

## **SYMPTOM MEDIA INSTITUTIONAL SUBSCRIPTION TERMS AND CONDITIONS:**

### **1. Grant of License.**

1.1 Subject to the terms of this Agreement, Licensor (Symptom Media) hereby grants to Licensee, a limited, royalty-free, non-exclusive, non-transferable license (the “**License**”) to exhibit or display the Film Library on Licensor’s Servers at its facility or on monitors at its facility (the “**Premises**”) and via Licensee’s Network. For the purpose of this Section 1.1, Licensor’s Servers means a combination of software, residing on certain hardware, performing certain processes and functions at Licensor’s Premises, which can be used to display or exhibit the Film Library to Authorized Users (as defined in Section 5.1 below).

1.2 The term (the “**Term**”) of the License listed on the invoice prepared by Licensor, provided that Licensor shall have the right to revoke the License as to any or all of the Film Library immediately upon written notice to Licensee in the event Licensee is in breach of this Agreement which has not been cured in accordance with Section 9 below.

1.3 No ownership or copyright in any of the Film Library shall pass to Licensee by the issuance of the License, and, except as expressly stated in this Agreement, Licensor grants Licensee no right or license, express or implied, to the Film Library; provided, however, that nothing in the License is intended to affect such rights in the Film Library as Licensee may otherwise have, whether by contractual arrangement or by law.

2. Trademarks. Licensee agrees to refer to the Film Library as Symptom Media’s or any other trademarks specified by Licensor. Licensee is hereby granted , a limited, non-exclusive, non-transferable license to use those Licensor trademarks, logos, service marks, and trade names (collectively, “**Trademarks**”) in the form provided by Licensor in connection with its obligations and rights under this Agreements. Licensee agrees that it will not use

3. Payment By Licensee. In consideration for the License provided herein, Licensee shall pay Licensor the license fee (“**License Fee**”). All fees are non-refundable. Amounts not paid due under this Agreement will accrue interest at the lesser of one and one-half percent per month or the maximum rate permitted under applicable law.

4. Delivery of the Film Library. Subject to the terms herein, Licensor shall deliver to Licensee by providing the Film Library to Licensee through digital electronic access, granting one username and password located at Symptom Media’s website (www.symptommedia.com). Licensee will have thirty days from the delivery date to test and accept the Film Library, provided that any use of the Film Library during this period which permits Authorized Users to access the benefits of the Film Library, shall be deemed to constitute acceptance.

### **5. Authorized Use of the Film Library.**

5.1 For the purpose of this Agreement, use of the Film Library shall be limited to Licensee’s Premises, limited to hospital rooms or in other non-common or non-public areas. Only Licensee’s employees and students (including faculty, staff, affiliated researchers and

independent contractors) at the Premises may exhibit or view the Film Library (“**Authorized Users**”). Other employees (including faculty, staff, affiliated researchers and independent contractors) outside of the license parameters, including those located at different locations, but within Licensee’s company or related or affiliated companies, shall not be considered Authorized Users.

5.2 Licensee shall have the limited right to display the Film Library to Authorized Users for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research or analysis. The content and material offered, including without limitation text, graphics, and images ("**Content**"), are provided for informational purposes only. It is made with the understanding that the Licensor is not engaged in rendering medical, health, psychological, or any other kind of personal professional services. The Content is not intended to be, and must not be taken to be, the practice of medical or counseling care.

5.3 Licensee shall not: (i) permit anyone other than Authorized Users to use the Film Library; (ii) modify, edit, make changes to or create a derivative work of the Film Library without the express written permission of Licensor; (iii) remove, obscure or modify any copyright or other notices included in the Film Library; or (iv) other than as specifically permitted in this Agreement, Licensee may not use the Film Library for commercial purposes, including but not limited to the sale of the Film Library or reproduction or distribution of the Film Library in any form.

## 6. Licensee Performance Obligations.

6.1 Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Film Library is granted under this Agreement including, in particular, any limitations on access or use of the Film Library as set forth in this Agreement.

