



WORKFLOW EVALUATION TERMS AND CONDITIONS [US and CANADA (excluding Quebec)]

These Workflow Evaluation Terms and Conditions (“Agreement”), effective as of August 26, 2017, are hereby provided by Align Technology, Inc., a Delaware corporation, having a principal place of business at 2560 Orchard Parkway, San Jose, CA 95131 (“Align”) for review and acceptance by Dr. [REDACTED], with a principal place of business at

[REDACTED] (“Doctor”).

WHEREAS, Align has developed a new feature for the certain software for use by dental professionals providing treatment with Invisalign products, which is currently being used by the Doctor (“Workflow”), and

WHEREAS, Align desires through this Agreement to have the Workflow previewed by Invisalign providers prior to its general release in order to evaluate its effectiveness, and

WHEREAS, Align has done some testing of the Workflow and wishes to expand its testing and experimentation for the purpose of completing the testing, development and fine-tuning of the Workflow by permitting, under this Agreement, the testing of this Workflow by Doctor prior to its general release in order to evaluate its effectiveness; and

WHEREAS, Doctor is an experienced Invisalign provider and desires to gain early operational experience and conducting testing with the Workflow.

NOW THEREFORE, in consideration of the promises and conditions contained herein, the parties do hereby agree as follows:

1. SCOPE

1.1 **Right to Use.** Subject to the terms and conditions of this Agreement, Align grants Doctor a limited right to evaluate and use the Workflow, together with any supporting documentation (“Documentation”), provided by Align solely for the purpose of testing and internal evaluation by Doctor for the sole benefit of Align (“Purpose”). The Workflow and Documentation is hereinafter referred to as the “Technology”.

1.2 **Limitations and Restrictions on Use.** Except as required by Align in writing for the Purpose hereunder, Doctor may not use, copy, modify, reverse engineer, re-use, publish or disclose any information regarding the Technology or its performance or capabilities to any third parties. Additionally, the Doctor shall not and shall have no right to: (i) merge the Technology with any other technology or software whatsoever; (ii) sublicense, distribute, market, sell lease, loan, transfer lend or grant or attempt to grant any similar right to the Technology; and (iii) transfer, export and re-export, directly or indirectly, Technology or any part thereof outside of the United States.

1.3 **Feedback.** In consideration for receiving the Technology, Doctor agrees to promptly communicate to Align information regarding performance, operation, process, quality of output, problems, user satisfaction, and other ideas, modifications, enhancements or recommendations for improvement to the Technology. Doctor will complete surveys, attend telephone conferences and meetings either in person or telephonically as requested by Align. Any such information and feedback shall be owned by Align regardless of whether such was communicated orally or in writing. No other consideration will be provided to Doctor hereunder.

1.4 **Evaluation.** Doctor will use reasonable efforts to:

- Use the Workflow during its normal course of business;

- Promptly report any problems with the Technology to Align;
- Promptly document and provide feedback to Align in accordance with clause 1.3 and without providing any patient specific information in any such feedback), such as but not limited to, Doctor’s experience including any problems encountered while testing the Workflow and provide any feedback on the Documentation as requested by Align; and
- Promptly complete surveys and telephone conferences as requested by.

1.5 **Ownership.** This license is not a sale and does not transfer to Doctor any title or ownership interest in or to Technology, any patent, copyright, trade secret, trade name, trademark or other proprietary or intellectual property rights related to the Technology. Align retains all of its right, title and interest in and to the Technology and to any feedback, ideas, modifications, improvements, reports, designs, inventions, specifications or other materials developed in connection with Doctor’s use or evaluation of the Technology including any intellectual property rights therein (collectively “Developments”), whether prepared by Align or Doctor. Doctor hereby assigns to Align all of its ownership rights in the Developments and agrees to execute such documents and perform such acts as are reasonably necessary to perfect such assignment, at Align’s expense. Doctor may not remove, alter, or obscure any proprietary notices contained on or within Workflow.

1.6 **Compensation.** For clarity, no financial or other compensation shall be provided to Doctor by Align.

2. CONFIDENTIALITY

2.1 **Definition of Confidential Information.** For purposes of this Agreement, “Confidential Information” shall mean all tangible and intangible information or material disclosed by Align, its contractors, representatives or agents or otherwise made available or accessible to Doctor, his or her employees, contractors, affiliates, invitees, assigns, representatives or agents (collectively the “Receiving Party”), regardless of the manner or medium of disclosure or access (e.g. visual, oral, writing, electronic form). Notwithstanding the foregoing, the Receiving Party expressly agrees that the failure by Align to designate any information as Confidential Information shall not give Receiving Party the right to treat such information as free from the restrictions imposed by this Agreement.

2.2 **Confidentiality Obligations.** Receiving Party shall treat all Confidential Information of Align with the same degree of care it accords its own Confidential Information of like nature, but not less than reasonable care. Receiving Party shall not use Align’s Confidential Information for any purpose other than the Purpose specified hereunder. The Receiving Party’s obligations under this Agreement with respect to any portion of the Confidential Information shall cease to thereafter apply to the extent that Receiving Party can document to Align’s reasonable satisfaction that such Confidential Information:

- (i) is now or subsequently becomes publicly known through no act or fault of the Receiving Party;
- (ii) was rightfully in the possession of Receiving Party prior to receipt or access from Align;
- (iii) is rightfully furnished to Receiving Party without breach of any obligation of confidence to Align; or

Receiving Party agrees not to disclose in any form, including viewing, Confidential Information to any third party without prior written approval from Align.

