



VisualDx Institutional End User License Agreement

This **VisualDx Institutional End User License Agreement** (this “Agreement”) is made and entered into effective as of 5/15, 2023 by and between **Logical Images, Inc. d/b/a VisualDx**, a New York corporation with an address at 302 N. Goodman Street, Suite E200, Rochester, NY 14607 (“VisualDx”), and the customer listed in Section 3 below, with an address as set forth in Section 3 below (“Customer”) (VisualDx and Customer are each individually, a “Party” and collectively, the “Parties”). VisualDx and Customer hereby agree as follows:

1. License; License Fees. Subject to the terms and conditions of this Agreement, VisualDx will license the Software (as defined in Section 2 below) to Customer (the “License”). As consideration for the License, Customer will pay VisualDx the license fees set forth in Section 3 below (the “License Fees”) in accordance with the payment terms set forth in Section 3 below.

2. Licensed Software. For purposes of this Agreement, “Software” means the web-based software hosted by VisualDx that is listed and checked in the Licensed Software Section of Section 3 below and any add-ons to such software listed and checked in the Licensed Software Add-Ons Section of Section 3 below, including any maintenance or updates thereto provided by VisualDx from time to time, but not including any new versions of or upgrades to such software or add-ons as determined by Contractor from time to time in its sole discretion.

3. Customer License Profile.

Customer Name:	University of California San Diego
Mailing Address:	
Licensed Software:	Product Selected: <input type="checkbox"/> VisualDx Basic: Named accounts will be created which will include mobile access <input checked="" type="checkbox"/> VisualDx Enhanced: Multi-user access will be implemented which will include mobile access <input type="checkbox"/> VisualDx Enterprise: Multi-user access will be implemented which will include mobile access See Attachment A for Product Descriptions
Licensed Software Add-Ons:	Add-Ons Selected: <input checked="" type="checkbox"/> DermExpert <input type="checkbox"/> SMART on FHIR <input type="checkbox"/> None
Description of Access:	Software Access Selected: <input checked="" type="checkbox"/> IP Authentication to access and use the Software using the following Customer IP addresses/ranges (the “ <u>Authorized IP Addresses</u> ”) at the following Customer geographical locations: See Attached
IP Authentication Authorized Users:	Customer’s authorized users are as follows (the “ <u>Authorized Users</u> ”): Customer’s current providers, residents, interns, employees, faculty, staff, and students who: (a) are permitted access to the Software by Customer while on-site at a geographical location with an Authorized IP Address or via Customer’s VPN; or

	(b) have established a Personal Account (as defined in Section 7 below) while on-site at a geographical location with an Authorized IP Address or via Customer's VPN.
License Fees:	[Text deleted]
License Term:	License Start Date: 7/1/2023 License End Date: 6/30/2023
Training:	Access to on-demand web-based training sessions provided at no additional charge to Customer. Other in-person training options are available.
Support:	[Text deleted] Monday through Friday, 8:00 AM to 5:00 PM Eastern Time, excluding U.S. holidays, for the duration of the License Term at no additional charge to Customer.
Payment Terms:	Net 30 days from Customer's receipt of an invoice from VisualDx for the License Fees or any other amounts payable by Customer to VisualDx pursuant to this Agreement that Customer has not reasonably disputed in good faith. Notwithstanding anything in this Agreement to the contrary, payment amounts that are the subject of a good faith ongoing dispute between the Parties will not incur interest, penalties, or give rise to a termination right on the part of VisualDx pursuant to this Agreement.

4. Additional Payment Terms; Sales Tax. All License Fees and other amounts payable by Customer to VisualDx pursuant to this Agreement will be paid by Customer in the lawful money of the United States of America within the timeframe set forth in the Payment Terms Section of Section 3 above. All License Fees and other amounts payable by Customer to VisualDx pursuant to this Agreement are exclusive of all applicable federal, state, local, and foreign sales, use, value added, excise, and other similar taxes arising out of or in connection with this Agreement (excluding taxes based on VisualDx's net income) (collectively, "Sales Tax"). Except to the extent of any applicable and validated exemption, Customer will promptly pay VisualDx any Sales Tax owed within 30 days after receipt of an invoice from VisualDx for such Sales Tax.

