |
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Dear Valued Olympus Customer,

This product evaluation document (**"Evaluation"**) sets forth the terms under which Olympus will loan certain capital equipment, accessories, single-use consumable / disposable products, and/or provide access to certain software (collectively, the **"Products"**) to the Customer set forth above. A description of the Products is set forth on Schedule A, below, or on the attached Olympus quotation for the Products. By accepting the Products, Customer agrees to the terms of this Evaluation.

The Products are loaned to Customer for evaluation purposes only, and are provided by Olympus free of charge, so that Customer may (i) assess the appropriate use and functionality of the Products, and (ii) determine whether and when to use, order, purchase or recommend the Products in the future. The Products are loaned for a period not to exceed sixty (60) days (the **"Evaluation Period"**), which begins on the date the Products are received by Customer. Customer has no obligation to purchase, lease, order, use, prescribe, recommend, or arrange for the purchase, lease, use, prescription, or order of, the Products or any other products or services.

The Products shall remain the exclusive property of Olympus and may not sold, leased, rented, loaned, licensed, or otherwise disposed of by Customer. Customer must return the Products to Olympus (excluding consumable / disposable products) at the end of the Evaluation Period, or upon earlier request of Olympus. Customer shall maintain the Products in good working condition and shall operate the Products in accordance with Olympus-provided operating manuals and instructions for use (collectively, **"IFUs"**). Customer shall be responsible for all risk of loss and damage to the Products while in Customer's possession, normal wear and tear excepted. For software Products, Customer agrees to the terms and conditions of the System Integration End User License Agreement, to the extent they are applicable to this Evaluation, as set forth on Exhibit A and incorporated as a material part hereof by reference.

AT THE CONCLUSION OF THE EVALUATION PERIOD, OR UPON EARLIER TERMINATION THEREOF BY OLYMPUS, CUSTOMER MAY: (A) PURCHASE THE PRODUCTS, (B) LEASE OR RENT THE PRODUCTS, OR (C) RETURN THE PRODUCTS TO OLYMPUS. IF THE PRODUCTS ARE NOT RETURNED TO OLYMPUS UPON THE CONCLUSION OF THE EVALUATION PERIOD, OLYMPUS WILL, IN ITS DISCRETION, INVOICE CUSTOMER (I) AT OLYMPUS' THEN-EXISTING RENTAL RATE FOR THE PRODUCTS, OR (II) AT THE LIST PRICE FOR THE PRODUCTS. IF CUSTOMER DOES NOT RETURN THE PRODUCTS TO OLYMPUS WITHIN NINETY (90) DAYS FROM THE START OF THE EVALUATION PERIOD, OLYMPUS WILL COMPLY WITH APPLICABLE REPORTING REQUIREMENTS FOR THE PRODUCTS UNDER THE PHYSICIAN PAYMENTS SUNSHINE ACT.

# Olympus MedPresence Privacy Notice

In compliance with OSHA blood-borne pathogen regulations and other applicable federal, state and local regulations medical equipment that comes into contact with potentially infectious material must be (decontaminated, cleaned, and then disinfected or sterilized, as appropriate) before being sent to Olympus. Customer shall ensure that the applicable Products (as applicable) have been cleaned and disinfected or sterilized pursuant to applicable IFUs prior to shipment to Olympus.

In compliance with the Health Insurance Portability and Accountability Act (**"HIPAA"**) and other applicable federal, state and local regulations, medical equipment that stores electronic Protected Health Information (**"ePHI"**), must be securely purged of this information prior to being sent to Olympus. Please ensure that the accompanying medical equipment has had all ePHI deleted prior to shipment.  If assistance is needed to remove ePHI, then Customer should contact the Olympus Technical Assistance Center (**"TAC"**) at 1-800-848-9024, Option 1 (Monday through Friday between 7am and 8pm ET) or 1-877-624-7267 (Weekends and Monday through Friday between 8pm and 7am ET).

Because Customer is using the Products free of charge, Customer shall not bill patients or any third-party payors, including Medicare, Medicaid, or any other state or federal health insurance programs (collectively, the **"Insurance Programs"**) for the use of the Products. The value of the Products provided at no charge to Customer may constitute a "discount or other reduction in price" under Section 1128B(b)(3) of the Social Security Act [42 U.S.C. §1320a-7b(b)(3)]. Customer shall comply with all reporting obligations for the Products under applicable Insurance Programs. Olympus will provide additional information upon request.

