



**VOLK OPTICAL INC.**  
**VISTAVIEW™ TERMS AND CONDITIONS**

Revised as of August 4, 2020

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**2. Use Restrictions**

End User is solely responsible and liable for all uses of the Software and Documentation through access thereto provided by End User, directly or indirectly, or through End User's Hardware, whether or not authorized. Specifically, and without limiting the generality of the foregoing, End User is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by



any other person to whom End User or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of these Terms.

Except as set forth in Section 1, End User shall not, and shall require its Authorized Users not to, directly or indirectly:

- (a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 1;
- (b) provide any other person, including any subcontractor, independent contractor, affiliate or service provider of End User, with access to or use of the Software or Documentation;
- (c) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
- (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
- (e) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- (f) remove, delete, alter or obscure any intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
- (g) copy the Software or Documentation, in whole or in part;
- (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;
- (i) use the Software or Documentation in violation of any law, regulation or rule; or
- (j) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to Volk's commercial disadvantage.

### 3. Data

End User may use the Hardware and/or Software to capture, record, enter, and transfer photographs, patient information, notes, or other data or materials ("**End User Data**"). As between the parties, **End User** shall be the sole owner of the **End User Data** and all Intellectual Property Rights inherent therein.

**End User** acknowledges that neither the Hardware nor Software transfer **End User Data** to Volk, and that Volk shall not be responsible or liable for **End User Data**. **End User** shall not send any **End User Data** to Volk without Volk's express prior written approval. **End User** shall be solely responsible for backing up, directing any transfers, and ensuring the protection, confidentiality, and integrity of **End User Data**. **End User** hereby holds Volk harmless from any claims, damages, or losses related to **End User Data**.

In no event will Volk be responsible for designing, providing, implementing, configuring, or maintaining the Software or Hardware in a manner that complies with any laws, regulations, or rules that apply to **End User** or **End User's** industry, including without limitation, the Foreign Corrupt Practices Act, Health Insurance Portability and Accountability Act of 1996 (HIPAA), General Data Protection Regulation (GDPR), and associated regulations, Federal Trade Commission regulations, or the Telephone Consumer Protection Act of 1991 (collectively "**End User Specific Laws**").

End User warrants, represents and agrees that End User will at all times comply with all laws, statutes, regulations, ordinances, or restrictions of any governing body or governmental entity, whether state, federal or otherwise, currently existing or hereafter enacted, which governs, controls, restricts or is otherwise applicable to the receipt, gathering, storage, maintenance, transmission, processing, reporting, disclosure, release or other use of patient information through or in connection with any use of the Software and Hardware. Volk does not assume any responsibility and will incur no liability for, End User's use or misuse of any patient information, End User Data or



other information received, gathered, stored, maintained, transmitted, processed, reported, disclosed or released through the use of the Hardware and/or Software.

#### **4. Medical Disclaimer**

Use of the Hardware or Software or Documentation do not constitute or substitute for professional medical advice and do not replace expert medical opinion diagnosis, or treatment, or other professional judgment. End User acknowledges and agrees that it will rely solely on the medical and professional judgment of its employees and agents when using the Hardware and Software.

#### **5. Warranties**

Volk provides a limited Hardware warranty against manufacturing defects as set forth in the Volk Optical Inc. Terms and Conditions of Sale and the Documentation. Volk also warrants to End User that the Software will conform to the Documentation for a period of one (1) year from receipt by End User. The obligation of Volk, and the End User's sole exclusive remedy hereunder, shall be limited, at Volk's option, to replacement or repair of any defective Hardware and Software. End User shall not return any Software or Hardware unless authorized in writing by Volk. End User's failure to give prompt written notice (30 days) upon discovery of any alleged defect shall constitute acceptance of the Hardware and Software as delivered, and a waiver by End User of all claims with respect thereto. Notwithstanding the foregoing warranties and remedies, Volk shall have no obligation hereunder if the Hardware or Software become defective as a result of End User's disassembly or modification of the goods, unauthorized service or repair, misuse or abuse of the Hardware or Software, or combination with unauthorized software, hardware, or systems, or improper storage, accidents, contamination, adulteration, improper configuration, improper use or misapplication after delivery thereof to End User, or End User's failure to use the Hardware or Software consistent with the Documentation including but not limited to failure to follow the recommended cleaning instructions and/or warnings contained in the Documentation, or End User's breach of these Terms.

