



## ITERO INTRAORAL SCANNER END USER LICENSE AGREEMENT

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE WITH YOUR iTERO INTRAORAL SCANNER:

This license agreement ("Agreement") is a legal agreement between you, a user of an iTero Scanner ("you") and Align Technology, Inc., a Delaware corporation, with an address at 410 N Scottsdale Rd #1300, Tempe, AZ 85281 United States of America, and its subsidiaries and affiliates (collectively referred to as "Align", "us" or "we").

This Agreement governs your right to use the software, including any updates, upgrades (if applicable under your iTero Agreement), new releases as may be released by us from time to time (the "Software") included with your iTero Scanner.

Whereas, you have either purchased, rented or received a loan of an iTero Intraoral Scanner ("iTero Scanner") pursuant to an agreement between you and Align or a third party on behalf of Align, or pursuant to a purchase order submitted to Align including its terms and conditions (collectively, the "iTero Agreement"). In the event that you have purchased or otherwise acquired your iTero Scanner from a third party which is not a third party acting on behalf of Align, you agree that you must notify Align in writing of such purchase or acquisition, and Align reserves the right to suspend or terminate this Agreement.

Now, therefore, you agree to the following:

- (a) You agree to use the Software in accordance with this Agreement, the iTero Agreement and the Documentation. "Documentation" means the Assembly Guide, User Manual, Operation Manual and related documentation, marketing information, training or other documentation relating to the iTero Scanner, as such Documentation may be updated by Align from time to time. You may view certain Documentation, including any updates, on [www.MyAligntech.com](http://www.MyAligntech.com) or [www.MyiTero.com](http://www.MyiTero.com) (collectively referred to as "iTero Doctor's Site") or at [www.itero.com](http://www.itero.com) (In some regions you may have a local iTero Doctor's Site; please check with your local customer representative). Translations of this Agreement for some countries will be made available on the iTero Doctor's Site.
- (b) By downloading, installing or using the Software and/or Documentation or by clicking the "accept" button where such is applicable or available, you agree to the terms and conditions of this Agreement.
- (c) If you do not agree to the terms and conditions of this Agreement, do not download, install or use the Software or Documentation.
- (d) To the extent permitted by applicable law, we may amend this Agreement at any time. We will notify you of changes to this Agreement by publishing the amended version of this Agreement on the iTero Doctor's Site. You may review the current version of this Agreement on the iTero Doctor's Site. Where required by applicable laws, we will send you a copy of the amended version of this Agreement from time to time, however, where applicable laws permit, your continued use of the Software constitutes your acceptance of the amended Agreement. Any amendments will take effect 10 Business Days after publication.

The Software's intended use with the iTero Scanner is to (i) scan 3D images for various dental purposes, including without limitation, depending on the iTero Scanner model and Software, orthodontic treatment, restorative treatment, aid to diagnostics, record keeping, and treatment progress tracking, and/or enabling proximal caries detection, using NIRI (near infrared technology) (ii) view and adjust the images in real time, (iii) process the images and data provided by a doctor, (iv) upload the 3D images and data to Align's cloud based storage system ("Align Storage System"), and (v) additional permitted uses as set forth herein, in



the Documentation, and in the iTero Agreement (note, collectively, "Permitted Use"). Access to and use of the Software and Documentation requires a valid iTero Doctor's account login ("Customer ID") to the iTero Doctor's Site or any other relevant site, as allocated to Align approved dentists, orthodontic practitioners or lab technicians.

Depending on the iTero Scanner model, you may be required to separately acquire a compatible laptop computer, as instructed in the Documentation (the "Laptop").

The term "Device" shall be defined as the iTero Scanner and/or the Laptop, if applicable, as set forth in the Documentation.

1. Grant and scope of software license

1.1 In consideration of the mutual promises and covenants herein and subject to your compliance with this Agreement and the iTero Agreement, we grant to you, for so long as you own or possess the iTero Scanner, under a current, valid iTero Agreement and the terms of any service plan, if applicable, and only for your Permitted Use, a limited, personal, non-transferable, nonexclusive license to use the Software in machine readable form in accordance with the intended Permitted Use described above. You assume full responsibility for any use of the iTero Scanner, by you, the Permitted Employees (as defined below) and anyone who may have access to the iTero Scanner.

1.2 For the purposes of this Agreement, "Permitted Use" shall also mean that you may permit your employees within your practice who provide treatment to patients under your care ("Permitted Employees") to use the Software on the applicable Device for the Permitted Use.

The term Permitted Use specifically excludes any use of the Software and/or Documentation for any purpose other than the purposes specified in Section 1.1 and 1.2. With respect to the Laptop, if applicable, including any software, applications or other information stored on the Laptop (collectively, "Laptop Software"), the license granted to you by the software licensor(s) of the Laptop Software or the Laptop manufacturer shall govern, and you agree that Align shall have no liability for your use or misuse of the Laptop or the Laptop Software. Notwithstanding the foregoing, you represent that you shall use the Laptop in accordance with the terms of this Agreement, the iTero Agreement, and the Documentation.

1.3 Demo Mode. iTero Scanners support a demo mode with registration. Demo mode offers limited features, allowing you time to familiarize yourself with the Software, with features such as practice scanning, viewing sample orders, viewing sample cases, viewing samples of patient records and messaging subject to the terms of this Agreement ("Demo Mode"). Demo Mode will not allow you to submit an actual case. You are responsible for using the Demo Mode in accordance with the Permitted Use. You must complete the required training for the iTero Scanner prior to its use. Any scans completed in Demo Mode cannot be transferred or used for any purpose other than as set forth in this Section 1.3.

1.4 To the extent permitted by law, you agree that the Software is not error-free and is not designed, manufactured 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, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). You agree that neither Align nor its suppliers will be liable for any claims or damages arising from the use of the Software in High Risk Activities.

1.5 For the avoidance of doubt, the exclusions and limitations set out in this Agreement do not apply to the extent they are contrary to the rights available to you under any statutory guarantees under any relevant consumer law.