Evaluation Period Start Date:
Evaluation Period End Date:

## Agreed and Accepted by:

| Authorized Customer Signature | Title | Date |
|---|---|---|
|  |  |  |

## Olympus America Inc.

| Authorized Customer Signature | Title | Date |
|---|---|---|
|  |  |  |

Schedule A

| Products | | | | |
|---|---|---|---|---|
| # | Product Description | Serial/Batch (lot#) | Qty | List Price |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |

## Exhibit A

This **SYSTEM INTEGRATION END USER LICENSE AGREEMENT ("Agreement")** by and between Image Stream Medical, Inc., a wholly owned subsidiary of Olympus Corporation of the Americas, by and through Olympus America Inc. (**"ISM"**) and the company or other legal entity for which you are downloading or installing the software, (collectively **"Customer"**) governs Customer's use of ISM's software (the **"Software"**).

By indicating acceptance of the terms of this Agreement, executing an ISM order confirmation that references this Agreement, or otherwise downloading, installing or using the Software, Customer agrees to be bound by and become a party to this Agreement.  If an individual is entering into this Agreement on behalf of Customer, Customer agrees to this Agreement and represents and warrants that such individual has the authority to bind Customer to this Agreement. If such individual does not have such authority, or if Customer does not agree to all of the terms of this Agreement, neither individual nor Customer may download, install, access or use the Software.

1.      **LICENSE GRANT**

(a) Software License.  Subject to Customer's compliance with this Agreement, ISM grants Customer a limited, non-exclusive, non-transferable (except as otherwise expressly permitted under Section 15), non-sub licensable license to download, install and use the Software at a single site that Customer owns or controls, solely for Customer's internal business purposes.

(b) Third Party Code.  The Software is delivered with certain items of independent, third-party code that are licensed under separate terms provided by the authors or licensors (**"Third Party Code"**).  This Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for any Third Party Code delivered with the Software.  Documentation regarding open source software included in the Third Party Code can be provided by contacting ISM Support.

(c) Updates.  Customer understands that the Software is evolving.  As a result, ISM may require Customer to accept updates to the Software.  Customer acknowledges and agrees that ISM may update the Software with or without notifying Customer.  Customer may need to update third-party software from time to time in order to use the Software.  Any future releases, updates, and additions to functionality of the Software shall be subject to the terms of this Agreement, unless ISM expressly states otherwise in writing.  Unless expressly and otherwise agreed by ISM in a separate written agreement with Customer, neither ISM nor any of its suppliers is obligated to provide any updates or upgrades to the Software.

## 2. RESTRICTIONS

Customer agrees that Customer will not, and will not permit any third party to: (i) license, sell, rent, lease, transfer, assign, distribute, host, outsource, copy, disclose or otherwise commercially exploit the Software (including, but not limited to, using the Software to process information or to generate output data for the direct benefit of, or for purposes of rendering services to, any third party) or make the Software available to any third party; (ii) modify, make derivative works of, disassemble, decompile or reverse engineer any part of the Software, except as expressly permitted by law; (iii) access the Software in order to build a similar or competitive product or service; (iv) access or use the Software to identify vulnerabilities in it or publish any information on how to circumvent the Software; (v) use the Software to upload, store or transmit infringing, libelous, or otherwise unlawful material, or to upload, store or transmit material in violation of third-party privacy rights; (vii) use the Software to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (viii) interfere with or disrupt the integrity or performance of the Software or any of the servers or networks that are connected to the Software; (ix) attempt to gain unauthorized access to the Software or related systems or networks; (x) attempt to disable or circumvent any security mechanisms used by the Software; or (xi) remove, obscure or destroy any copyright and other proprietary rights notices in the Software and any copies thereof.  In addition, Customer agrees to use the Software only in accordance with all applicable laws and regulations.  Any unauthorized use of the Software terminates the license granted by ISM pursuant to this Agreement.  With respect to any Software accessed through or downloaded from an app store (including, but not limited to, the Apple App Store), Customer agrees to comply with all applicable terms of use of such app store when downloading and using the Software.

## 3. OWNERSHIP

(a) Software.  The Software is licensed and not sold. Except for the express license granted to Customer under Section 1(a), ISM retains all right, title and interest in the Software, including but not limited to, all intellectual property rights.  Except as expressly permitted in Section 1(a), all other uses of the Software by Customer are prohibited.

(b) Technical Data.  The parties jointly own all right, title and interest in the Technical Data.  **"Technical Data"** means any and all data generated by Customer's use of the Software (including, but not limited to, statistical data, room context data and de-identified clinical data) that is not protected health information as defined under the U.S. Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as each is amended (**"Protected Health Information"**).

(c) Protected Health Information.  As between the parties, Customer owns all, right, title and interest in the Protected Health Information.

