1. SOFTWARE LICENSE

1.1. License. Upon the execution of a Sales Order, and subject to all terms of the Underlying Agreement (including this Product Terms Page) and of the applicable Sales Order, for Software locally installed on Customer’s computer systems, Merge grants to Customer a non-exclusive, non-sublicensable, non-transferable license to install one instance of the Software at the location set forth in the applicable Sales Order and use such Software (in executable or object code form only), and the accompanying Documentation. Unless otherwise expressly set forth in the applicable Sales Order, the Software may only be accessed and used by Customer and its Authorized Users, and Customer shall be responsible for breaches of the Underlying Agreement by its Authorized Users. The term of the license shall be as set forth in the applicable Sales Order. If no term is set forth in a Sales Order and for licenses designated to be “perpetual”, the term of the license shall be the Term of the Underlying Agreement. “Authorized User” shall have the meaning set forth on the applicable Sales Order, except that for Merge Software licensed subject to an Annual Procedure Volume not limited to a specific number of users (as set forth on the applicable Sales Order), “Authorized User” shall mean an employee, contractor or member of the medical staff of Customer who uses the Software as authorized in a Sales Order and solely in connection with the business activities of Customer. “Underlying Agreement” means this Sales Order and the terms and conditions that govern this Sales Order.

1.2 License Restrictions. Except to the extent otherwise expressly set forth in the applicable Sales Order, Customer shall not:

- Use the Software for any purpose other than Customer’s internal business purposes;
- Permit the use of or access to the Software by any party other than an Authorized User;
- Sell, lease, share, loan, encumber, license, sublicense, distribute or transfer the Software to any third party (including a parent, subsidiary or other affiliated entity), nor in any manner use the Software to provide hosting, application service provider, service bureau, time sharing, outsourcing or other services to third parties;
- Translate, reverse engineer, decompile or disassemble or otherwise attempt to derive the source code of the Software (except and only to the extent that the foregoing restriction is prohibited by applicable law, in which event Customer shall provide Merge with prior written notice its intention to reverse engineer the Software and shall provide Merge with a right of first refusal to perform such services at rates equal to those proposed by a recognized third-party software services provider for such work);
- Use any component of the Software on a standalone basis;
- Modify, adapt, create derivative works based on the Software (but, for the avoidance of doubt, Customer may interface the Software with other Customer systems and prepare report formats for Customer’s own internal business purposes);
- Make copies of the Software or Documentation except for its internal back-up and archival purposes; and/or
- Use the Software in any manner that is unlawful or not in accordance with the Underlying Agreement.

1.3 Documentation. Any Documentation provided to or to which Customer otherwise has access shall be used solely in connection with Customer’s use of the Software as permitted under the Underlying Agreement.

1.4 Ownership. For Software licensed hereunder, Customer acquires only the right to use the Software in accordance with the Underlying Agreement and does not acquire any rights of ownership nor any implied right of any kind. The Software and Documentation and all modifications thereto, and all intellectual property rights therein, are and shall be owned by Merge and all intellectual property rights in and to the Products are reserved by Merge and/or its suppliers, except as expressly provided herein. Merge shall have all right, title or interest in and to all modifications and derivative works based on the Merge Software. Customer shall not alter, remove or obscure any copyright or other proprietary notices on or in the Software or Documentation or any copies thereof.

1.5 License Fees. In consideration of the licenses granted by Merge under the Underlying Agreement, Customer shall pay Merge all license fees set forth in the applicable Sales Order. Upon execution of such Sales Order, Merge is authorized by Customer to deliver and invoice for the Software in accordance with such Sales Order. All licenses granted to Customer hereunder are specifically contingent upon payment to Merge of applicable license fees.

1.6 Annual Procedure Volume; License Use Limitation (may not be applicable for all licenses). In addition to the limitations and restrictions elsewhere in the Underlying Agreement, a Sales Order may specify that Customer’s license to the Software is limited to an Annual Procedure Volume or a License Use Limitation.
• For a license based on Annual Procedure Volume, if the Software is used in excess of the Annual Procedure Volume, Customer shall immediately purchase from Merge, at Merge’s then current rate or at some other mutually agreed upon rate, incremental licensing to increase its Annual Procedure Volume by an amount no less than that by which actual use exceeded the Annual Procedure Volume. For purposes hereof, the following definitions apply: “Annual Procedure Volume” means the maximum number of Procedures, as set forth on the Sales Order, permitted by the license to be processed by the Software or used in conjunction with the Software in a twelve (12) month period, as measured from First Productive Use and each anniversary thereof. Unless otherwise defined in the applicable Sales Order, “Procedure” means a captured study that: (i) has a unique DICOM study instance UID, and (ii) is managed or stored by the Software.