- 2.3. **Confidentiality Term.** Notwithstanding the conclusion or termination of the parties' relationship as described herein, whether due to cancellation, or otherwise, Receiving Party shall continue to fulfill its obligations hereunder and to maintain the confidentiality of the Confidential Information for a period of ten (10) years thereafter, except for source code which shall remain subject to this Agreement until and if it becomes publicly known and made generally available by Align.
- 2.4 **Return of Confidential Information.** Receiving Party shall immediately irreversibly destroy or return all confidential information upon (i) termination of this Agreement; or (ii) written request from Align. Align has the right to audit the Receiving Party to confirm that all Confidential Information has been returned or destroyed as instructed by Align, provided that the audit takes place during business hours, at a mutually convenient time.
3. **DISCLAIMER OF WARRANTY.** THE TECHNOLOGY, INCLUDING THE SOFTWARE AND DOCUMENTATION IS PRERELEASE CODE AND IS NOT AT THE LEVEL OF PERFORMANCE AND COMPATIBILITY OF A FINAL, GENERALLY AVAILABLE PRODUCT OFFERING. THE SOFTWARE AND DOCUMENTATION MAY BE SUBSTANTIALLY MODIFIED PRIOR TO FIRST COMMERCIAL SHIPMENT, OR WITHDRAWN, SINCE VERSIONING IS NOT COMPLETE. THE TECHNOLOGY IS PROVIDED "AS IS" AND ALIGN MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO TECHNOLOGY OR THE USE OR OPERATION THEREOF, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. ALIGN DOES NOT GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY IMPACT OF USE OF THE TECHNOLOGY IN DOCTOR'S PRACTICE.
4. **COMPLIANCE WITH THE LAWS.** Doctor accepts and agrees that the existence of this Agreement and the sums payable under it, if any, might have to be disclosed by laws applicable in the jurisdiction in the country or State in which Doctor practices, but also in those jurisdictions where Align has a presence. Whether or not such laws apply Align might at any time choose to publish details of this Agreement in order to meet the ethical principle of transparency in its dealings with physicians. Doctor accepts and agrees that Align might, without further notice to Consultant, make such publication by any means, through any media and anywhere in the world.
5. **DATA PRIVACY.** To the extent that Consultant processes personal data about any living individual ("Data") in the course of its obligations under this Agreement, it will do so only as a processor acting on behalf of Align (as controller) and in accordance with the requirements of this Agreement. Doctor will at all times: (i) process the Data only for the purpose of this Agreement; and (ii) not divulge the whole or any part of the Data to any person, except to the extent necessary for the proper performance of this Agreement.

Doctor will not transfer any Data outside of the European Economic Area without the prior written consent of Align, which consent may be conditioned on a requirement that the proposed importer of the Data enters a data transfer agreement with Align on the basis of model contract clauses adopted by the European Commission.

In the event of a data breach, Doctor will immediately notify Align and do all such acts and things as Align considers necessary in order to remedy or mitigate the effects of the Data Breach and will continuously update Align of developments relating to the Data Breach.

Doctor hereby represents and warrants that no full-face photos, patient names or any other similar personally identifiable information shall be used for the purpose of Doctor's performance within the obligations hereunder.

6. **TERM.** This Agreement shall commence on the Effective Date and shall end upon the earlier of (a) the date of general availability of Technology, as solely determined by Align, or (b) by Doctor via thirty (30) day prior written notice to Align. However, upon completion of the evaluating and testing phase, Doctor may choose to continue to use the Technology and the terms of this Agreement shall continue to apply to such. For clarity, no technical support shall be provided for the Technology. Doctor hereby acknowledges and agrees that that continuation of use of the Technology is at their own risk. Align may terminate this Agreement at any time via a written notice, which may be an email.
7. **LIMITATION OF LIABILITY.** EXCEPT FOR BREACHES OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 3, IN NO EVENT WILL ALIGN BE LIABLE FOR ANY SPECIAL INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM THE USE OF THE TECHNOLOGY, INCLUDING LOSS OF DATA, LOSS OF SYSTEM AVAILABILITY, LOSS OF COMPUTER RUN TIME, LOST PROFITS, COST OF COVER, HOWEVER CAUSED, AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY BY DOCTOR. ALIGN DISCLAIMS ALL LIABILITY ARISING OUT OF USE, PERFORMANCE OF, OR INABILITY TO USE THE TECHNOLOGY. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THIS IS A REASONABLE ALLOCATION OF RISK.
8. **MISCELLANEOUS.** The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California as if it was entered into by California residents and, as if it was to be performed entirely within California. Venue for all disputes hereunder shall be in Santa Clara County, California. Doctor agrees to comply with all applicable laws and regulations, including U.S. and foreign export control laws and/or regulations. Align may, at any time and at its sole discretion, choose to discontinue any and all development of this Workflow. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and supersedes and cancels all agreements, negotiations, commitments, writings and discussions between them as to the subject-matter prior to the date of execution of this Agreement. The following sections shall survive the termination of this Agreement: 1, 2, 3, 4, 5, 6, 7, and 8.

IN WITNESS WHEREOF, Doctor hereby acknowledges and agrees to the terms and conditions contained herein and represents that Doctor is duly authorized to do so.

DOCTOR

By: _____
Name: _____
Title: _____