**4.      LICENSE TERM**

(a) <u>Term</u>.  This Agreement commences on the date when Customer accepts this Agreement (as described in the preamble above) and remains in full force and effect until terminated in accordance with this Agreement.

(b) <u>Termination</u>.  ISM may, at any time and without liability, terminate this Agreement or suspend Customer's access to the Software: (i) if Customer breaches any provision of this Agreement; (ii) if ISM is required to do so by law; (iii) if ISM ceases to offer any Software covered by this Agreement; or (iv) for any other reason with thirty (30) days prior written notice to Customer (or at any time without notice if Customer breaches this Agreement or ISM reasonably believes that Customer could cause harm to ISM, ISM's users and/or the Software). Customer may terminate this Agreement at Customer's convenience by delivering at least thirty (30) days' prior written notice to ISM and stopping all use of the Software.     ISM has the right to suspend or terminate Customer's use or access to the Software provided to Customer for any reason, including if Customer has breached any provision of this Agreement or if ISM is required to do so by law (e.g., where the provision of the Software is, or becomes, unlawful).

(c) <u>Effect of Termination</u>. Upon termination of this Agreement, Customer's right to use the Software will automatically terminate immediately and Customer shall cease all use of the Software.  Customer understands that any termination this Agreement may involve deletion of Customer's data and content from ISM's systems and agree that ISM shall not be liable for such deletion.  Sections 3, 4(b), 4(c), 5 (last sentence only), 6, 7, 8, 11, 12, 13, 14 and 15 shall survive the expiration or termination of this Agreement.

**5.      PASSWORDS AND REGISTRATION INFORMATION**

Customer will ensure that: (a) all required registration information Customer submits is truthful and accurate; and (b) Customer maintains the accuracy of such information. Customer is responsible for the security of Customer's passwords (if any) and for any use of Customer's account. If Customer becomes aware of any unauthorized use of Customer's passwords or of Customer's account, Customer will notify ISM immediately.  ISM will not be liable for any loss or damage resulting from Customer's failure to comply with this Section 5.

**6.      WARRANTIES AND DISCLAIMERS**

(a) Customer represents and warrants that (a) Customer has all right, authority and capacity to enter into this Agreement; and (b) all information Customer has provided and will provide to ISM (including, but not limited to, any registration information) is true, accurate, and complete.

(b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS," AND ISM HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING ANY OF THE FOREGOING, ISM MAKES NO WARRANTY THAT THE SOFTWARE WILL PROVIDE PERFECT OR ABSOLUTE SECURITY, IS ERROR-FREE, OR IS FREE FROM INTERRUPTIONS, VIRUSES OR OTHER HARMFUL COMPONENTS.  SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE LIMITATIONS IN THIS SECTION 7(b) MAY NOT APPLY TO CUSTOMER.

**7.      LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ISM SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY (WHETHER IN TORT, CONTRACT, OR OTHERWISE), EVEN IF ISM HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.  IN ADDITION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ISM'S LIABILITY TO CUSTOMER FOR ALL CLAIMS RELATING TO THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID BY CUSTOMER TO ISM WITHIN THE PRIOR TWELVE (12) MONTHS FOR THE SOFTWARE WHICH IS THE SUBJECT MATTER OF THE CLAIM.  CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH IN THIS SECTION 8 MAY NOT APPLY TO CUSTOMER.

**8.       NO SOFTWARE MAINTENANCE OR SUPPORT**

Unless expressly and otherwise agreed by ISM in a separate written agreement with Customer, the Software is provided without software maintenance or support of any kind.

**9.      EXPORT**

The Software and data generated by the Software, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer may not use, export, import, or transfer the Software or such data, except as authorized by U.S. law and any other applicable laws.

**10.      THIRD PARTY MATERIALS**

The Software may include links to third party web sites, data, content, or services. Customer acknowledges and agrees that ISM has no control over any such third party web sites, content or services, and that ISM shall not be liable for any loss or damage which may be incurred by Customer relating to such third party sites, data, content or services.

**11. FEEDBACK**

If Customer provides ISM with any feedback or suggestions (collectively, **"Feedback"**), Customer hereby assigns to ISM all rights in the Feedback and agrees that ISM shall have the right to use such Feedback and related information in any manner it deems appropriate without any compensation to Customer.  ISM will treat any Feedback Customer provides to ISM as non-confidential and non-proprietary.  Customer agrees that Customer will not submit to ISM any information or ideas that Customer considers to be confidential or proprietary.