• For a license based on a License Use Limitation, if the Software is used in excess of the applicable License Use Limitation, Customer shall immediately purchase from Merge, at Merge’s then current rate or at some other mutually agreed upon rate, incremental licensing to increase its License Use Limitation by an amount no less than that by which actual use exceeded the License Use Limitation. For purposes hereof, “License Use Limitation” means a specific metric or limitation (such as the number of users, medical providers, workstations, etc., but not including Annual Procedure Volume) limiting Customer’s use of the Software.

1.7 License Use Confirmation. From time to time, Merge may, on its own or through a third party, perform an audit of Customer’s use of the Software and Customer’s compliance with the provisions of the Underlying Agreement. Any such audit may take place either remotely or at Customer’s site, and if on-site shall occur at times agreed to by the Parties, with neither Party to unreasonably withhold or delay its agreement. Customer shall be liable to Merge for use of the Software that exceeds the applicable limitations and restrictions specific to the use of Software as set forth on the applicable Sales Order.

2. SUPPORT SERVICES

2.1. Support Services

(a) Support Services. Merge’s Support Services are provided in accordance with the terms and conditions of the Underlying Agreement. Support Services are provided for the standard version of the Software made generally available by Merge, and Support Services for custom software may be subject to additional fees as provided on the applicable Sales Order.

(b) Support Services Term, Renewal and Fees. Unless otherwise provided on a Sales Order, Support Services for newly-licensed Software shall begin on the effective date of the Sales Order (under which the applicable Software is licensed) and continue for one year thereafter (the “Initial Support Services Term”). Upon expiration of the Initial Support Services Term, Support Services shall automatically renew for consecutive annual periods (each of which shall be referred to as a “Support Services Renewal Term”), unless either Party provides the other Party with written notice, at least twenty-eight (28) days prior to the expiration of the then-current Initial Support Services Term or Support Services Renewal Term, of its intention not to renew Support Services. The fees for the first Support Services Renewal Term may be set forth in the Sales Order, and the annual Support Services fee is due in full at the commencement of each annual Support Services Renewal Term. Merge reserves the right to (i) immediately suspend Support Services in the event Customer is more than thirty (30) days late in payment of any Support Services Fee; and/or (ii) increase the Support Services fee for any future Support Services Renewal Term by not more than 5% (annualized), by providing Customer with advance written notice no less than forty-five (45) days prior to the expiration of the then-current Support Services Renewal Term. If applicable, Merge may readjust the dates for the terms of Support Services and issue prorated invoices so as to synchronize Customer’s multiple terms for Support Services.

3. OBLIGATIONS UPON TERMINATION

3.1. Effects of and Obligations upon Termination of Underlying Agreement. Upon termination of the Underlying Agreement, licenses for all Software under the Underlying Agreement and under any Sales Order under the Underlying Agreement (the “Terminated Software”) are immediately terminated and Customer shall immediately cease use of all Terminated Software. Within thirty (30) days after termination, Customer shall either return to Merge or destroy all Terminated Software and all copies (authorized and unauthorized) thereof, and remove and purge from all Customer’s systems and equipment (and that of its employees, contractors and Authorized Users) all Terminated Software. Customer shall, within such 30-day period, deliver to Merge a written certification signed by an officer of Customer certifying that Customer has ceased use of all Terminated Software and has returned, destroyed and/or purged all Terminated Software as required in this Section. Termination shall not relieve Customer of its obligation to pay all fees that are attributable to the time preceding termination, have become
payable or will become payable by Customer hereunder, and upon termination all such sums shall be immediately due and payable to Merge. Termination of the Underlying Agreement or of a license granted hereunder shall not limit either Party from pursuing any remedies available to it, including injunctive relief.

3.2. **Survival.** All provisions of this Product Terms Page which by their nature are intended to survive the termination of the Underlying Agreement (including, without limitation, the provisions of Sections 1.2, 1.4, 1.5, 1.7, and 3.1) shall survive such termination.

4. **PRODUCT WARRANTY**

4.1. **Software.** Merge hereby grants to Customer limited warranty, as defined below, commencing on First Productive Use of the applicable Merge Software and continuing for ninety (90) days thereafter (the “**Software Warranty Period**”). Merge warrants that during the Software Warranty Period (a) the Merge Software will perform in substantial conformity with the functional specifications contained in the Documentation, and (b) the media on which the Merge Software is delivered shall be free of defects. The preceding warranty is conditional upon the Software having been properly used on the hardware and with the operating system and other software for which it was designed. In the event of breach of the preceding warranty, Merge shall, at its option: (i) replace the applicable Merge Software or media on which it is installed, as appropriate, (ii) correct the Merge Software so that it complies with the above warranty, or (iii) terminate the license for the applicable Merge Software and refund to Customer amounts paid as license fees for such Merge Software, together with any pre-paid Professional Service Fees and Support Services Fees for Services not rendered, and such shall constitute the exclusive remedy of Customer and Merge’s sole liability with respect to this Section 4.1.

[11/10/2017]