End Users shall be responsible for returning products for warranty service to Volk Optical, 7893 Enterprise Drive, Mentor, Ohio 44060 - USA. In the event product is not eligible for warranty service, End User is solely responsible for all costs of shipping and handling.

The warranty service will not be provided without proof the Software and Hardware were purchased from Volk Optical Inc., an authorized Volk distributor, or a Volk-authorized e-commerce platform.

This warranty becomes null and void if the End User fails to return the Hardware in packaging consistent with the original protective packaging and it results in shipping damages.

Warranty repairs will include all labor, adjustments, and replacement parts. Replacement parts may be re-manufactured or contain re-manufactured materials.

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#### **6. Indemnities**

End User shall indemnify, defend, and hold harmless Volk, its owners, affiliates, officers, directors, employees, agents and customers from and against any and all loss, liability, cost, judgment, damages and expense, including attorneys' fees, which may be incurred by Volk in connection with any claims, actions, or demands by a third party arising out of or related to (a) End User's breach of these Terms; (b) End User Data; or (c) any medical decision, diagnosis, or treatment, or negligent, reckless, or intentionally wrongful act or omission by End User, any Authorized User, or any of their respective employees or agents. Volk, its owners, agents, directors, officers, and



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In the event of any award of damages by a United States Federal Court from which no appeal can be taken against End User arising out of a claim of infringement by the Software of any existent valid U.S. patent owned by a third party, End User and Volk agree that Volk shall indemnify End User for such damages to the extent specified in Section 5 hereof, provided End User notifies Volk in writing within ten (10) days from the receipt by End User of the first notice of said claim of infringement. Volk, at its option shall have the right to participate in the defense of any such infringement action. Such participation, however, will not constitute any admission of liability upon Volk's part.

Any indemnification by Volk will be conditioned upon: (a) End User's full assistance and cooperation in the defense of any such action; and (b) End User's, and all Authorized Users', full compliance with these Terms, the Volk Optical Inc. Terms and Conditions of Sale, and the Purchase Agreement. This sets forth Purchaser's sole and exclusive remedy for any claim of infringement related to the goods or Software, and Volk shall have no obligation or other liability to End User for infringement arising from the use of the Software or Hardware in the operation of any process or in combination with other materials or arising from any alteration in the goods made by the End User.

## **7. Termination**

Volk shall have the right to, immediately and without notice to End User or any Authorized User, suspend or terminate any or all access to the Software or terminate these Terms if Volk determines or reasonably believes that End User or any Authorized User: (i) breaches these Terms; (ii) commits or attempts to commit a fraud upon Volk or another party; or (iii) unlawfully accesses, uses, or distributes the Software. Volk may also terminate these Terms, effective immediately, if End User files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

Upon termination of these Terms, the rights granted hereunder shall also terminate, and End User shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect End User's obligation to pay all fees that may have become due before such expiration or termination or entitle End User to any refund.

## **8. Miscellaneous**

These Terms shall be construed and performed in accordance with the laws of the State of Ohio, USA without giving effect to its choice of law provisions. Any claim, dispute, or matter arising under or in connection with this agreement shall be brought exclusively in the state or federal courts located in Lake County, Ohio. End User hereby irrevocably submits to the jurisdiction of such courts and hereby waives any objection based on lack of personal jurisdiction, improper venue, or forum non conveniens. The United Nations Convention on the International Sale of Goods (CISG) shall NOT apply to this agreement. End User may not assign its rights or delegate its obligations hereunder without Volk's prior written consent.