**12. CHANGES TO AGREEMENT**

ISM may modify this Agreement in its sole discretion from time to time, and will post the most current version of this Agreement on its website. If ISM believes that a modification to this Agreement is material, ISM may notify Customer (via email to the email address associated with Customer's account, for which it is Customer's responsibility to maintain and keep current). By continuing to access or use the Software after modifications are posted or notice is delivered to the email address ISM has associated with Customer's account, Customer agrees to be bound by the modified Agreement. If Customer does not agree to the new terms, Customer must immediately stop using the Software.

**13. INDEMNIFICATION**

Each party agrees to indemnify, defend and hold harmless the other party and its officers, directors, shareholders, managers, employees, agents, successors and assigns (collectively **"Indemnified Party"**) from and against any and all direct: claims, losses, liabilities, damages, penalties, fines, forfeitures, judgments, and any other fees, costs, and expenses, including reasonable attorneys' fees and related costs and expenses, (collectively **"Claims"**) resulting from (i) the negligence or misconduct of the indemnifying party, (ii) a breach of this Agreement, (iii) any Claims relating to the violation or infringement of the intellectual property rights of any third party, or (iv) a violation of any laws in the performance of such party's obligations hereunder or under this Agreement.

**14. GENERAL**

(a) Non-Solicitation: During the time period during which Services are provided and for a period of one (1) year after completion of Services, neither party shall solicit, interfere with, or endeavor to entice away any employee of the other party who has been involved in the performance of the Services, except that either party may hire an employee of the other party who, without individual solicitation, responds to advertisements or solicitations aimed at the general public.

(b) Severability: If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

(c) <u>Amendments</u>: This Agreement and its attachments contains the entire agreement between the parties regarding the purchase and sale of the ISM System and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.  Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by both parties.  In the event of a conflict with the provisions of any other document, the provisions of this Agreement will control.

(d) <u>Parties</u>: Persons and entities who have licensed software to ISM for inclusion in the ISM System are third party beneficiaries to this Agreement as it applies to their respective software products included in the ISM System.  Except as specifically provided in this paragraph, a person who is not a party to this Agreement has no right to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from this Agreement.

(e) <u>Waiver</u>: Except for actions for nonpayment or breach of ISM's proprietary rights in the Licensed Products, a delay or failure by either party to exercise any right or bring any action, within one (1) year of the event giving rise to such right or such cause of action, shall waive any and all rights relating to that action.

(f) <u>Notices</u>: All notices or other communications required to be given hereunder shall be in writing and delivered either personally or by U.S. mail, postage prepaid, and addressed as provided in this Agreement or as otherwise requested by the receiving party.  Notices delivered personally shall be effective upon delivery and notices delivered by mail shall be effective upon their receipt by the party to whom they are addressed.

(g) <u>Governing Law</u>: This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Pennsylvania, U.S.A. without regard to its conflict of laws provisions. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Commonwealth of Pennsylvania, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

(h) <u>Participation in Government Programs</u>:  Each party represents and warrants to each other, its officers, directors, agents, subcontractors and employees (i) are not currently excluded from, debarred or otherwise ineligible to participate in state or federally funded programs (**"Government Programs"**), (ii) are not currently excluded, debarred or otherwise ineligible to participate in the federal healthcare programs as defined in 42 USC § 1320a-7b(f) (**"Federal Healthcare Programs"**); (iii) have not been convicted of a criminal offense related to the provision of items or services but have not yet been excluded, debarred or otherwise declared ineligible to participate in Government Programs or Federal Healthcare Programs and (iv) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in either Party being excluded from participation in Government Programs or Federal Healthcare Programs.  This shall be an ongoing representation and warranty during the term of this Agreement and each party shall immediately notify the other of any change in the status of the representations and warranty set forth in this Section.  Any breach of this Section shall give non-breaching party the right to terminate this Agreement immediately for cause.

# Olympus MedPresence Privacy Notice

(i) <u>Access to Records</u>: If applicable, for the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, as amended, and any written regulations thereto, the parties agree to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

    1) Until the expiration of four years after the furnishing of such services pursuant to such Agreement, the parties shall make available, upon written request by the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and books, documents and records of such that are necessary to certify the nature and extent of such costs; and

    2) If either party 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-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs; and

    3) If either party is required to disclose any books, documents and records relevant to this Agreement for the purpose of an audit or investigation, they shall notify the other party of the nature and scope of the request.

(j) <u>Independent contractor relationship</u>:  The parties agree that each is at all times acting and performing as an independent contractor.  Nothing in this Agreement shall be construed as creating a partnership, joint venture, or employment agreement.