## 2. Your Content

2.1 To the extent ownership is not already transferred to Align under the iTero Agreement, you grant Align a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, sub-licensable, transferable right where permissible by applicable law to copy, translate, modify and use all digital images, photos, data and other content that you upload to Align Storage System ("Your Content") so that Align may provide Invisalign clear aligners or other products, orthodontic products, restorative products, accessories and services to you and your patients and use Your Content for research and development, internal data analytics, business purposes, and improvement and provision of Align products, services, and as further set out in this Agreement. The license granted by you to Align under this section will survive termination of this Agreement and will continue if your patient transfers to another doctor, (see condition 13.16 of this Agreement). You agree that:

- (a) you will only upload Your Content to Align Storage System if you have the lawful right to do so and where you have the right to grant Align the license in condition 2.1 of this Agreement;
- (b) you have obtained all necessary consents and permissions from your patients in relation to the use of Your Content by you and/or Align in accordance with this Agreement.

2.2 You will indemnify Align and hold Align harmless against all claims, legal proceedings, losses, costs (including reasonable attorney fees), penalties and fines that Align suffers or incurs as a result of any claim by any third party that Align's use of Your Content in accordance with this Agreement infringes the intellectual property, data privacy or image rights of any person. Nothing herein shall derogate from Align's rights to Your Content as set forth in the iTero Agreement to the extent permitted by applicable law.

## 3. Restrictions

3.1 You undertake:

- (a) not to copy the Software or Documentation except where such copying is incidental to the Permitted Use;
- (b) not to license, sub-license or in any way distribute or transfer any rights granted to you under this Agreement, or the Software or Documentation in any form, in whole or in part, to any person;
- (c) not to modify, adapt translate or create derivative works of the Software or Documentation, except and only to the extent that the foregoing restriction is prohibited by applicable law, and then only in accordance with applicable law;
- (d) that, unless this limitation is prohibited by applicable law, you will not and will not attempt to, or allow any third party to (or make the Software available to any third party so that such party is able to), reverse engineer, decompile, defeat license encryption mechanisms, or disassemble the Software or otherwise derive source code of the Software ("Reverse Engineer" the Software).

If applicable law grants you the right to Reverse Engineer the Software notwithstanding this limitation and to the extent that the following is permitted by applicable law, you must provide Align with a prior written notice of your intention to Reverse Engineer, and information detailing your intended method of Reverse Engineering, its purpose and the legal authority for such activity, and you must afford Align a reasonable period of time before initiating such Reverse Engineering activity in order for Align to evaluate such

activity and take steps to obviate the need for you to Reverse Engineer the Software in accordance with applicable law or challenge the Reverse Engineering activity with the appropriate legal authorities.

Steps that Align might take to obviate the need for you to Reverse Engineer the Software could include, at Align's option, providing you with information essential to achieve inter-operability of the Software with another software program ("Interoperability Information") for a reasonable fee (which in any event will not exceed the actual costs incurred by such reverse engineering activities) and on reasonable terms. You must refrain from such Reverse Engineering activity until such time as any legal challenge is resolved in your favor. To the extent permitted by applicable law, if we provide you with Interoperability Information:

- (i) you must use (and procure that your Permitted Employees use) that Interoperability Information only for the purpose of achieving inter-operability of the Software with another software program;
    - (ii) you must not (and you must procure that your Permitted Employees do not) disclose or communicate that Interoperability Information without our prior written consent to any third party to whom it is not necessary to disclose or communicate it for the purpose of achieving interoperability; and
    - (iii) you must not use that Interoperability Information to create any software which is substantially similar to the Software.
  - (e) not to use the Software for any unlawful purpose or in any way that interrupts, damages or impairs the Software, nor to transmit or upload to Align Storage System any material that is infringing, obscene, defamatory, threatening or unlawful or that may harm Align or any other person and not to use the Software maliciously or for any malicious purpose, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Software or any operating system or platform.
  - (f) to ensure that Permitted Employees use the Software strictly in accordance with the Permitted Use;
  - (g) not to remove our copyright, patent or other proprietary notices from the Software and/or Documentation; and
  - (h) only to use the Software in connection with the iTero Scanner.
  - (i) guarantee that the Laptop, if applicable, shall meet the specifications as required by Align in writing at all times.
- 3.2 Any use of the Software or Documentation which is in breach of condition 3.1 shall be a breach of this Agreement.
4. No assurances
- 4.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU ACKNOWLEDGE THAT THE SOFTWARE AND DOCUMENTATION HAVE NOT BEEN PREPARED TO MEET YOUR INDIVIDUAL REQUIREMENTS AND ARE SUBJECT TO THE WARRANTIES AS SET FORTH IN THE ITERO AGREEMENT.

- 4.2 TO THE EXTENT PERMITTED BY LAW, ALIGN DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE, THE DOCUMENTATION OR YOUR DOWNLOAD OR USE OF THE SOFTWARE OR DOCUMENTATION WILL BE ERROR-FREE, UNINTERRUPTED OR FREE OF VIRUSES OR HARMFUL COMPONENTS. THE SECURITY MECHANISMS IMPLEMENTED BY THE SOFTWARE HAVE INHERENT LIMITATIONS. WHERE APPLICABLE LAW PROHIBITS THE RESTRICTION OF THE REMEDIES OFFERED IN THIS CLAUSE 4.2, ALIGN EXCLUDES ALL SUCH REPRESENTATIONS AND WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- 4.3 TO THE EXTENT PERMITTED BY LAW, ALL WARRANTIES, TERMS, CONDITIONS, REPRESENTATIONS AND UNDERTAKINGS THAT WOULD BE IMPLIED BY LAW, TRADE, CUSTOM, PRACTICE, COURSE OF DEALING, STATUTE OR OTHERWISE ("IMPLIED TERMS") AND WHICH ALIGN MAY BY APPLICABLE LAW EXCLUDE, ARE EXCLUDED FROM THIS AGREEMENT INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTY WHICH CANNOT BY APPLICABLE LAW BE EXCLUDED SHALL BE INCLUDED HEREIN TO THE EXTENT REQUIRED BY APPLICABLE LAW.
- 4.4 TO THE EXTENT PERMITTED BY LAW, OTHER THAN THE PROVISIONS SET OUT IN THIS AGREEMENT AND IMPLIED WARRANTIES THAT CANNOT BY LAW BE EXCLUDED BY ALIGN, THERE ARE NO OTHER WARRANTIES, TERMS, CONDITIONS, REPRESENTATIONS OR UNDERTAKINGS INCLUDED OR GIVEN BY ALIGN IN THIS AGREEMENT OR IN RELATION TO THE SOFTWARE AND/OR DOCUMENTATION AND ITS USE.
- 4.5 TO THE EXTENT PERMITTED BY LAW, ANY STATEMENTS, REPRESENTATIONS, ASSURANCES OR WARRANTIES MADE BY ALIGN EMPLOYEES OR REPRESENTATIVES ARE NOT PART OF THIS AGREEMENT UNLESS EXPRESSLY SET OUT IN THIS AGREEMENT AND YOU AGREE THAT YOU HAVE NOT RELIED UPON ANY SUCH STATEMENT, REPRESENTATIONS, ASSURANCES OR WARRANTIES WHEN ENTERING INTO THIS AGREEMENT AND YOU SHALL NOT HAVE ANY REMEDY IN RESPECT OF ANY STATEMENT, REPRESENTATION OR WARRANTY OF ANY PERSON OTHER THAN AS EXPRESSLY SET OUT IN THIS AGREEMENT. NOTHING IN THIS SECTION SHALL OPERATE TO LIMIT OR EXCLUDE ANY LIABILITY FOR FRAUD.
- 4.6 TO THE EXTENT PERMITTED BY LAW, ALIGN SPECIFICALLY EXCLUDES ANY EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE LAPTOP OR THE LAPTOP SOFTWARE OR LAPTOP DOCUMENTATION.
5. Limitation of Liability
- 5.1 Nothing in this Agreement shall exclude or limit in any way Align's liability for death or personal injury caused by any of Align's negligence, fraud or fraudulent misrepresentation, any breach of obligations implied by applicable law and in respect of which obligations the law prohibits Align from so limiting or excluding its liability or any other matter for which it would be illegal or unlawful for Align to so limit or exclude its liability.
- 5.2 SUBJECT TO CONDITION 5.1 OF THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ALIGN OR ANY PARTY ON ITS BEHALF OR ITS SUPPLIERS BE LIABLE TO YOU IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOFTWARE AND/OR DOCUMENTATION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR INDIRECT LOSSES, CONSEQUENTIAL LOSSES, SPECIAL LOSS OR DAMAGE, LOSS OF INCOME OR REVENUE, LOSS OF PROFIT, THIRD PARTY CLAIMS, LOSS OF BUSINESS, LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION,

