

MedPresence® Evaluation Agreement

Olympus	Olympus America Inc. 3500 Corporate Parkway Center Valley, PA 18034	Customer:	
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Instructions for Executing this Evaluation Agreement

1. The following agreement is a rider to the standard terms and conditions for customer evaluations of Olympus equipment.
2. Those Ts&Cs ship automatically with any evaluation consignment.
3. Due to the online nature of Olympus hosting of the MedPresence service on the Olympus MedPresence Portal, these additional terms require a customer's electronic signature before the consignment process.
4. For Olympus Territory Managers:
 - a. Share this PDF version as a template for your customer to review with their legal team.
 - b. When your customer is ready to sign, contact **monica.boldurian@olympus.com** in legal to initiate a DocuSign version for e-signature.
 - c. You **MUST** first secure an electronic signature on the DocuSign version of this document and **ATTACH** the signed copy as an attached file to your consignment request.
5. For prospective MedPresence Subscribers:
 - a. You are about to evaluate the Olympus MedPresence System because your institution is interested in electronic collaboration between procedure staff and remote students/consultants/suppliers
 - b. Make sure that you share this document with those stakeholders in your organization who have signature authority
 - c. You will also want to alert your IT department well in advance in order to arrange their participation in this evaluation
 - d. When you are ready to sign, please provide your signing contact's information, including email and mobile phone information.
 - e. Acceptance of these additional terms and conditions is required before an evaluation tower can be shipped to your address.

Dear Valued Olympus Customer:

This Product Evaluation Agreement (“**Evaluation**”) sets forth the terms under which Olympus will loan certain capital equipment and related accessories (“Products”) to provide access to certain software product(s) (“**Software**”) to the Customer set forth above. A description of the Products and Software is set forth on Schedule A, below, or on the attached Olympus quotation for the Products. By accepting the Products and Software, Customer agrees to the terms of this Evaluation.

The Products and Software are loaned to Customer for evaluation purposes only, and are provided by Olympus free of charge, so that Customer may (i) assess the appropriate use and functionality of the Software, and (ii) determine whether and when to use, order, purchase or recommend the Software in the future. The Products and Software are loaned for a period not to exceed sixty (60) days (the “**Evaluation Period**”), which begins on the date the Products and Software are received by Customer and activated by Olympus. Customer has no obligation to purchase, lease, order, use, prescribe, recommend, or arrange for the purchase, lease, use, prescription, or order of, the Products, Software or any other products or services.

Because Customer is using the Products and Software free of charge, Customer shall not bill patients or any third-party payors, including Medicare, Medicaid, or any other state or federal health insurance programs (collectively, the “**Insurance Programs**”) for the use of the Products and/or Software. The value of the Products and Software provided at no charge to Customer may constitute a “discount or other reduction in price” under Section 1128B(b)(3) of the Social Security Act [42 U.S.C. §1320a-7b(b)(3)]. Customer shall comply with all reporting obligations for the Products and Software under applicable Insurance Programs. Olympus will provide additional information upon request.

Product Terms

The Products shall remain the exclusive property of Olympus and may not sold, leased, rented, loaned, licensed, or otherwise disposed of by Customer. Customer must return the Products to Olympus at the end of the Evaluation Period, or upon earlier request of Olympus. Customer shall maintain the Products in good working condition and shall operate the Products and Software in accordance with Olympus-provided operating manuals and instructions for use (collectively, “IFUs”). Customer shall be responsible for all risk of loss and damage to the Products while in Customer’s possession, normal wear and tear excepted.

AT THE CONCLUSION OF THE EVALUATION PERIOD, OR UPON EARLIER TERMINATION THEREOF BY OLYMPUS, CUSTOMER MAY: (A) PURCHASE THE PRODUCTS, (B) LEASE OR RENT THE PRODUCTS, OR (C) RETURN THE PRODUCTS TO OLYMPUS. IF THE PRODUCTS ARE NOT RETURNED TO OLYMPUS UPON THE CONCLUSION OF THE EVALUATION PERIOD, OLYMPUS WILL, IN ITS DISCRETION, INVOICE CUSTOMER (I) AT OLYMPUS’ THEN-EXISTING RENTAL RATE FOR THE PRODUCTS, OR (II) AT THE LIST PRICE FOR THE PRODUCTS. IF CUSTOMER DOES NOT RETURN THE PRODUCTS TO OLYMPUS WITHIN NINETY (90) DAYS FROM THE START OF THE EVALUATION PERIOD, OLYMPUS WILL COMPLY WITH APPLICABLE REPORTING REQUIREMENTS FOR THE PRODUCTS UNDER THE PHYSICIAN PAYMENTS SUNSHINE ACT.