5. Term; Renewal. The term of this Agreement will begin on the License Start Date set forth in Section 3 above and will continue until the License End Date set forth in Section 3 above, unless this Agreement is earlier terminated pursuant to this Agreement (the "License Term"). Prior to the end of the License Term or any subsequent renewal License Term, VisualDx will provide to Customer a written Renewal Notice (a "Renewal Notice") setting forth the License Fees and License Term that will be in effect for the subsequent renewal License Term. Unless Customer responds to VisualDx within 30 days of the date of the Renewal Notice that Customer does not desire to renew this Agreement pursuant to such terms, this Agreement will renew with all terms and conditions of this Agreement continuing in full force and effect, as modified only by the terms of the Renewal Notice.

6. Termination. VisualDx may, at its option and sole discretion, terminate this Agreement immediately or suspend Customer's access to the Software upon written notice to Customer if Customer fails to pay when due any License Fees or other amounts that VisualDx is entitled to receive pursuant to this Agreement (except such License Fees or other amounts that Customer has reasonably disputed in good faith) and such payment remains unpaid for 30 days after Customer is notified by VisualDx in writing of such failure. Either Party may terminate this Agreement immediately or, with respect to VisualDx only, suspend Customer's access to the Software upon written notice to the other Party if such other Party: (a) breaches, defaults under, or fails to perform or observe any of its representations, warranties, covenants, or obligations under this Agreement (other than for the payment of money due VisualDx), and does not cure such breach, default, or failure within 30 days after being notified by the other Party in writing of such breach, default, or failure; or (b) ceases doing business, files for bankruptcy protection under the United States federal bankruptcy laws or similar laws of any state, makes an assignment for the benefit of creditors, or admits inability to pay its creditors when due, or if its creditors file an involuntary petition of bankruptcy and such petition is not dismissed within 30 days of its filing date. If Customer terminates this Agreement pursuant to the foregoing sentence or Section 12.1 below (Service Level Commitment/Performance Warranty), the License Fee will

be prorated as of the termination date and any prepaid License Fees paid by Customer to VisualDx for the period from the termination date to the end of the License Term will be promptly refunded to Customer. Termination of this Agreement or the suspension of Customer's access to the Software will be in addition to and not in lieu of any other legal or equitable remedies available to VisualDx under this Agreement or otherwise.

7. Grant of License. Subject to the terms and conditions of this Agreement, VisualDx hereby grants to Customer a non-exclusive, non-transferable license to access and use the Software during the License Term for Customer's own internal clinical and educational use only. Customer may share access to and use of the Software with the Authorized Users, provided that the Authorized Users access and use the Software in accordance with, and subject to, the terms, conditions, and restrictions governing Customer's access to and use of the Software set forth in this Agreement. Customer may not share access to or use of the Software with any individuals or entities other than the Authorized Users. Each Authorized User may (but is not required to) create a personal account to access and use the Software ("Personal Accounts") using the username and password created by him or her pursuant to the protocol established by VisualDx from time to time for creating a Personal Account. Each Authorized User may use his or her Personal Account to access and use the Software on up to (but never more than) 3 computer or mobile devices at any one time while on-site at a geographical location with an Authorized IP Address or using Customer's VPN. Personal Accounts may only be used by the Authorized User that created them, and may not be shared with, transferred or assigned to, or used by any other individual or entity, including other Authorized Users.]

8. License Restrictions.

8.1 Customer's Own Internal Clinical and Educational Use Only. Customer may only use the Software and the VisualDx Content as expressly provided in this Agreement. Customer may not sell, resell, license, sublicense, copy, download, extract, reproduce, reutilize, repurpose, modify, transfer, assign, loan, lease, distribute, or otherwise commercially exploit, make available to any individuals or entities who are not Authorized Users, or put to public use the Software or the VisualDx Content, in whole or in part, in any way; provided, however, that during the License Term Customer may copy or link to VisualDx Content for Customer's own internal clinical and educational use only for the purposes of consultation among individual colleagues, patient education, and inclusion in educational materials (including, without limitation, lectures, handouts, and other teaching materials) presented within Customer's own institution. Customer may not create derivative works of or based upon the Software or the VisualDx Content, or any part thereof. Customer may not modify, adapt, hack, reverse engineer, decompile, or disassemble the Software or the Software's source code or object or executable code, or any part thereof, or cause or permit any third party to do so. Customer will not remove, modify, or obscure any copyright, patent, trademark, or other intellectual property notice included in or on the Software or the VisualDx Content.