BUSINESS INTERRUPTION, LOSS OF DATA (INCLUDING PATIENT DATA), LOSS OF ANTICIPATED SAVINGS, OR LOSS OF ANY OPPORTUNITY, AND IN EACH CASE THE LOSSES HAVING THE CLOSEST EQUIVALENT MEANING IN LOCAL APPLICABLE LAW.

- 5.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY DOCUMENTATION, ALIGN IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY YOU OR A THIRD PARTY ON YOUR BEHALF THAT IS ACCESSED THROUGH THE SOFTWARE (INCLUDING, WITHOUT LIMITATION, CONTENT IN ALIGN STORAGE SYSTEM) AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT OR THE USE OF THE SOFTWARE IN RELIANCE ON SUCH CONTENT. FURTHERMORE, ALIGN IS NOT LIABLE FOR ANY DAMAGES INCURRED THROUGH YOUR (OR ANY THIRD PARTY ON YOUR BEHALF) UNAUTHORIZED USE OR MODIFICATION OF THE SOFTWARE OR COMBINATION OF THE SOFTWARE WITH ANY PRODUCT OR PART THEREOF (INCLUDING OTHER SOFTWARE OR HARDWARE) EXCEPT AS AUTHORIZED BY ALIGN IN WRITING. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

SUBJECT TO CONDITION 5.1 OF THIS AGREEMENT AND APPLICABLE LAW, THE TOTAL AND AGGREGATE LIABILITY OF ALIGN AND ITS SUPPLIERS AND LICENSORS TO YOU IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOFTWARE AND/OR DOCUMENTATION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE SHALL NOT EXCEED FIFTY UNITED STATES DOLLARS.

- 5.4 SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING LIMITATIONS OR EXCLUSIONS OF LIABILITY, SO THE FOREGOING LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.
- 5.5 You acknowledge that the Software and Documentation are licensed to you at no additional cost and that the exclusions and limitations of liability in this Agreement reflect this. Some jurisdictions do not allow the foregoing limitations or exclusions of liability; therefore, the foregoing limitations or exclusions may not apply to you.

## 6. Hardware

- 6.1 The proper functioning of the Software may be affected by the equipment on which it is used. You are responsible for ensuring that the equipment you use in connection with the Software is suitable for running the Software and that in particular it meets the requirements set out in this Section 6. Without derogating from the foregoing with respect to the iTero Scanner, the Software shall only be used with the appropriate Laptop, if applicable, as recommended in the Documentation.
- 6.2 You are responsible for ensuring that you have suitable equipment and services to allow the proper downloading and use of the Software, including (without limitation and as applicable) the Laptop, if applicable, additional compatible devices as set forth in the Documentation, suitable internet access, and certain software as specified in the Documentation (fees may apply), as well as periodic updates to such software.
- 6.3 The specific equipment and services requirements for Software or Software update, as may be necessary, shall be provided to you in the Documentation. If you fail to have suitable equipment and services, including and if applicable the Laptop or the Laptop Software, the Software might not operate as intended and any results obtained may not be correct at no fault of Align.



- 6.4 You acknowledge that if you download the Software through a data connection you may incur significant charges because of the size of the Software, depending on your contract with your internet service provider.
7. Updates
- 7.1 We may from time to time (but shall not be required to) make available a new version, updates, patches, fixes, modifications, extensions, functional improvements, error corrections, enhancements, revisions or changes to the Software (the "Updates") or upgrades in order to ensure its continued operation.
- 7.2 Most Updates or new software releases may be automatically downloaded and installed to your Device (and you hereby authorize us to implement such automatic download).
- 7.3 You agree that Align may perform periodically any type of reasonable actions determined by Align in its discretion in order to update and to maintain the Software on your Device. Such actions may include, automatically assessing the version of the Software in use by you and providing Updates of the Software or any parts thereof to you, collection of anonymous statistics such as sequence of features used to analyze patterns or user trends to support efforts to improve the Software, pulling instrumentation data from such equipment, including the Device, containing information such as usage of tools, logs of error messages, sequence of events that may be causing issues or other similar information. You grant us or anyone on our behalf, permission to access the Software on your Device as set forth herein, including without limitation, to allow log files of the statistics to be stored on Align's Storage System and to remotely ascertain the version and configuration of the Software, web browser and operating system in use on your Device.
- 7.4 Align has no liability for or any obligation to provide updates, upgrades, patches, fixes, or any other services or support for any Laptop Software which shall be your sole responsibility. In the event that Align notifies you that an update or upgrade or other fix to your Laptop Software is required in order for the Software to function properly, you agree to promptly obtain such update, upgrade or other fix, and your failure to do so shall relieve Align of any obligations hereunder and shall be considered a material breach of this Agreement.
8. Intellectual Property Rights
- 8.1 You acknowledge that all intellectual property rights in the Software and Documentation belong to us on a worldwide basis, that rights in the Software and Documentation are licensed (not sold) to you, and that you have no rights in, or to, the Software or Documentation other than the right to use them in accordance with the Permitted Use.
- 8.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments except to the extent required by applicable law.
- 8.3 Nothing in this Agreement grants you any right in connection with copyrights, trademarks or service marks of Align.
- 8.4 You agree that you will not license or sublicense the Software or use the Software for any illegal purpose or in any unlawful manner.
9. Confidentiality
- 9.1 You acknowledge that the Software comprises valuable confidential proprietary information and trade secrets belonging or licensed to us ("Confidential Information"), the disclosure of which could have damaging effects on our business.