Software Terms

The Software is being provided by Image Stream Medical, Inc., a wholly owned subsidiary of Olympus Corporation of the Americas, by and through Olympus America Inc. (“ISM”).

License Grant

- a. **Software License:** Subject to Customer’s compliance with this Evaluation, ISM grants Customer a limited, non-exclusive, non-transferable (except as otherwise expressly permitted under Section 15), non-sub licensable license to download, install and use the Software at a single site that Customer owns or controls, solely for Customer’s internal business purposes.
- b. **Third Party Code:** The Software is delivered with certain items of independent, third-party code that are licensed under separate terms provided by the authors or licensors (“Third Party Code”). This Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this Evaluation limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for any Third Party Code delivered with the Software. Documentation regarding open source software included in the Third Party Code can be provided by contacting ISM Support.
- c. **Updates:** Customer understands that the Software is evolving. As a result, ISM may require Customer to accept updates to the Software. Customer acknowledges and agrees that ISM may update the Software with or without notifying Customer. Customer may need to update third-party software from time to time in order to use the Software. Any future releases, updates, and additions to functionality of the Software shall be subject to the terms of this Evaluation, unless ISM expressly states otherwise in writing. Unless expressly and otherwise agreed by ISM in a separate written agreement with Customer, neither ISM nor any of its suppliers is obligated to provide any updates or upgrades to the Software.

Restrictions

Customer agrees that Customer will not, and will not permit any third party to: (i) license, sell, rent, lease, transfer, assign, distribute, host, outsource, copy, disclose or otherwise commercially exploit the Software (including, but not limited to, using the Software to process information or to generate output data for the direct benefit of, or for purposes of rendering services to, any third party) or make the Software available to any third party; (ii) modify, make derivative works of, disassemble, decompile or reverse engineer any part of the Software, except as expressly permitted by law; (iii) access the Software in order to build a similar or competitive product or service; (iv) access or use the Software to identify vulnerabilities in it or publish any information on how to circumvent the Software; (v) use the Software to upload, store or transmit infringing, libelous, or otherwise unlawful material, or to upload, store or transmit material in violation of third-party privacy rights; (vi) use the Software to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (vii) interfere with or disrupt the integrity or performance of the Software or any of the servers or networks that are connected to the Software; (viii) attempt to gain unauthorized access to the Software or related systems or networks; (ix) attempt to disable or circumvent any security mechanisms used by the Software; or (x) remove, obscure or destroy any copyright and other proprietary rights notices in the Software and any copies thereof. In addition, Customer agrees to use the Software only in accordance with all applicable laws and regulations.

Restrictions (continued)

Any unauthorized use of the Software terminates the license granted by ISM pursuant to this Evaluation. With respect to any Software accessed through or downloaded from an app store (including, but not limited to, the Apple App Store), Customer agrees to comply with all applicable terms of use of such app store when downloading and using the Software.

Ownership

- a. **Software License:** The Software is licensed and not sold. Except for the express license granted to Customer under Section 1(a), ISM retains all right, title and interest in the Software, including but not limited to, all intellectual property rights. Except as expressly permitted in Section 1(a), all other uses of the Software by Customer are prohibited.
- b. **Technical Data:** The parties jointly own all right, title and interest in the Technical Data. “**Technical Data**” means any and all data generated by Customer’s use of the Software (including, but not limited to, statistical data, room context data and de-identified clinical data) that is not protected health information as defined under the U.S. Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as each is amended (“**Protected Health Information**”).
- c. **Protected Health Information:** As between the parties, Customer owns all, right, title and interest in the Protected Health Information.