8.2 No Publication, Image Repositories, Vision Science, or Machine Learning. Notwithstanding anything in this Agreement to the contrary, the Software and the VisualDx Content, or any part thereof, may not, under any circumstances, be (a) used in any print or electronic publication or posted on websites, publicly available intranet domains, public bulletin boards, social media, online chat rooms, or the like, (b) added to centralized image repositories or learning management systems, or (c) used in performing vision science or machine learning or to train or test deep learning or artificial intelligence algorithms in any way, all of which are strictly prohibited by VisualDx, without VisualDx's prior written consent.

8.3 Reservation of Rights. Notwithstanding anything in this Agreement to the contrary, VisualDx hereby reserves all rights and licenses in and to the Software not expressly granted to Customer under this Agreement (including, without limitation, all modification rights, translation rights, and rental rights and rights to source code and object or executable code). Without limiting the generality of the foregoing sentence, VisualDx expressly reserves its exclusive right under all applicable patent, copyright, trademark, trade secret, and other intellectual property laws to distribute the Software by any means. Customer acknowledges that, subject to the license granted to Customer by VisualDx pursuant to this Agreement, all right, title, and interest in and to the Software (including, without limitation, all associated patent, copyright, trademark, trade secret, and other intellectual property rights and all moral rights related thereto) are owned by VisualDx or VisualDx's licensors and will be retained by VisualDx or VisualDx's licensors.

8.4 Export Control. None of the Software or underlying information or technology may be downloaded, exported, or re-exported into any country to which the United States ("U.S.") has embargoed goods, or

to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or located in or under the control of, any country subject to such export controls.

9. U.S. Government Restricted Rights. The Software is provided with **Restricted Rights**. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or in subparagraphs (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 CFR 52.227-19, as applicable.

10. Confidentiality.

10.1 Use and Disclosure of Confidential Information. VisualDx and Customer may each disclose certain of its Confidential Information (as defined in Section 10.2 below) ("Disclosing Party") to the other ("Recipient") for the sole purpose of fulfilling their respective obligations under this Agreement (the "Purpose") and they each desire to maintain the confidential and secret status of their respective Confidential Information. Recipient will use Disclosing Party's Confidential Information solely for the Purpose. Recipient will not without Disclosing Party's prior written consent, directly or indirectly, disclose Disclosing Party's Confidential Information to any person or entity, except for Recipient's employees, independent contractors, attorneys, accountants, and other advisors that (a) have a need to know Disclosing Party's Confidential Information in connection with furthering the Purpose and (b) accept disclosure of Disclosing Party's Confidential Information under restrictions on use and disclosure no less restrictive than those contained in this Agreement with respect to Disclosing Party's Confidential Information (such entities and persons are collectively referred to herein as "Representatives"). Recipient will take all reasonable measures (including, without limitation, those measures that Recipient uses to protect its own confidential information, which will be no less than reasonable care) to protect the secrecy of Disclosing Party's Confidential Information that the Recipient receives or otherwise obtains and to prevent the unauthorized, negligent, or inadvertent use or disclosure thereof. If Recipient becomes legally obligated to disclose any of Disclosing Party's Confidential Information under law, court order, or subpoena, Recipient may disclose such Confidential Information as so required; provided, however, that before such disclosure Recipient will give Disclosing Party prompt written notice of such obligation (which will include, without limitation, identification of Disclosing Party's Confidential Information to be so disclosed and a copy of the law, court order, or subpoena) to allow Disclosing Party to seek a protective order or other appropriate remedy to prevent or limit any such disclosure and, in the event that Disclosing Party cannot prevent the disclosure, Recipient will disclose only such Confidential Information of Disclosing Party as Recipient is legally required to disclose. The Parties' respective obligations under Section 10 of this Agreement will survive the termination of this Agreement and will extend until such time as the information protected hereby is in the public domain. Recipient will notify Disclosing Party promptly of (and in no event later than 5 days following when Recipient becomes aware of) any use or disclosure of Disclosing Party's Confidential Information not permitted by Section 10 of this Agreement.