- 9.2 You undertake to keep confidential all Confidential Information received from us (or disclosed to you on our behalf) in connection with this Agreement and shall not divulge the same to any person without our prior written consent except where such Confidential Information:
- (a) is in the public domain at the date of this Agreement otherwise than as a result of a breach of a confidentiality obligation by any person;
  - (b) subsequently comes into the public domain, otherwise than as a result of a breach of this Agreement or other breach of a confidentiality obligation by any person, but only after it has come into the public domain;
  - (c) was already in your possession at the time of disclosure to you by or on behalf of us and you are able to demonstrate this by documentary evidence and you do not owe a separate obligation of confidentiality to us in relation to that Confidential Information; or
  - (d) is independently developed by you without use of the Confidential Information as demonstrated by documentary evidence.
- 9.3 You shall be entitled to disclose Confidential Information where required to do so by law, regulation or order of a court of competent jurisdiction, but only to the extent necessary to comply with such law, regulation or order. Where a disclosure is necessary under this condition, you must promptly notify us except where you are prohibited by law, regulation or order of a court of competent jurisdiction to do so.
10. Termination; Suspension
- 10.1 To the extent permitted by applicable law, either party may terminate this Agreement at any time on thirty (30) days written notice to the other party.
- 10.2 Align may terminate this Agreement at any time and without notice if you or any Permitted Employee breaches this Agreement, the terms of the Documentation, or the iTero Agreement, any such breach is not remedied within 14 days of notice to remedy, to the extent curable.
- 10.3 This Agreement will terminate automatically if you no longer have a Customer ID.
- 10.4 Without derogating from the foregoing in this Section 10, Align may, if you fail to remedy a breach of this Agreement within 14 days of a notice to remedy, to the extent curable, and without derogating from any other right that Align may have at law or in equity, suspend your use of the Software and Documentation or any right granted to you which suspension may continue, at Align's sole discretion, until such time as Align determines that you are no longer in breach of this Agreement or the iTero Agreement.
- 10.5 Upon termination or suspension, during the duration of such suspension, for any reason:
- (a) all rights granted to you under this Agreement shall cease or be suspended, in the event of a suspension;
  - (b) you must cease to use the Software and Documentation and all other activities authorised by this Agreement and upon termination, return or destroy any and all copies of the Software within your possession or control, including any copies, whether installed for back-up purposes or otherwise; and
  - (c) upon termination, you must immediately delete or remove the Software and Documentation from all computer equipment in your possession and from the Laptop, if



applicable, and immediately destroy all copies of the Software, Documentation, Interoperability Information and any Confidential Information, and Patient Data as defined in Section 13 (except as you may be required to maintain with record-keeping or data-privacy requirements) below in your possession, custody or control (including electronic copies) and certify to us that you have done so.

## 11. U.S. Government End-Users

- 11.1 If you are a U.S. Government end-user: The Software is a “commercial item” as that term is defined at FAR 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are defined in FAR 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire the rights set out in this Agreement for the Software consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, the terms set forth in DFARS 227.7202. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in FAR 12.212 and DFARS 227.7202 and is further restricted in accordance with this Agreement. The contractor/manufacturer is Align Technology, Inc., 410 N Scottsdale Rd #1300, Tempe, AZ 85281.

## 12. Export Prohibition

- 12.1 You certify, to the extent applicable, that you, your employees, and your agents will comply with applicable U.S. export control laws and regulations, including but not limited to the Export Administration Regulations at 15 CFR Part 730-774 and the U.S. Treasury Department’s Office of Foreign Assets Control trade regulations at 31 CFR Part 500-598, (collectively “U.S. export and trade laws and regulations”).
- 12.2 You certify that you nor any of your immediate or ultimate parents, majority shareholders, subsidiaries, affiliates, or beneficial owners have been designated as a “Restricted Party” by the U.S. Government; by non-U.S. Governments, if applicable; or by international organizations. For purposes of this Section, “Restricted Parties” means any individual or entity identified by the U.S. Government, by non-U.S. Governments or international organizations as being restricted, sanctioned or otherwise prohibited from engaging in transactions with a U.S. person. You certify that you, your employees and your agents will not deal with any Restricted Party related to this Agreement. You shall immediately notify Align in the event this certification changes.
- 12.3 You shall promptly disclose to Align if you become aware of or have a reasonable belief of a violation or suspected violation of U.S. export and trade laws and regulations. In such event you shall provide Align any information Align requests related to your disclosure.
- 12.4 Regardless of the limitations of liability in Section 5 of this Agreement, you shall indemnify Align for all liabilities, penalties, losses, damages, costs or expenses, including reasonable attorney fees, that Align may incur as a result of any violations of U.S. export and trade laws and regulations by you, your employees, or agents.

## 13. Data Collection and Privacy

- 13.1 Align reserves the right to collect anonymous statistics, such as the sequence of features used, to analyze use patterns and/or user trends to support its efforts to improve the Software. By using the Software, you agree to such data collection and further agree to allow log files of the statistics, of a relatively small and reasonable size, to be stored on your computer as a sequence of numbers, for a reasonable length of time. No cookies will be placed on your computer.

