

ScImage Terms and Conditions

By signing the Order Form with NextGen Healthcare, Inc. that contains the following Third-Party Product or Service and/or clicking "I ACCEPT" or equivalent language when You or Your organization first uses ScImage products or services, Customer and/or its organization are agreeing to the following terms and conditions that are directly between you and the Third-Party vendor. To the extent you are agreeing on behalf of Customer, you represent and warrant that you are authorized by Customer to do so.

Customer Responsibilities:

To the extent required, Customer shall be responsible for the preparation of the installation site where the Software and/or Hardware will be installed. The site preparation shall comply with all safety, electrical, RF or magnetic shielding and acoustical suppression and building codes relevant to the installation and use of the Software, Hardware, and Specified Configuration. The sufficiency of any site installation plans shall be the responsibility of the Customer. ScImage works with the Customer to plan the network configuration. Customer is responsible for purchasing all in-wall cable according to the cabling specifications and for installing the cable in compliance with all applicable regulatory requirements (e.g., building and fire codes). ScImage does not run cabling. All wiring including the wiring of any Local or Wide Area Network, cables, etc., is the responsibility of the Customer. Customer shall at a minimum provide Cat 5 network cabling, 100 BaseT Ethernet network, accommodating TCP/IP protocol and all hubs, switches, routers, firewalls etc., including remote access connections and associated fees.

Customer will provide to ScImage access to the applicable Customer location(s) specified in the Quotation and to Customer's equipment, data, and employees, and will otherwise cooperate with ScImage, as reasonably necessary for ScImage to perform its installation, training, and other obligations under this Agreement. Customer will devote all equipment, facilities, personnel, and other resources reasonably necessary to (a) install the Software, (b) be trained in the use of the Software, (c) begin using the Software on a timely basis as contemplated by this Agreement and (d) satisfy any Customer requirements described in the Quotation. ScImage will not be responsible for any delays or additional fees and costs associated with Customer's failure to timely perform its obligations.

When DICOM Services for a particular acquisition modality are included, the Customer must provide a DICOM 3.0 compliant file structure and communications channel for all of Customer's equipment.

Customer is responsible for setting up and maintaining adequate fire wall protection for the network on which the Software is to be located. Should the Software or Customer's equipment on the network be hacked, corrupted or otherwise damaged due to lack of proper network protection, any expenses associated with bringing the network and associated Customer equipment back to its previous standard operating condition are not covered under ScImage's warranty or Software Support Agreement and shall be the responsibility and cost of the Customer.

It is strongly suggested that the Customer's only Internet access to be used on ScImage workstations that contain the Software is to access PICOM365.com. E-mail or other electronic communications of any kind can be allowed on workstations containing the Software but at customer's sole risk and responsibility and further provided, with the understanding that ScImage offers no guarantee of compatibility with various third party software applications. The PICOM365 System is designed to connect to the Internet via broadband technology with consistent minimum synchronous speeds of 10 Mbps or greater.

All fees to third parties (i.e. HIS, RIS, PACS or device manufacturers) are the responsibility of the Customer.

Confidentiality:

Disclosure Restrictions: All Confidential Information of one party ("Disclosing Party") in the possession of the other ("Receiving Party"), whether or not authorized, will be held in strict confidence, and the Receiving Party will take all steps reasonably necessary to preserve the confidentiality thereof. The Disclosing Party's Confidential Information

will not be used or disclosed by the Receiving Party for any purpose except as necessary to implement or perform this Agreement, or except as required by law, provided that the other party is given a reasonable opportunity to obtain a protective order. The Receiving Party will limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees whose responsibilities require such use or access. Before any of the Receiving Party's employees receive access to or possession of any of the Disclosing Party's Confidential Information, the Receiving Party will have previously advised all such employees generally in writing of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party will be liable for any breach of this Agreement by any of its employees, or possession of any of the Disclosing Party's Confidential Information from or through the Receiving Party.

Compliance with Laws & Privacy:

Each party shall comply with all laws, rules and regulations applicable to the party in connection with the performance of its obligations in connection with the transaction contemplated hereunder, including, but not limited to FDA, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In the course of providing project implementation related services and/or support services to Customer, hereunder, it may be necessary for ScImage to have access to, view, and/or download computer files that might contain Personal Data. "Personal Data" shall mean information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (e.g., images, heart monitor data, medical record number) and non-health information (e.g., date of birth, gender). ScImage will process Personal Data only to the extent necessary to perform and/or fulfill its project implementation and support obligations hereunder.