10.2 Definition of Confidential Information. For purposes of this Agreement, the term "Confidential Information" means: (a) the terms of this Agreement; (b) patient information and medical records; and (c) any and all other information in any form or of any type, no matter the medium of, about, or relating to Disclosing Party that is learned or otherwise obtained by Recipient during the Term of this Agreement or that Disclosing Party expressly designates in writing as confidential. Notwithstanding anything in this Agreement to the contrary, information will not be considered Confidential Information to the extent that it: (a) is or becomes part of the public domain without breach of this Agreement; (b) is rightfully received without requirements of confidential treatment by Recipient from a third party who did not acquire or disclose such information by a wrongful or tortious act or in violation of any agreement or other requirements of confidential treatment; (c) was lawfully in Recipient's possession without requirements of confidential treatment, as demonstrated by written records, prior to Recipient's receipt of such information from Disclosing Party; or (d) can be shown by documentation to have been developed by Recipient without reference to any of Disclosing Party's Confidential Information.

10.3 Compliance with HIPAA. To the extent applicable, VisualDx will comply with the applicable privacy, security, and confidentiality requirements of the Health Insurance Portability and Accountability Act, as amended ("HIPAA"), governing the confidentiality of patient information and medical records. VisualDx represents and warrants that in the performance of this Agreement, VisualDx does not require and shall not request access to, nor attempt to access, any Protected Health Information (as defined in HIPAA) ("PHI") of Customer or any of its affiliates. Based upon and in reliance upon the representations, warranties and covenants set forth in this Section

10.3, VisualDx is not a Business Associate of Customer as defined in HIPAA. If VisualDx inadvertently comes in contact with Protected Health Information, it will keep such information confidential and not further access, use, or disclose it. If VisualDx becomes a Business Associate, it agrees to comply with all applicable provisions of HIPAA and agrees to sign Customer's then-current Business Associate Agreement.

11. Medical Disclaimer. The Software does not provide medical advice or diagnose a person's health condition. In addition, it is not intended to replace or be a substitute for professional medical advice, judgment, diagnosis, or treatment. The Software is a clinical reference tool that provides initial comparative information for informational purposes only and is intended to be an adjunct to traditional medical information sources. The practice of medicine is a complex process that involves the synthesis of information from a multiplicity of sources. The information provided by the Software delivers information similar to that of a textbook and is but one of the sources that may be used in establishing a diagnosis for a patient. The Software and any information provided thereby should never be solely relied upon as a verified diagnosis of a person's health condition. VisualDx accepts no responsibility for the correctness of any diagnosis made by any person or entity based in whole or in part upon the Software, the use thereof, or any information provided thereby. The use of the Software and reliance on any information provided thereby is solely at one's own risk. If a non-healthcare provider is using the Software for such person's own personal use, such person should never disregard professional medical advice or delay in seeking it based on the Software, the use thereof, or any information provided thereby. Such person should promptly contact such person's own health care provider regarding any medical conditions or medical questions that person may have.

12. Limited Warranty.

12.1 Performance Warranty/Service Level Commitment.

12.1.A Service Level Commitment; Termination. VisualDx will use commercially reasonable efforts to maintain the availability of the Software 24 hours a day, 7 days a week. In the event the Software experiences an Uptime Percentage (as defined below) of less than 99.9% in any calendar month during the License Term (the "SLC Commitment"), Customer may terminate this Agreement by delivering written notice of termination to VisualDx (the "SLC Termination"). The SLC Termination will be effective as of the date VisualDx receives the SLC Termination notice or such later date as specified in the notice. In the event of a breach of the SLC Commitment, Customer's exclusive remedy, and VisualDx's entire liability, will be Customer's right to invoke the SLC Termination.

12.1.B "Uptime Percentage" means the total number of minutes of Scheduled Available Time (as defined below) for a calendar month minus the number of minutes of Downtime (as defined below) suffered in such calendar month, divided by the total number of minutes of Scheduled Available Time in such calendar month. Uptime Percentage will be calculated by VisualDx solely using records and tools available to VisualDx.

12.1.C "Scheduled Available Time" means 24 hours a day, 7 days a week.

12.1.D "Downtime" means any period within the Scheduled Available Time during which Customer is unable to access or use the Software because of an Error (as defined below), excluding (a) any such period that occurs during any Scheduled Downtime (as defined below), or (b) search, FTP, sync, or document preview functions of the Software.