License Term

- a. **Term:** This Evaluation commences on the date when Olympus activates the Software (as described above) and remains in full force and effect until terminated in accordance with this Evaluation.
- b. **Termination:** ISM may, at any time and without liability, terminate this Evaluation or suspend Customer’s access to the Software: (i) if Customer breaches any provision of this Evaluation; (ii) if ISM is required to do so by law; (iii) if ISM ceases to offer any Software covered by this Evaluation; or (iv) for any other reason with thirty (30) days prior written notice to Customer (or at any time without notice if Customer breaches this Evaluation or ISM reasonably believes that Customer could cause harm to ISM, ISM’s users and/or the Software). Customer may terminate this Evaluation at Customer’s convenience by delivering at least thirty (30) days’ prior written notice to ISM and stopping all use of the Software. ISM has the right to suspend or terminate Customer’s use or access to the Software provided to Customer for any reason, including if Customer has breached any provision of this Evaluation or if ISM is required to do so by law (e.g., where the provision of the Software is, or becomes, unlawful).
- c. **Effect of Termination:** Upon termination of this Evaluation, Customer’s right to use the Software will automatically terminate immediately and Customer shall cease all use of the Software. Customer understands that any termination this Evaluation may involve deletion of Customer’s data and content from ISM’s systems and agree that ISM shall not be liable for such deletion. Sections providing ongoing rights and obligations shall survive the expiration or termination of this Evaluation.

Passwords and Registration Information

Customer will ensure that: (a) all required registration information Customer submits is truthful and accurate; and (b) Customer maintains the accuracy of such information. Customer is responsible for the security of Customer's passwords (if any) and for any use of Customer's account. If Customer becomes aware of any unauthorized use of Customer's passwords or of Customer's account, Customer will notify ISM immediately. ISM will not be liable for any loss or damage resulting from Customer's failure to comply with this Section 5.

Warranties and Disclaimers

a. Customer represents and warrants that:

- Customer has all right, authority and capacity to enter into this Evaluation
- All information Customer has provided and will provide to ISM (including, but not limited to, any registration information) is true, accurate, and complete.

b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS," AND ISM HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING ANY OF THE FOREGOING, ISM MAKES NO WARRANTY THAT THE SOFTWARE WILL PROVIDE PERFECT OR ABSOLUTE SECURITY, IS ERROR-FREE, OR IS FREE FROM INTERRUPTIONS, VIRUSES OR OTHER HARMFUL COMPONENTS. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE LIMITATIONS IN THIS SECTION 7(b) MAY NOT APPLY TO CUSTOMER.

No Software Maintenance or Support

Unless expressly and otherwise agreed by ISM in a separate written agreement with Customer, the Software is provided without software maintenance or support of any kind.

Export

The Software and data generated by the Software, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer may not use, export, import, or transfer the Software or such data, except as authorized by U.S. law and any other applicable laws.

Third Party Materials

The Software may include links to third party web sites, data, content, or services. Customer acknowledges and agrees that ISM has no control over any such third party web sites, content or services, and that ISM shall not be liable for any loss or damage which may be incurred by Customer relating to such third party sites, data, content or services.

Feedback

If Customer provides ISM with any feedback or suggestions (collectively, "**Feedback**"), Customer hereby assigns to ISM all rights in the Feedback and agrees that ISM shall have the right to use such Feedback and related information in any manner it deems appropriate without any compensation to Customer. ISM will treat any Feedback Customer provides to ISM as non-confidential and non-proprietary. Customer agrees that Customer will not submit to ISM any information or ideas that Customer considers to be confidential or proprietary.

Changes to Agreement

ISM may modify this Evaluation in its sole discretion from time to time, and will post the most current version of this Evaluation on its website. If ISM believes that a modification to this Evaluation is material, ISM may notify Customer (via email to the email address associated with Customer's account, for which it is Customer's responsibility to maintain and keep current). By continuing to access or use the Software after modifications are posted or notice is delivered to the email address ISM has associated with Customer's account, Customer agrees to be bound by the modified Evaluation. If Customer does not agree to the new terms, Customer must immediately stop using the Software.

Indemnification

Each party agrees to indemnify, defend and hold harmless the other party and its officers, directors, shareholders, managers, employees, agents, successors and assigns (collectively "**Indemnified Party**") from and against any and all direct: claims, losses, liabilities, damages, penalties, fines, forfeitures, judgments, and any other fees, costs, and expenses, including reasonable attorneys' fees and related costs and expenses, (collectively "**Claims**") resulting from (i) the negligence or misconduct of the indemnifying party, (ii) a breach of this Evaluation, (iii) any Claims relating to the violation or infringement of the intellectual property rights of any third party, or (iv) a violation of any laws in the performance of such party's obligations hereunder or under this Evaluation.

