

VITAL IMAGES WEB SITE TERMS AND CONDITION OF USE

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5. Limitation of Liability

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SOME STATES PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THUS, THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU.

6. Indemnification

You agree to indemnify, hold harmless and defend Vital Images, its agents, officers, directors, employees, successors, assigns, and affiliates, from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney's fees, asserted by any person, arising out of or relating to: (a) this Agreement; (b) your use of this Site, including any data or work transmitted or received by you; and (c) any prohibited use of the Site as set forth in Section 2 (a).

7. Termination

This Agreement is effective upon your acceptance as set forth herein and shall continue in full force until terminated. Vital Images reserves the right, in its sole discretion and without notice, at any time and for any reason, to: (a) remove or disable access to all or any portion of the Site; (b) suspend your access to or use of all or any portion of the Site; and (c) terminate this Agreement.

8. Miscellaneous

a. Amendment. Vital Images shall have the right, at any time and without notice, to add to or modify the terms of this Agreement. Your access to or use of the Site after the date such amended terms are delivered to you shall be deemed to constitute acceptance of such amended terms.

b. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof. No waiver shall be binding unless executed in writing by the party making the waiver.

c. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, then such provision will be enforced to the maximum

extent possible and the other provisions will remain fully effective and enforceable.

d. Notice. All notices shall be in writing and shall be deemed to be delivered when sent by first-class mail, postage prepaid, or when sent by facsimile or e-mail to either parties' last known post office, facsimile or e-mail address, respectively. User hereby consents to notice by email. All notices shall be directed to the parties at the respective addresses given above or to such other address as either party may, from time to time, provide to the other party.

e. Law. This Agreement is made in and shall be governed by the laws of the State of Minnesota without reference to conflicts of laws.

f. Forum. All actions, claims or disputes arising under or relating to this Agreement shall be brought in the federal or state courts in the State of Minnesota. The parties irrevocably submit and consent to the exercise of subject matter jurisdiction and personal jurisdiction over each of the parties by the federal and/or state courts in the State of Minnesota. The parties hereby irrevocably waive any and all objections which any party may now or hereafter have to the exercise of personal and subject matter jurisdiction by the federal or state courts in the State of Minnesota and to the laying of venue of any such suit, action or proceeding brought in any such federal or state court in the State of Minnesota.

g. Process. The parties irrevocably submit and consent, and irrevocably waive any and all objections which any party may now or hereafter have, to process being served in any such suit, action or proceeding referred to in the preceding subsection pursuant to the rules of the applicable court, including, without limitation, service by certified or registered mail, return receipt requested. No provision of this section shall affect the right of any party to serve process in any manner permitted by law or limit the right of any party to bring suits, actions or proceedings to enforce in any lawful manner a judgment issued by the state or federal courts of the State of Minnesota.

h. Attorney's Fees. If any action in law or in equity is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable fees of attorneys, accountants, and other professionals, and costs and expenses in addition to any other relief to which such prevailing party may be entitled.

i. **Headings.** The captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement.

j. **Force Majeure.** If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the reasonable control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

k. **Survival.** The terms and provisions of Sections 2, 3, 4, 5, 6, and 7 shall survive any termination or expiration of this Agreement.

l. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the use of this Site supersedes any and all prior or contemporaneous communications, representations, statements and understandings, whether oral or written, between the parties concerning this Agreement.