12.1.E "Error(s)" means the failure of the Software to substantially perform in accordance with its most current published functional specifications. Notwithstanding anything in this Agreement to the contrary, Error(s) does not include any Errors or other issues caused by: (a) the improper use of the Software by Customer or the Authorized Users; (b) the accidental or deliberate damage to or intrusion or interference with the Software by Customer or the Authorized Users; or (c) the use of the Software by Customer or the Authorized Users other than in accordance with the reasonable instructions provided by VisualDx from time to time regarding the use of the Software.

12.1.F “Scheduled Downtime” means the time period identified by VisualDx in which it intends to perform any planned maintenance or upgrades to the Software or related systems and any overrun beyond the planned completion time. VisualDx will use commercially reasonable efforts to provide at least 24 hours’ prior notice to Customer before undertaking any Scheduled Downtime.

12.2 Non-Infringement Warranty. VisualDx warrants to Customer that the Software will not infringe on the patents, copyrights, trademarks, trade secrets, or other intellectual property rights of any person or entity. In the event of a breach of VisualDx’s non-infringement warranty in the preceding sentence, Customer’s exclusive remedy, and VisualDx’s entire liability, will be Customer’s right to invoke the provisions of the non-infringement indemnity in Section 13.1 below.

12.3 No Other Warranties. **Customer’s use of the Software is at Customer’s own risk. Except as otherwise expressly provided for in Section 12.1 above and Section 12.2 above, the Software and any other products or services provided by VisualDx pursuant to or in connection with this Agreement are provided on an “as is”, “with all faults”, and “as available” basis without warranties of any kind, either express or implied by statute, usage, custom of trade, or otherwise (including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement).** Without limiting the generality of the foregoing, VisualDx makes no representations or warranties regarding the following: (a) the accuracy, correctness, quality, reliability, completeness, security, availability, currentness, or timeliness of the Software or the use of or the results of the use of the Software; (b) the approval or compliance of the Software or any software tools available through the Software by any government or other entity; or (c) that the Software is free of errors, omissions, or inaccuracies. Furthermore, when using the Software, information will be transmitted over a medium that may be beyond the control and jurisdiction of VisualDx and its suppliers. Accordingly, VisualDx assumes no liability for or relating to the delay, failure, interruption, security, theft, or corruption of any data or other information transmitted over a medium that is beyond the control and jurisdiction of VisualDx and its suppliers in connection with Customer’s use of the Software. In addition, no information or assistance given by VisualDx, or VisualDx’s employees, agents, or independent contractors, to Customer, whether oral or written, will create any warranty, express or implied.

13. Indemnification.

13.1 VisualDx Non-Infringement Indemnity. Subject to the terms and conditions of this Agreement, and except to the extent attributable to the willful misconduct or gross negligence of the Indemnifiable Parties (as defined below in this Section 13.1), VisualDx will, at VisualDx’s sole expense, indemnify, defend, and hold harmless Customer and Customer’s trustees, directors, officers, employees, representatives, successors, and assigns (the “Indemnifiable Parties”) from and against any and all Losses (as defined below in this Section 13.1) resulting from, arising out of, or related to any breach or default in the performance of VisualDx’s non-infringement warranty in Section 12.2 above. The Indemnifiable Parties will provide prompt written notice to VisualDx of any claim, together with a copy of the claim and any information or materials known to the Indemnifiable Parties with respect to such claim, asserted by a third-party against the Indemnifiable Parties that may give rise to a claim for indemnification pursuant to this Section 13.1 and VisualDx will take up the defense of such claim. The Indemnifiable Parties will provide reasonable assistance to VisualDx as reasonably necessary for VisualDx to defend any such third-party claim, provided that the Indemnifiable Parties will have the right to fully participate in such defense at their own expense. VisualDx will have full authority to defend and settle such claims, provided that any settlement intended to bind the Indemnifiable Parties will require Customer’s prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. For purposes of this Section 13.1, “Losses” means any and all claims, suits, proceedings, losses, damages, penalties, expenses, costs, court costs, professional fees (including, without limitation, reasonable attorneys’ fees and disbursements), interest, disbursements, judgments, liens, and liabilities of any kind or nature whatsoever (including, without limitation, claims for the injury to or the death of any person or the damage to any property (including, without limitation, loss of use thereof)). This Section 13.1 will survive the termination of this Agreement.