6.2 Licensee shall use reasonable efforts to protect the Film Library from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Film Library by an Authorized User, Licensee shall terminate such Authorized User's access to the Film Library immediately.

6.3 Where access to the Film Library is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.

## 7. Licensor Performance Obligations.

7.1 Within two (2) weeks from commencement of this Agreement, Licensor shall make the Film Library available to Licensee.

7.2 Licensor reserves the right to withdraw from the Film Library any item or part of

an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than 14 days following the removal of any item pursuant to this section.

8. Reservation of Rights and Ownership of Intellectual Property. All rights in the Film Library, other than those specifically granted herein are reserved to Licensor for its own use and benefit. Licensee is affirmatively prohibited from copying, distributing, and or otherwise exploiting the Film Library except as specifically provided for in this Agreement. The Film Library and all copies of them, any intellectual property rights in such Film Library (whether under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law or similar protections), and any owned by Licensor and notwithstanding this License, shall remain the exclusive property of Licensor and/or its third party licensors. Licensee acknowledges that it shall not acquire any rights whatsoever in the Film Library as a result of Licensee's Authorized Use of such Film Library. Licensee agrees that it shall not directly nor indirectly, attack the ownership or validity of Licensor's Film Library and/or any intellectual property rights in the Film Library.

9. Representations and Warranties.

9.1 Subject to the limitations set forth in this Agreement, Licensor warrants and represents as follows: (i) Licensor has the right, title and interest in and to the Film Library, the intellectual property rights in and to the Film Library and the right and authority to grant Licensee the License under this Agreement to use Materials; (ii) Licensor is a duly organized, valid and existing entity under the laws of the state of its formation, and has the power and authority to enter into this Agreement, perform its obligations hereunder, and grant the rights granted hereunder; and (iii) this Agreement has been duly and validly executed by Licensor and constitutes a valid and binding agreement of Licensor, enforceable against Licensor in accordance with its terms.

9.2 Subject to the limitations set forth in this Agreement, Licensee represents and warrants: (i) Licensee has the power and authority to enter into this Agreement; and (ii) Licensee will adhere to the terms and conditions of this Agreement and it will not permit uses of the Film Library beyond the scope of this License or provide the Film Library to any person or entity other than the Authorized Users.

10. Termination.

10.1 Licensor shall have the absolute right to terminate this Agreement, without thereby incurring any liability to Licensee, effective immediately upon Licensee's receipt of notice of such termination from Licensor upon any of the following events: (i) Licensee becomes insolvent or appears unable to pay its debts as they mature; (ii) Licensee makes an assignment for the benefit of its creditors; (iii) Licensee seeks relief under any bankruptcy, insolvency or debtors' relief law; (iv) proceedings are commenced against Licensee or on its behalf under any bankruptcy, insolvency or debtors' relief law and such proceedings have not been vacated or set aside within sixty days from the date of commencement thereof; (v) Licensee uses the Film

Library in a manner not consistent with the terms of this Agreement; or (vi) Licensee is dissolved or otherwise ceases to operate, provided, however, in the event that Licensee merges with another entity or is acquired by another entity, Licensor in its sole discretion may choose to terminate the agreement immediately upon notice to Licensee; (viii) Licensee is in violation of any local, state or national law which it fails to cure as provided by said authorities; or (ix) Licensee is convicted of any penal law which affects, injures or impugns the integrity of Licensor.

10.2 Either party may terminate this Agreement at any time if the other party has committed material breach of this Agreement. Written notice must be delivered to the other party stating with specificity the basis for the claim of material breach such that the noticed party is given a reasonable opportunity to cure the alleged breach. In the event that the alleged breach remains uncured for a period of thirty days after receipt of written notice thereof, the Agreement shall be deemed terminated.

10.3 Licensee shall, thereupon, immediately cease use of the Film Library and/or to utilize the Trademark, in advertising or in the identification of the Film Library or in any manner whatsoever in connection with the business of Licensee. Licensee agrees that it will not thereafter represent or advertise that it is a former licensee of Licensor.

#### 11. Limitation of Liability.

11.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, BUSINESS INTERRUPTION, OR LOSS OF PROFITS, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE FILM LIBRARY.