General

- a. **Severability:** If any term of this Evaluation is held by a court of competent jurisdiction to be invalid or unenforceable, then this Evaluation, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
- b. **Amendments:** This Evaluation and its attachments contains the entire agreement between the parties and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. Any waiver or modification of the provisions of this Evaluation will be effective only if in writing and signed by both parties. In the event of a conflict with the provisions of any other document, the provisions of this Evaluation will control.
- c. **Parties:** Persons and entities who have licensed software to ISM for inclusion in the Software are third party beneficiaries to this Evaluation as it applies to their respective software products included in the Software. Except as specifically provided in this paragraph, a person who is not a party to this Evaluation has no right to enforce any term of this Evaluation but this does not affect any right or remedy of a third party which exists or is available apart from this Evaluation.

General (continued)

- d. **Waiver:** Except for actions for nonpayment or breach of ISM's proprietary rights in the Licensed Products, a delay or failure by either party to exercise any right or bring any action, within one (1) year of the event giving rise to such right or such cause of action, shall waive any and all rights relating to that action.
- e. **Notices:** All notices or other communications required to be given hereunder shall be in writing and delivered either personally or by U.S. mail, postage prepaid, and addressed as provided in this Evaluation or as otherwise requested by the receiving party. Notices delivered personally shall be effective upon delivery and notices delivered by mail shall be effective upon their receipt by the party to whom they are addressed.
- f. **Governing Law:** This Evaluation shall be governed by and construed in accordance with the laws of The Commonwealth of Pennsylvania, U.S.A. without regard to its conflict of laws provisions. Any legal action or proceeding arising under this Evaluation will be brought exclusively in the federal or state courts located in the Commonwealth of Pennsylvania, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Evaluation.
- g. **Participation in Government Programs:** Each party represents and warrants to each other, its officers, directors, agents, subcontractors and employees (i) are not currently excluded from, debarred or otherwise ineligible to participate in state or federally funded programs ("**Government Programs**"), (ii) are not currently excluded, debarred or otherwise ineligible to participate in the federal healthcare programs as defined in 42 USC § 1320a-7b(f) ("**Federal Healthcare Programs**"); (iii) have not been convicted of a criminal offense related to the provision of items or services but have not yet been excluded, debarred or otherwise declared ineligible to participate in Government Programs or Federal Healthcare Programs and (iv) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in either Party being excluded from participation in Government Programs or Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Evaluation and each party shall immediately notify the other of any change in the status of the representations and warranty set forth in this Section. Any breach of this Section shall give non-breaching party the right to terminate this Evaluation immediately for cause.
- h. **Access to Records:** If applicable, for the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, as amended, and any written regulations thereto, the parties agree to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Evaluation:
- Until the expiration of four years after the furnishing of such services pursuant to such Evaluation, the parties shall make available, upon written request by the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, this Evaluation, and books, documents and records of such that are necessary to certify the nature and extent of such costs

General (continued)

h. Access to Records (continued):

- If either party carries out any of the duties of this Evaluation through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services, or upon request by the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs
- If either party is required to disclose any books, documents and records relevant to this Evaluation for the purpose of an audit or investigation, they shall notify the other party of the nature and scope of the request.

Independent Contractor Relationship

The parties agree that each is at all times acting and performing as an independent contractor. Nothing in this Evaluation shall be construed as creating a partnership, joint venture, or employment agreement.

Evaluation Period Start Date:

Evaluation Period End Date:

Agreed and Accepted by:

Authorized Customer Signature:	Title:	Date:
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Olympus America Inc.

Authorized Signature:	Title:	Date:
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Schedule A

- Software:** MedPresence Software as a Service Subscription.
- Products:** Hardware varies, see consignment equipment list generated by consignment center.
Most commonly, a MedPresence Sales Demo System (cart assembly) is shipped to run the procedure room-side software.

Specifications, design and accessories are subject to change without any notice or obligation on the part of the manufacturer. Olympus is a registered trademark of Olympus Corporation, Olympus America Inc., and/or their affiliates. | Medical devices listed may not be available for sale in all countries.



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For more information, contact your Olympus sales representative, or call 800-848-9024.
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