13.2 Customer Indemnity. Except to the extent attributable to the willful misconduct or gross negligence of VisualDx, Customer will indemnify and hold harmless VisualDx against any damages finally awarded against VisualDx for any claim based on any use of the Software by Customer, provided that VisualDx gives Customer prompt written notice of such action, cooperates with Customer in the defense of such action, and gives Customer sole control of the defense of such action and the right to settle it, provided that Customer will not enter into any settlement

or other agreement that admits liability on behalf of VisualDx or places ongoing obligations on VisualDx without VisualDx's prior written consent. This Section 13.2 will survive the termination of this Agreement.

14. Limits on Liability for Damages.

14.1 Indirect Damages. In no event will VisualDx be liable to Customer or any Authorized User (or any person or entity claiming through Customer or an Authorized User) for any indirect, consequential, incidental, special, punitive, exemplary, or other similar damages resulting from, arising out of, or related to this Agreement, any alleged or actual breach of this Agreement, the Software, the VisualDx Content, or the use of, the results of the use of, or the inability to use the Software or the VisualDx Content in any manner whatsoever, whether arising under contract, breach of warranty, tort, negligence, strict liability, enterprise liability, product liability, any other theory of liability, or otherwise, and whether or not VisualDx has been advised of the possibility of such damages or such damages are otherwise foreseeable (including, as examples of such damages, but not in limitation thereof, any damages for or based on loss of profits, loss of revenue, loss of use, loss of production or productivity, loss of opportunity, loss of contracts, loss of financing, loss of data, loss of privacy, loss of reputation or goodwill, loss of business or business relations, business interruption, delays, downtime costs, diminution of value, cost of capital, cost or procurement of substitute goods, services, or facilities, the cost of attorneys' fees or disbursements, bodily injury or death, property or equipment damage, or claims of customers of Customer for the foregoing damages).

14.2 Direct Damages. Except as otherwise set forth in Section 14.3 below, without limiting the generality of Section 14.1 above and notwithstanding anything else in this Agreement or otherwise to the contrary, VisualDx's maximum aggregate liability to Customer or any Authorized User (or any person or entity claiming through Customer or an Authorized User) for any direct or other damages of any type whatsoever resulting from, arising out of, or related to this Agreement, any alleged or actual breach of this Agreement, the Software, the VisualDx Content, or the use of, the results of the use of, or the inability to use the Software or the VisualDx Content in any manner whatsoever will not exceed the License Fees paid by Customer to (and actually received by) VisualDx for the initial License Term or renewal License Term in which the event giving rise to the claim of liability actually occurred.

14.3 VisualDx Exceptions. In the event or case of VisualDx's willful misconduct, gross negligence, indemnification liability under Section 13.1 above, or breach of its confidentiality obligations under Section 10 above, the limits on VisualDx's liability for damages set forth in Section 14.2 above will not apply.

14.4 Fundamental Elements; Survival. The limits on liability for damages set forth this Section 14 are fundamental elements of the basis of the bargain between VisualDx and Customer. This Section 14 will survive the termination of this Agreement.

15. Contractual Representations and Warranties.

15.1 VisualDx. VisualDx represents and warrants to Customer, as of the date of this Agreement and during the License Term, that: (a) this Agreement is a valid and binding obligation of VisualDx and is enforceable against VisualDx in accordance with its terms; and (b) VisualDx is not a party to or subject to any agreement, judgment, decree, or order that would directly or indirectly affect its ability to enter into or perform its obligations under this Agreement. This Section 15.1 will survive the termination of this Agreement.

15.2 Customer. Customer represents and warrants to VisualDx, as of the date of this Agreement and during the License Term, that: (a) this Agreement is a valid and binding obligation of Customer and is enforceable against Customer in accordance with its terms; and (b) Customer is not a party to or subject to any agreement, judgment, decree, or order that would directly or indirectly affect its ability to enter into or perform its obligations under this Agreement. This Section 15.2 will survive the termination of this Agreement.

16. Miscellaneous Provisions.

16.1 Independent Contractor. VisualDx and Customer hereby acknowledge that the relationship of VisualDx and Customer is that of an independent contractor in connection with the subject matter of this Agreement. In no event will either Party be deemed a joint venture party, partner, employee, or agent of the other Party by virtue of this Agreement.

16.2 Survival. The provisions of this Agreement that by their terms or by their nature and content survive or are intended to survive the termination of this Agreement will so survive the termination of this Agreement.