11.2 EXCEPT AS PROVIDED HEREIN, LICENSOR MAKES NO REPRESENTATION OR WARRANTY, AND EXPRESSLY DISCLAIMS ANY LIABILITY WITH RESPECT TO THE CONTENT OF THE FILM LIBRARY, INCLUDING BUT NOT LIMITED TO ERRORS OR OMISSIONS CONTAINED THEREIN. LICENSOR DISCLAIMS ALL RESPONSIBILITY FOR ANY LIABILITY LOSS OR RISK, PERSONAL OR OTHERWISE, WHICH IS INCURRED AS A CONSEQUENCE, DIRECTLY OR INDIRECTLY, OF THE USE AND APPLICATION OF ANY OF THE CONTENT CONTAINED HEREIN.

11.3 THE INFORMATION CONTAINED IN THE FILM LIBRARY IS OF A GENERAL NATURE AND CANNOT SUBSTITUTE FOR THE ADVICE OF A MEDICAL PROFESSIONAL. THE CONTENT PROVIDED MAY NOT APPLY TO LICENEE'S PATIENTS OR CLIENTELE. LICENSOR SHOULD NOT RELY ON CONTENT OF THE FILM LIBRARY AS A SUBSTITUTE FOR, NOR SHOULD IT REPLACE, PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS OR TREATMENT. THE INFORMATION CONTAINED IN THE FILM LIBRARY SHOULD NOT BE CONSIDERED COMPLETE AND DOES NOT COVER ALL DISEASES, AILMENTS, PHYSICAL CONDITIONS OR THEIR TREATMENT. LICENSOR DOES NOT RECOMMEND OR ENDORSE ANY SPECIFIC TESTS, PHYSICIANS, CLINICS, PROCEDURES, OPINIONS, PRODUCTS OR OTHER INFORMATION THAT MAY APPEAR IN THE FILM LIBRARY.

11.4 EXCEPT FOR LICENSOR'S FAILURE TO INDEMNIFY LICENSEE UNDER SECTION 12, IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY ARISING UNDER ANY PROVISION OF THIS AGREEMENT REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT PAID TO LICENSOR PURSUANT TO THIS AGREEMENT DURING THE SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

12. Indemnification.

12.1 Indemnification by Licensor. Licensor will defend, indemnify and hold Licensee harmless from any third-party suit or action against Licensor to the extent such suit or action is based on a claim that the Film Library infringes any copyright, trademark or other intellectual property right held by such third party; and Licensor will pay those damages finally awarded against Licensee in any monetary settlement of such suit or action. These obligations do not include any claims that arise from the use of the Film Library in violation of this Agreement, or any modification made to the Film Library by anyone other than Licensor. In the event that the continued use of the Film Library is enjoined by a court of competent jurisdiction, Licensor, at its election will, at its own cost and expense, either: (i) procure for Licensee the right to continue the use of the Film Library; (ii) modify or replace the Film Library in such a way that the use thereof does not infringe; or as a last resort in the neither of the foregoing alternatives is reasonably feasible; or (iii) terminate this Agreement by notice to Licensee and refund to Licensee an equitable portion of the License Fees.

12.2 Indemnification by Licensee. Licensee will defend, indemnify and hold Licensor harmless from any third-party claim or suit brought against Licensor, including a claim or suit initiated by an Authorized or end user, to the extent such suit or action is based on a claim arising from (i) Licensee's use of the Film Library; (ii) any use of the Film Library by Licensee which deviates from the provisions of this Agreement; (iii) a negligent act or omission of Licensee in connection with this Agreement; or (iv) material breach of any representation, warranty, covenant or other provision of this Agreement. Licensee will pay those damages finally awarded against Licensor by a court of competent jurisdiction in any monetary settlement of such suit or action and all reasonable associated costs and expenses, including reasonable counsel fees that are specifically attributable to such claim.

12.3 The indemnity obligations set forth in this Section 12 are contingent upon: (i) the Indemnified Party giving prompt written notice to the Indemnitor of any such claim(s); and (ii) at Indemnitor's request and expense, the Indemnified Party cooperating in the investigation and defense of such claim(s).