- 13.2 You understand and agree that by using the Software, that you may be electronically transferring information of a confidential nature.
- 13.3 Definitions: In this condition 13, the following terms will have the following meanings: (a) "Binding Corporate Rules" ("BCRs") mean our Binding Corporate Rules Processor Policy, available at <https://investor.aligntech.com/corporate-gov/documents>; (b) "Data Protection Law" means applicable data protection or privacy laws or regulations in the country in which you practise dentistry with respect to patients, including the General Data Protection Regulation 2016/679 ("GDPR") or the GDPR as incorporated into United Kingdom law pursuant to section 3 of the European Union (Withdrawal Act) 2018 ("UK GDPR") and any applicable supplemental or implementing legislation and any applicable national implementations and the Privacy and Electronic Communications Directive (2002/58/EC) (each as amended), including the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 as it continues to have effect in the United Kingdom under section 2 of the European Union (Withdrawal) Act 2018; and including The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations made thereunder, including the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164; the security and privacy provisions of the American Recovery and Reinvestment Act of 2009; (c) "Personal Data", "Sensitive Personal Data", "Special Category Data", "Process/Processing", "Controller" (which shall be read in these Terms as "Operator" where local Data Protection Law uses instead the term "Operator"), "Processor", will each have the meaning given to them under Data Protection Law; (d) "Patient Data" means Personal Data (including Special Category Data) about a patient collected by means of iTero Scanner and "Protected Health Information" as defined by HIPAA, including their patient records, impressions and intra-oral scans, study models and treatment plans; (e) "EU Adequacy Finding" means a decision by the European Commission under Article 45 of the GDPR in relation to a country, territory or international organisation or one or more specified ensures an adequate level of protection for personal data. For the purpose of this Agreement, the UK is deemed to be subject to such a decision during the period in which any transmission of data from the EEA to the UK is considered not a transfer of data as set out in the Trade and Cooperation Agreement between the European Union and the UK; and (f) "UK Adequacy Finding" means any regulations made by the Secretary of State under Section 17A of the UK Data Protection Act 2018 that a country, territory, international organisation or sector ensures an adequate level of protection for personal data.
- 13.4 Controller / Processor: You are the Controller of any Patient Data (i.e. Special Category Data of your Patients) and you are responsible for compliance with Data Protection Law with respect to Patient Data. To the extent that Align processes any such Patient Data, Align will do so as a Processor on your behalf and in accordance with your instructions (as set out in this Agreement and our Binding Corporate Rules). Align, as Processor, will not apply or use the data for purposes other than those established in this Agreement, and will not disclose the data to third parties unless authorized by you. You warrant that you have obtained valid consent and are entitled to disclose the Personal Information to Align so as to allow Align to lawfully process through the collection and transfer of the Personal Information in accordance with this Agreement on your behalf.
- 13.5 Transparency and fairness: You must comply with all applicable Data Protection Laws and inform your patients of the use of the Patient Data, including the purpose for which the Patient Data is being collected, intended recipients of the Patient Data, name and address of the person collecting and storing Patient Data (including of any Subprocessors as defined below), and their data protection rights. In addition, you shall obtain any necessary consents in the format required by the locally applicable Data Protection Law from your patients for the processing of their Patient Data in accordance with this Agreement, including that Align may appoint subcontractors and process Patient Data outside the country in which you practise per our data protection policies, including our BCRs. You agree to indemnify and keep indemnified Align and its directors, employees, agents, subcontractors, and affiliates from and against any claims, damages,

liabilities, expenses or penalties Align may incur due to your disclosure of Patient Data to Align, or any of its agents, subcontractors or affiliates pursuant to this Agreement.

- 13.6 Access to Binding Corporate Rules: You should inform your patients about the existence of our Binding Corporate Rules.
- 13.7 Patient Data disclosures: You will only disclose to us Patient Data that is necessary to fulfil the purposes described in this Agreement and in accordance with the patient's consent and any other consent(s) as required by applicable law signed by the patient (a template consent is available on the Invisalign Doctor Site and the iTero Doctor's Site and can be obtained by contacting Align).
- 13.8 Confidentiality and security: You and Align agree to adhere to the principles of medical confidentiality in relation to Patient Data and any confidentiality and security requirements prescribed by applicable law. Align shall ensure that any person it authorizes to process Patient Data has committed themselves to keep such Patient Data confidential or are under an appropriate statutory obligation of confidentiality. You are responsible for maintaining any backup copies or originals of any Patient Data in your possession in a manner that complies with appropriate statutory obligation of confidentiality. You must use the security features (including any key, PIN, password, token or smartcard) that Align issues to you individually to keep Patient Data secure and keep such security features confidential without lending, sharing, transferring or otherwise misusing them. You acknowledge that Align may change its security features from time to time. Further, Align and you shall each implement appropriate technical and organizational measures to protect Patient Data against accidental loss, alteration, unauthorized disclosure or access (a "Data Breach").
- 13.9 Notwithstanding anything to the contrary as set forth in this Section 13, to the maximum extent permitted by applicable law, you acknowledge that you are solely responsible for the security of the Patient Data located on your Device, and any Data Breach of the Patient Data located on your Device shall be your sole responsibility. In the event that you sell, transfer, or dispose of your Device, if applicable, or any other personal equipment on which the Patient Data is stored, you shall delete all files relating to such Patient Data and reset the Device to "Factory Reset" before transferring, selling or disposing of your Device or any other of such personal equipment.
- 13.10 Data Breaches: Except in the case of Section 13.9, where an incident or breach gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of the Personal Information held in manual or electronic form by or on behalf of Align (as Processor), Align will notify you of such incident, as required by applicable law. Align will take all reasonable steps to mitigate or negate the effects of any such Data Breach. In the event of a Data Breach under Section 13.9, you will notify Align as soon as possible if you become aware of a verified Data Breach and keep us informed of any related developments. In addition, Align shall provide you with all co-operation and assistance as may be reasonably required in order to report the breach to appropriate Data Protection Authorities and Data Subjects as required under Data Protection Law and to mitigate or negate the effects of any such Data Breach. Align will maintain records of any known or suspected Align breaches in accordance with commercially accepted industry practices and will make such records reasonably available to you upon request, subject to restrictions that may be placed on Align by contractual obligations of confidentiality to third parties, Regulatory Authorities, or Applicable Law. Except as may be strictly required by Applicable Law, no public notice issued by Align regarding the incident or breach will disclose the name of, or refer to, you without your prior written consent.
- 13.11 Align has made modifications to the Software, by implementing a third party security and back-up software solution as a managed service ("Security Software") that is being provided to you under the terms of this Agreement. Align hereby grants to you a non-exclusive, non-transferable, limited right and license to access and use the Security Software within the territory where you operate.