16.3 Notices. Except as otherwise expressly provided by this Agreement, any notice, consent, demand, or other communication required or permitted under this Agreement will be in writing, addressed to the Party that the same is directed using the appropriate address for such Party as set forth below in this Section 16.3 (or such other address as the Party may designate by like notice from time to time), delivered using one of the following delivery methods, and deemed delivered to and received by the Party that the same is directed for all purposes as of the date: (a) it is actually received by the Party that the same is directed, if sent by electronic mail; (b) it is actually received by the Party that the same is directed, if delivered personally (by hand delivery); (c) 1 business day after it was sent, if sent by commercial overnight courier service (that guarantees next day delivery and provides a receipt) or 3 business days after it was sent, if sent by commercial international courier service (that guarantees three day or less delivery and provides a receipt); or (d) 3 business days after it was deposited in a regularly maintained receptacle for the deposit of U.S. mail, if sent by registered or certified U.S. mail (postage prepaid, return receipt requested). VisualDx's mailing address and electronic mail address are as follows: Logical Images, Inc. d/b/a [Text deleted]

16.4 Assignment; Binding Effect; No Third-Party Beneficiary. No Party will assign (in whole or in part) this Agreement or any of their respective rights or obligations under this Agreement, whether voluntarily, involuntarily, by operation of law, or otherwise, without the prior written consent of the other Party (which consent will not be unreasonably withheld, conditioned, or delayed). Any proposed assignment in contravention of this Section 16.4 will be null and void. This Agreement is binding upon and will inure to the benefit of the Parties and their respective legal representatives, heirs, executors, successors, and permitted assigns. This Agreement is intended solely for the benefit of the Parties and does not create or grant any right in or to a person or entity who is not a Party, unless this Agreement is assigned to such person or entity as permitted by this Section 16.4. Notwithstanding anything in this Section 16.4 to the contrary, VisualDx may assign this Agreement, together with all of its rights and obligations under this Agreement, without the prior written consent of Customer to: (a) any entity controlling, controlled by, or under common control with VisualDx, (b) any entity that acquires substantially all of VisualDx's assets or the assets of the business unit of VisualDx to which this Agreement pertains, or (c) the successor in a merger or consolidation involving VisualDx, provided that (i) the assignee assumes VisualDx's obligations under this Agreement in writing for the benefit of Customer effective as of the time of the assignment and (ii) VisualDx notifies Customer of the assignment in writing no later than 10 days after the effectiveness of the assignment.

16.5 Enforcement of this Agreement. If VisualDx commences legal proceedings to enforce its rights or collect any amount it is due under this Agreement, then VisualDx will be entitled to recover from Customer all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, internal legal costs, court costs, expenses of investigation, and expert fees) incurred by VisualDx in connection with such enforcement or collection, provided that VisualDx is the prevailing party in any such proceeding. This Section 16.6 will survive the termination of this Agreement.

16.6 Cumulative Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement or otherwise conferred upon or reserved to any Party are cumulative and not exclusive of any other rights or remedies that the Party otherwise has or would have under this Agreement, at law or in equity, or otherwise, and may be exercised singularly, successively, or together at the sole discretion of the Party as often as occasion may arise or as may be deemed expedient.

16.7 Headings; Incorporation by Reference. The headings in this Agreement are inserted as a matter of convenience only and will not be used to interpret or construe any provision of this Agreement. Every schedule, exhibit, appendix, and other attachment attached to this Agreement and referred to herein is hereby incorporated into this Agreement by reference.

16.8 Construction; General Interpretive Principles. Whenever the context may require, any pronoun used in this Agreement will include the corresponding masculine, feminine, or neutral forms and the singular of nouns, pronouns, and verbs will include the plural and vice versa. This Agreement will not be construed against any Party by reason of the fact that the Party may be responsible for the drafting of this Agreement or any provision hereof. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) references in this Agreement to “Sections”, “paragraphs”, and other subdivisions without reference to a document are to designate Sections, paragraphs, and other subdivisions of this Agreement; (b) the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision; and (c) the terms “include” and “including” will mean without limitation by reason of enumeration.