Acceptance:

Customer will be deemed to have accepted the Software and, if applicable, the Hardware on the earlier date of First Clinical Use or the thirtieth (30th) day after the Delivery Date, unless during that period, the Software and, if applicable, the Hardware, fails to perform in accordance with applicable Documentation in some material respect that precludes clinical use by Customer, and, prior to the end of that thirty (30) day period, Customer gives written notice of non-acceptance to ScImage describing the material failure in reasonable detail and explaining why the failure precludes clinical use by Customer. Acceptance is not delayed if factors within Customer's control cause delay in the installation or First Clinical Use of the Software. If Customer provides timely notice of non-acceptance to ScImage, then:

ScImage will investigate the reported failure. Customer will provide to ScImage reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist ScImage in its efforts to diagnose and correct the failure. If ScImage determines, reasonably and in good faith, that there was no material failure to perform or that the failure to perform was not attributable to a defect in the Software (or Hardware, if applicable) or an act or omission of ScImage, then ScImage will give written notice to Customer explaining that determination in reasonable detail, and Customer will be deemed to have accepted the Software (and Hardware, if applicable) as of the date of ScImage's notice or thirty (30) days after the Delivery Date, whichever is later.

If ScImage determines that there was a material failure to perform that was attributable to a defect in the Software (or Hardware, if applicable) or an act or omission of ScImage, and if ScImage cannot correct the failure within thirty (30) days (or such necessarily longer period as may be reasonably agreed to by the parties) after receipt of Customer's notice of non-acceptance, then Customer will promptly return to ScImage all copies of the Software and Documentation (or Hardware, if applicable) and related items delivered to Customer by ScImage, the Software License shall be cancelled, and as Customer's sole and exclusive remedy, ScImage will then refund to Customer the Software License or purchase fee, as applicable, paid by Customer in accordance with Section 4, less all professional services fees for services previously delivered by ScImage. If, within such period, ScImage does correct the failure, then ScImage will give written notice to Customer certifying that the failure has been corrected, and another thirty (30) day acceptance period will begin in accordance with this Paragraph.

Warranties, Exclusions, and Limitations

Assignment of Warranties: If the Quotation includes Hardware and if Customer does not receive warranties directly from applicable Hardware manufacturers, ScImage, hereby assigns to Customer, to the fullest extent permitted under applicable agreements with Hardware manufacturers, the benefit of all representations, warranties and indemnities granted by such vendors to ScImage with respect to the Hardware sold under this Agreement, provided, however, that to the extent ScImage expressly provides support with respect to such Hardware, ScImage's standard support terms and conditions will apply to such Hardware.

Force Majeure: Neither party will be liable for, nor will either party be considered in breach of the Agreements, including Services beyond those specified in this Agreement that are provided to Customer, due to, any failure to perform its obligations under this Agreement (other than its payment obligations) as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies, extraordinary conditions or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

Limitations: SCIMAGE'S TOTAL LIABILITY UNDER THIS AGREEMENT WILL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNT OF THE SOFTWARE LICENSE FEES AND HARDWARE FEES ACTUALLY PAID BY CUSTOMER TO SCIMAGE, UNDER THIS AGREEMENT. NOR SHALL SCIMAGE BE LIABLE FOR THE COSTS OF PROCUREMENT OF SUBSTITUTE SOFTWARE OR SERVICES.

Consequential Damage Exclusion: UNDER NO CIRCUMSTANCES WILL SCIMAGE OR ANY MANUFACTURER OF HARDWARE OR THIRD-PARTY SOFTWARE (OR ANY AFFILIATES PROVIDING SOFTWARE, HARDWARE OR OTHER PRODUCTS OR SERVICES TO CUSTOMER) BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF DATA OR SOFTWARE, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS OR DELIVERY OF SERVICES, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING SUCH DAMAGES ARISING FROM ANY BREACH OF THIS AGREEMENT OR FOR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF SCIMAGE HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

Termination by ScImage:

ScImage may immediately terminate the Agreement by giving written notice of termination to Customer, upon the occurrence of any of the following events:

Customer fails to pay, within twenty (20) days after written demand therefore, of any past-due amount payable that is not the subject of a Good Faith Dispute.

Customer breaches any of its other material obligations under this Agreement and does not cure the breach within thirty (30) days (provided that the breach is susceptible to cure) after ScImage gives written notice to Customer describing the breach in reasonable detail.

Customer does not post any studies to PICOM365.com for three (3) consecutive months.

Customer dissolves or liquidates or otherwise discontinues all or a significant part of its business operations.

UNLESS OTHERWISE AGREED UPON, SCIMAGE WILL DELETE ALL STUDIES UPON TERMINATION OF THE AGREEMENT OR 7 YEARS AFTER THE STUDY WAS POSTED, WHICHEVER COMES FIRST. ALL CUSTOMER DATA WILL BE DELETED THE 31ST DAY AFTER TERMINATION IF THE CUSTOMER HAS NOT PROVIDED A WRITTEN REQUEST TO HAVE ALL DATA RETURNED. If return of data is requested, Customer will be provided with a quotation for the cost of returning the data after termination of the agreement.