You acknowledge that Align cannot guarantee that the Software will completely and accurately detect or clean applications and files that are malicious or that you do not use or want. You acknowledge, accept and represent that you accept the risk that the Software may cause welcome as well as unwelcome files, email or URLs or other web content to be screened and blocked and that rejected files may not be recoverable.

- 13.12 Subprocessing: You agree that Align may subcontract its processing of Patient Data to third parties ("Subprocessors") which are listed at <https://investor.aligntech.com/static-files/1c5cc51c-9985-4ae2-87fb-f7ccf500bdf2> provided that: (i) Align has in place a written agreement in accordance with applicable Data Protection Law with the Subprocessor that requires it to process Patient Data only in accordance with this Agreement and Align's Binding Corporate Rules, (ii) any consents required by applicable Data Protection Law have been obtained and (iii) we remain liable to you for ensuring that our Subprocessors process Patient Data in accordance with the terms of Section 13. You may object to the appointment or replacement of a Subprocessor within 30 days of the receipt of notification from Align updating the list of current Subprocessors, provided such objection is based on grounds relating to data protection. In such event, Align will either (at Align's discretion): (a) appoint an alternative Subprocessor; or (b) permit you to terminate this Agreement.
- 13.13 Data transfers: Align's European headquarters are in Switzerland and we operate globally. You acknowledge that Align may transfer Patient Data for processing to one or more of its affiliates or Subprocessors in the course of providing the services, which include countries outside the country where you practise only where it has taken such measures as are necessary to ensure the transfer is in compliance with applicable Data Protection Law, including where the transfer is carried out pursuant to Align's BCRs or where the data importing country has been subject to an EU Adequacy Finding and/or a UK Adequacy Finding. You agree that, subject to provision of the information from Align, you will obtain any necessary consent for data transfer and/or notify the subjects of such Patient Data in accordance with applicable Data Protection Law and you agree and acknowledge that Align shall not be liable for any failure on your part to do so.
- 13.14 Data retention: In compliance with applicable healthcare data retention regulations and laws, Align will store each patient's Patient Data for at least seven (7) years or longer, subject to the terms below. This period can be extended if you contract with Align for additional periods of storage services, which can be agreed to by Align at its sole discretion. Align's storage of data on your behalf, at any time, is dependent on you maintaining an account in good standing with Align. Notwithstanding any term to the contrary herein, storage is subject to: (i) the terms of the applicable service plan, and (ii) your payment of additional fees, if any, as determined by Align from time to time, for storage of the Patient Data. You are solely responsible for compliance with any additional applicable data or healthcare retention requirements beyond this period, including providing copies of this data, if necessary, to comply with additional retention requirements. You will be able to access and to download copies of your patients' Patient Data from the iTero Doctor's Site at any time, unless and until such Patient Data is no longer retained pursuant to this clause or your authority as Controller of that patients' Patient Data has ended pursuant to condition 13.15 and 13.16.
- 13.15 Patient Notice: Where required by applicable law, you agree that you will notify Patients of the period of use and retention of their Patient Data prior to obtaining consent.
- 13.16 Patient transfer: If a Patient notifies you or Align directly that they wish to change doctors, or if for any reason you are no longer able to treat a patient, you authorise Align to effect and manage the patient transfer procedure on your behalf without further notice to you, provided that Align has obtained a signed patient transfer form from the patient that confirms the appointment of a new doctor (who shall become the Controller of the patient's Patient Data). Once the transfer is completed, you will cease to be the Controller of that patient's Patient Data, and your access to that Patient's Patient Data will cease.

- 13.17 Deletion or return of data: Upon termination of this Agreement, Align shall (at your election) (i) destroy; or (ii) return to you all Patient Data in its possession; or (iii) continue to store such Patient Data, subject to your payment for such storage at its then current charges, if applicable, for such storage. The requirement to destroy or return such Patient Data shall not apply to the extent that Align is required by applicable law to retain some or all of such Patient Data, or to Patient Data that Align has archived on back-up systems.
- 13.18 Patient referrals: If you refer a patient to another doctor, you shall do so in compliance with Data Protection Laws and applicable professional rules or laws.
- 13.19 Individuals' rights: If a patient notifies Align that such patients desires access to, or to correct, update or erase its Patient Data, or otherwise asserts any of the patient's rights, we will promptly inform you of such request and provide you with such reasonable assistance as you may require in connection with such request and may provide access to the patient or the patient's representative to the Patient Data. You agree that if applicable Data Protection Law specifies a timeframe and/or procedures that must be complied with in relation to any right asserted in relation to Patient Data you will be solely responsible for compliance with the relevant timeframe and/or procedures.
- 13.20 Anonymised data: You agree that Align may use Patient Data for promotional, educational and/or research purposes, publication in professional journals or use in professional collateral materials, provided that such Patient Data has first been anonymised in a way that neither you nor any patient are identifiable. Where applicable law requires consent for such use of Patient Data, you agree that you will obtain such consent.
- 13.21 Audit: From time to time, Align will submit its data processing facilities, data files and documentation needed for processing Patient Data for audit to ascertain compliance with Align's BCRs or compliance with the requirements of this condition 13. From time to time, Align will also take measures to verify the compliance of its Subprocessors with the requirements of this condition 13.
- 13.22 Data protection impact assessment: if Align believes or becomes aware that its processing of Patient Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, Align shall inform you and provide you with reasonable cooperation in connection with any data protection impact assessment that may be required under applicable Data Protection Law.
- 13.23 Your Personal Data: Align will process your name, contact details and any other Personal Data that you provide to Align in each case in accordance with Align's privacy policy which may be obtained by contacting [privacy@aligntech.com](mailto:privacy@aligntech.com) or your local commercial representative. This data can be processed for various purposes, including for selling, handling orders, or responding to enquiries about products or services or engaging in training with Align. In countries in which Align is legally obliged to grant this right, you have the right to access your Personal Data held by Align and to request its correction or erasure, as well as other rights set out in the privacy policy above. For this purpose, you may contact Align at [privacy@aligntech.com](mailto:privacy@aligntech.com). Align operates globally and may therefore transfer your Personal Data to other countries in which Align operates. The full details of the entities in the Align Corporate Group and the countries they are located in is available here: <https://investor.aligntech.com/static-files/3edcedc9-4451-4bd0-a8ad-151a6a94bf87>. Your Personal Data may also be stored on our servers, which may be located outside of the country you are resident in. However, we will continue to protect your information in accordance with our privacy policy and our Binding Corporate Rules. By providing us your Personal Data, you agree to such transfers, processing and/or storage. You may seek access to and correction of your Personal Data held by Align by contacting us at [privacy@aligntech.com](mailto:privacy@aligntech.com). Further, if you have concerns that we have not met our obligations to you as required by the relevant privacy law in



your country, you may contact Align and make a complaint at [privacy@aligntech.com](mailto:privacy@aligntech.com). You will need to provide Align with sufficient details regarding your complaint as well as any supporting evidence and/or information.