16.9 Severability. If any provision of this Agreement is finally determined to be unenforceable, invalid, or ineffective in any action, suit, or proceeding, such provision will be automatically reformed and construed so as to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving its original intent. The determination that any provision of this Agreement is unenforceable, invalid, or ineffective in any action, suit, or proceeding will not affect the enforceability of the remainder of this Agreement.

16.10 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all of the Parties need not sign the same counterpart. This Agreement may be executed by exchanging original handwritten signatures, electronic signatures, scanned signatures in portable document format (PDF), signatures by facsimile, or any combination of the foregoing.

16.11 Amendment; No Waiver. This Agreement may not be amended, changed, or modified, except in a written instrument signed by all of the Parties. Failure on the part of any Party to insist upon strict compliance with any of the terms, conditions, covenants, or obligations of this Agreement will not be deemed a waiver of such terms, conditions, covenants, or obligations nor will any waiver or relinquishment of any right or power under this Agreement at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

16.12 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and communications, written or oral, relating thereto (including, without limitation, any Customer purchase order or similar document related to the purchase of the License).

[Remainder of page intentionally left blank, signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this VisualDx Institutional End User License Agreement effective as of the date first written above.

Logical Images, Inc. d/b/a VisualDx

University of California San Diego

[Text deleted]

Print Title

Print Title

Date

Date

Attachment A to End User License Agreement – Product Descriptions

VisualDx Basic

VisualDx is an award-winning diagnostic clinical decision support system designed to enhance diagnostic accuracy, aid therapeutic decisions, and improve patient safety. Spanning over 3,000 diseases and including 40,000+ images, clinicians can quickly build a custom differential diagnosis across general medicine or use the powerful search function to access patient-specific clinical information. VisualDx is the tool of choice for front line healthcare workers who want a curated, peer-reviewed approach to drive quality patient care. The Basic Package provides a subscription to VisualDx to a determined number of named accounts which can be accessed via a desktop, smartphone, or tablet device.

VisualDx Enhanced

VisualDx is an award-winning diagnostic clinical decision support system designed to enhance diagnostic accuracy, aid therapeutic decisions, and improve patient safety. Spanning over 3,000 diseases and including 40,000+ images, clinicians can quickly build a custom differential diagnosis across general medicine or use the powerful search function to access patient-specific clinical information. VisualDx is the tool of choice for front line healthcare workers who want a curated, peer-reviewed approach to drive quality patient care. The Enhanced Package provides a subscription to VisualDx through IP-authentication. With that open access, users can create a personal account which can then be accessed via smartphone or tablet. Personal accounts are required for CME.

VisualDx Enterprise

VisualDx is an award-winning diagnostic clinical decision support system designed to enhance diagnostic accuracy, aid therapeutic decisions, and improve patient safety. Spanning over 3,000 diseases and including 40,000+ images, clinicians can quickly build a custom differential diagnosis across general medicine or use the powerful search function to access patient-specific clinical information. VisualDx is the tool of choice for front line healthcare workers who want a curated, peer-reviewed approach to drive quality patient care. The Enterprise Package provides enhanced integration into the clinical workflow by allowing providers to access VisualDx content from multiple touchpoints. VisualDx will be available via IP-authentication and the electronic health record via the HL7 infobutton standard. Users will be able to create a personal account which can then be accessed via smartphone or tablet device. Personal accounts are required for CME.

DermExpert

DermExpert is an algorithm that uses machine learning and vision science to enhance the process of dermatologic diagnosis. Proper lesion and rash classification is essential to an accurate dermatologic diagnosis. This task is challenging. DermExpert does not make a diagnosis, rather it lets providers take a picture and assists with the lesion classification process based on the image. Further, DermExpert has been designed to enhance learning - it does not replace clinician cognition. DermExpert is also HIPAA and Patient Privacy compliant. No patient images are uploaded to VisualDx servers, nor are they automatically stored on a device. DermExpert is available on both Apple and Android devices. A current VisualDx product license is required to use DermExpert.

SMART on FHIR

VisualDx supports the Health Level 7 (HL7) Infobutton standard and SMART® on FHIR®, with a focus on the problem list and medication list. As one of the first applications using FHIR inside of Cerner Millennium, clinicians can view medication reactions without leaving the Cerner workflow. Within the SMART on FHIR API, VisualDx uses patient data, condition list, and medication order to allow the clinician to review medical images and patient-specific clinical information as well as build a differential diagnosis based on the problem list and/or medication list.