12.4 The Indemnified Parties shall afford the Indemnitor the opportunity to participate in any compromise, settlement, litigation or other resolution of a third party claim, or, in the event the Indemnitor elects not to defend such claim, the Indemnified Parties may assume the defense of any such claim or litigation, at Indemnitor's cost and expense, with counsel of Indemnified Parties' own choosing. In the event the Indemnitor elects to assume the defense, the

Indemnitor shall afford Indemnified Parties the opportunity to participate fully in such defense at Indemnified Parties' expense.

12.5 Neither party shall compromise, settle or otherwise resolve any such claim or litigation without the other party's prior written consent, which shall not be unreasonably withheld; provided, however, that failure to respond within five (5) business days following receipt of written notice of such proposed compromise shall constitute consent to the proposed compromise, settlement or resolution.

13. Assignment. Licensee may not assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of Licensor, provided that Licensee may assign its rights to an entity that acquires all or substantially all of its assets provided that the acquiring party assumes in writing all of Licensee's obligations. Licensor may assign this Agreement to a person or entity that assumes all of its obligations hereunder.

14. Governing Law; Jurisdiction. This Agreement shall be construed under and in accordance with the laws of the State of California. Any suit, action or proceeding to determine, construe or enforce any provision of this Agreement, or the rights of any party hereunder, shall be brought in the County of San Diego, State of California, and all parties agree to be subject to the State and Federal courts therein. Licensee agrees and acknowledges that a breach of this Agreement by Licensee will result in irreparable harm to Licensor which harm could not be adequately compensated by an award of money damages, and Licensee therefore agrees and acknowledges that Licensor shall be entitled to injunctive relief.

15. Force Majeure. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. The Term of this Agreement shall be extended for the period of time of any event of force majeure provided that if such event of force majeure continues for more than twelve (12) weeks, either party shall have the right to terminate this Agreement upon written notice to the other.

16. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties, and their heirs, administrators, successors and permitted assigns. Licensor shall be entitled to assign this Agreement or any portion hereof freely. Licensee shall not be entitled to assign the License or this Agreement or any portion hereof without the prior written consent of Licensor.

17. Severability. If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this Agreement, and such invalid or unenforceable portion shall be deemed to be amended or deleted from this Agreement to the extent necessary to render such portion valid and enforceable, and as so modified this Agreement shall continue in full force and effect.

18. Notices. All notices or remittances which are herein required or either party wishes to serve hereunder, will be given in writing and may be delivered personally to any officer of Licensee or Licensor, or as appropriate, by express courier, registered or certified mail (postage and fees prepaid, with return receipt requested).

19. Entire Agreement. This Agreement constitutes the entire understanding of the parties relating to the subject matter hereof, and supersedes any and all prior agreements, whether oral or written, express or implied, relating to the subject matter hereof, and shall take precedence over any agreement in conflict herewith. This Agreement may not be modified or amended except in writing signed by both parties and specifically referencing this Agreement. No waiver of any particular right or obligation by either party shall be deemed a waiver of such right or obligation in the future, or of any other right or obligation hereunder.

20. Headings. Paragraph headings used in this Agreement are for convenience only and shall not be used to interpret, limit or modify this Agreement.

21. Relationship of the Parties. Nothing in this Agreement contained shall be deemed to constitute either of the parties being an agent of the other. Neither party shall hold itself out contrary to the terms of this Agreement and neither party shall become liable by reason of any representation, act or omission of the other contrary to the provisions hereof. Licensee is in all respects acting an independent contractor.

22. Authorship of Agreement. Each party acknowledges that it has had the advice of legal counsel in connection with the preparation, negotiation, execution and delivery of this Agreement. The parties shall both be considered the author of this Agreement. Any ambiguities that exist shall be interpreted equally between the parties and shall not be construed against either party on account that it drafted this Agreement, and this Agreement shall not be interpreted more or less favorably for either party by reason of such party's having drafted all or any portion of this Agreement.