- 13.24 You agree that you shall not engage any third party, including any laboratory or other service provider, that has not upgraded or updated its software used in connection with the iTero Scanner in accordance with Align's written notification to such third party, and you shall be solely responsible to confirm such upgrade or update in writing with such third party prior to transmitting to such third party any Patient Data or other information subject to applicable data privacy laws. Align shall have no obligation to verify that you have requested or been provided such written confirmation, and you shall be solely liable for any subsequent breach of applicable data privacy laws in the event that you provided Patient Data or such other information which is subject to applicable data privacy laws to a third party that has failed to confirm to you in writing that it has implemented such upgrade or update prior to your transfer of any Patient Data or other information subject to applicable data privacy laws.

## 14. General

- 14.1 If any provision of this Agreement is declared by any competent court or body to be illegal, invalid or unenforceable under the law of any jurisdiction, the remaining conditions will remain in full force and effect.
- 14.2 The failure to exercise or delay in exercising a right or remedy provided to a party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision.
- 14.3 You and the Permitted Employees shall be the only parties permitted to enjoy the benefits of this Agreement. A person who is not a party to this Agreement including a Permitted Employee has no right to enforce any of its terms, and there are no third party beneficiaries to this Agreement.
- 14.4 You shall not assign all or any part of your rights and/or obligations under this Agreement without our prior written consent. We may assign any or all of our rights and obligations under this Agreement at any time; however this will not affect your rights or obligations under this Agreement.
- 14.5 The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for your convenience only.
- 14.6 Any terms that by their nature should survive the termination or expiration of this Agreement, including but not limited to: Your Content, Restrictions, No Assurances, Limitation of Liability, Intellectual Property Rights, Confidentiality, Termination, Export Prohibitions, Data Collection and Privacy, and General Terms, will remain in effect after termination or expiration hereof.
- 14.7 Neither party shall be in default or be liable for any delay, failure in performance (excepting the obligation to pay) or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.
- 14.8 The parties acknowledge that support services, if any, are provided independently of the Software licensed hereunder in accordance with the then current applicable service plan, if any.

## 15. Law and Forum

- 15.1.1 Applicable law and jurisdiction. The validity, interpretation, enforceability, and performance of this Agreement will be governed by and construed substantively and procedurally (by excluding



expressly the applicability of UCITA, and the United Nations Convention on Contracts for the International Sale of Goods) as follows, unless your local applicable law requires otherwise:

LOCATION OF CUSTOMER	APPLICABLE GOVERNING LAW:	EXCLUSIVE JURISDICTION
United States, Canada or any other location not named	State of New York	State and/or Federal courts in New York, New York
EMEA, except for as specified below for Israel, Turkey, Russia and UAE	Switzerland	Exclusive jurisdiction of the courts of the city of Zurich, Switzerland.
Israel	Israel	Competent courts of Tel-Aviv, Israel
Turkey	Turkey	Exclusive jurisdiction of the courts of the city of Istanbul, Turkey.
Russia	Russia	Arbitration Court of the Moscow City
UAE	UAE	Competent court in Dubai, UAE
Brazil, Mexico, Argentina, Costa Rica, Colombia, Chile	California unless all parties are from the same country, in which case the law from that country governs, e.g., law of Brazil if all parties located in Brazil.	Court of competent jurisdiction of the relevant country:  Brazil – São Paulo  Mexico – Mexico City  Argentina – Buenos Aires  Costa Rica – San Jose  Colombia – Bogotá  Chile – Santiago
The Peoples' Republic of China	People's Republic of China	Court located at the registration place of Align Entity which sells the Product
Hong Kong	Hong Kong	Courts of Hong Kong
Taiwan	Taiwan	Taiwan Taipei District Court
Japan	Japan	Tokyo District Court

ASEAN, Republic of Korea,  Bangladesh, Nepal, India, Sri Lanka or any other Asia Pacific location not named	Singapore	Any dispute will be resolved by final and binding arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) by a panel of three arbitrators. The place of arbitration shall be Singapore and the language of arbitration shall be English.
Australia	New South Wales, Australia	Competent courts of New South Wales, Australia.
New Zealand	New Zealand	Competent courts of New Zealand

For arbitration proceedings, all disputes will be resolved in English unless otherwise agreed to by the parties.

Notwithstanding the foregoing, Align may seek injunctive relief for any reason and at any time in any court of competent jurisdiction.

**For California, USA only, the following Section shall be added to Section 13 as Section 13.25:**

**13.25 California Consumer Privacy Act.** For the purposes of the California Consumer Privacy Act (“CCPA”), Align shall be considered a Business and/or Third Party, as applicable. Where Align acts as a Third Party, you represent, warrant and covenant that all Personal Information provided or otherwise made available to Align is done so in compliance with applicable law, and that it has provided all necessary and appropriate notices and opt-outs, and otherwise has all necessary and appropriate rights, to enable Align Technology, Inc. to (i) share any and all Personal Information you provided with any Align company, including any parent, subsidiary, affiliate, or related company of Align Technology, Inc. (collectively, the “Align Family Companies”), and (ii) use any such Personal Information in connection with any and all Align Family Companies’ internal operations and functions, including, but not limited to, improving such Align Family Companies’ products and/or services, operational analytics and reporting, internal financial reporting and analysis, audit functions and archival purposes. Notwithstanding the foregoing, the parties agree that the sharing of Personal Information between Align Family Companies does not constitute a “sale” of such Personal Information under the CCPA. Capitalized terms in this paragraph have the meanings given those terms under the CCPA.

**For Australia and New Zealand only, the following sections shall replace the sections mentioned above:**

**Preamble, section (d):** To the extent permitted by applicable law, we may amend this Agreement at any time. We will notify you of changes to this Agreement by publishing the amended version of this Agreement on the iTero Doctor’s Site. A copy of any amendments to this Agreement will be provided to you by email. If the amendments are materially detrimental you may terminate this

Agreement within 30 days of receipt of the amendments. Following such period, the amendments become effective and your continued use of the Software constitutes your acceptance of the amended Agreement.

**Section 2.2:** You will indemnify Align and hold Align harmless against all claims, legal proceedings, losses, costs (including reasonable attorney fees), penalties and fines that Align suffers or incurs as a result of any claim by any third party that Align's use of Your Content in accordance with this Agreement infringes the intellectual property, data privacy or image rights of any person and excluding any liability caused or contributed to by the negligence or a breach of this Agreement by Align.

**Section 3.1:** Without limiting any rights available under the *Copyright Act 1968* (Cth) in Australia and the *Copyright Act 1994* in New Zealand, you undertake:

[Section 3.1(a)-(i) shall be the same as above]

**Section 4.1:** TO THE EXTENT PERMITTED BY APPLICABLE LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING YOUR RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, YOU ACKNOWLEDGE THAT THE SOFTWARE AND DOCUMENTATION HAVE NOT BEEN PREPARED TO MEET YOUR INDIVIDUAL REQUIREMENTS AND ARE SUBJECT TO THE WARRANTIES AS SET FORTH IN THE ITERO AGREEMENT, WHICH INCLUDES THE FOLLOWING:

- (a) UPON DELIVERY OF ANY MEDIA ON WHICH SOFTWARE IS FURNISHED, SUCH MEDIA WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP. ALIGN WARRANTS THAT, FOR A PERIOD OF 12 MONTHS FROM THE WARRANTY EFFECTIVE DATE, THE SOFTWARE, WHEN PROPERLY INSTALLED, WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE OPERATIONAL FEATURES SET FORTH IN THE THEN CURRENT DOCUMENTATION. YOU ARE RESPONSIBLE FOR PROVIDING AND MAINTAINING CURRENT BACK-UPS AND INDUSTRY STANDARD, UPDATED, VIRUS PROTECTION AND FIREWALL PROGRAMS FOR YOUR SYSTEMS AND DATA. ALIGN DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR FREE OF VIRUSES OR HARMFUL COMPONENTS.

THE WARRANTY FOR UPDATES TO SOFTWARE COMMENCE NO LATER THAN 30 DAYS FROM THE DATE OF DELIVERY OF THE UPDATE TO YOU AND WILL BE WARRANTED FOR 12 MONTHS FROM SUCH DELIVERY DATE.

- (b) UNDER THE AUSTRALIAN CONSUMER LAW YOU MAY HAVE THE FOLLOWING RIGHTS: (i) FOR MAJOR FAILURES WITH A SERVICE, YOU ARE ENTITLED: (ia) TO CANCEL YOUR SERVICE CONTRACT WITH ALIGN; AND (ib) TO A REFUND FOR THE UNUSED PORTION, OR TO COMPENSATION FOR ITS REDUCED VALUE; (ii) YOU ARE ALSO ENTITLED TO CHOOSE A REFUND OR REPLACEMENT FOR MAJOR FAILURES WITH GOODS; (iii) IF A FAILURE WITH GOODS OR A SERVICE DOES NOT AMOUNT TO A MAJOR FAILURE, YOU ARE ENTITLED TO HAVE THE FAILURE RECTIFIED IN A REASONABLE AMOUNT OF TIME. IF THIS IS NOT DONE YOU ARE ENTITLED TO A REFUND FOR THE GOODS AND TO CANCEL THE CONTRACT FOR THE SERVICE AND OBTAIN A REFUND OF ANY UNUSED PORTION; AND (iv) YOU ARE ALSO ENTITLED TO BE COMPENSATED FOR ANY OTHER REASONABLY FORESEEABLE LOSS OR DAMAGE FROM A FAILURE IN GOODS OR A SERVICE.

**Section 4.5:** TO THE EXTENT PERMITTED BY LAW, ANY STATEMENTS, REPRESENTATIONS, ASSURANCES OR WARRANTIES MADE BY ALIGN EMPLOYEES OR REPRESENTATIVES ARE NOT PART OF THIS AGREEMENT UNLESS EXPRESSLY SET OUT IN THIS AGREEMENT AND YOU AGREE THAT YOU HAVE NOT RELIED UPON ANY SUCH STATEMENT, REPRESENTATIONS, ASSURANCES OR WARRANTIES WHEN ENTERING INTO THIS AGREEMENT. NOTHING IN THIS SECTION SHALL OPERATE TO LIMIT OR EXCLUDE ANY LIABILITY FOR FRAUD.

**Section 5.2:** SUBJECT TO CONDITION 5.1 OF THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY IS LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOFTWARE AND/OR DOCUMENTATION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY INDIRECT LOSSES, CONSEQUENTIAL LOSSES, LOSS OF DATA (INCLUDING PATIENT DATA), LOSS OF ANTICIPATED SAVINGS, OR LOSS OF ANY OPPORTUNITY.

**Section 5.3:** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY DOCUMENTATION, ALIGN IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY YOU OR A THIRD PARTY ON YOUR BEHALF THAT IS ACCESSED THROUGH THE SOFTWARE (INCLUDING, WITHOUT LIMITATION, CONTENT IN ALIGN STORAGE SYSTEM) AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT OR THE USE OF THE SOFTWARE IN RELIANCE ON SUCH CONTENT. FURTHERMORE, ALIGN IS NOT LIABLE FOR ANY DAMAGES INCURRED THROUGH YOUR (OR ANY THIRD PARTY ON YOUR BEHALF) UNAUTHORIZED USE OR MODIFICATION OF THE SOFTWARE OR COMBINATION OF THE SOFTWARE WITH ANY PRODUCT OR PART THEREOF (INCLUDING OTHER SOFTWARE OR HARDWARE) EXCEPT AS AUTHORIZED BY ALIGN IN WRITING.

**Section 5.4:** SUBJECT TO CONDITION 5.1 OF THIS AGREEMENT AND APPLICABLE LAW, THE TOTAL AND AGGREGATE LIABILITY OF ALIGN AND ITS SUPPLIERS AND LICENSORS TO YOU IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOFTWARE AND/OR DOCUMENTATION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE SHALL NOT EXCEED:

- FIFTY UNITED STATES DOLLARS; OR
- IN THE AGGREGATE, THE PURCHASE PRICE ACTUALLY RECEIVED BY ALIGN FOR THE RELEVANT ITERO SCANNER PURCHASED BY YOU.

THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.