

# iTero Go Digital Rental Agreement

## 1. Term and Termination

- (a) Subject to earlier termination as provided for under this Agreement, this Agreement commences from the date of delivery of the Scanner to the Customer and will continue up to and including the date that the Customer has returned the Scanner to Align unless extended by the parties by mutual agreement in writing (**Term**).
- (b) Either party may terminate this Agreement immediately upon giving written notice to the other party if that party breaches a provision of this Agreement. If this Agreement is terminated due to a breach by the Customer of a provision of this Agreement, then any amount paid by the Customer pursuant to this Agreement will not be refunded to the Customer.
- (c) On expiry or termination of this Agreement for any reason, the Scanner must be immediately delivered to Align in accordance with clause 7 and the Licence granted under this Agreement is immediately terminated and the Customer must, at Align's direction, either return to Align, or destroy and certify in writing to Align the destruction of, all Confidential Information of Align in the Customer's possession or control.
- (d) Termination of this Agreement does not affect any accrued rights or remedies of either Party.

## 2. Scanner and training

- (a) From and including the date of delivery of the Scanner to the Customer and subject to clause 1(b), Align agrees to provide:
  - (i) the Scanner to the Customer for the Term;
  - (ii) access to any iTero Study Club held by Align during the Term; and
  - (iii) initial onboarding training on scanner usage and workflow integration at a time mutually agreed by the parties during the Term.
- (b) Align will pay for the shipment of the Scanner to the Customer. Align agrees to bear all risk of loss until delivery of the Scanner to the Customer. Any damage must be reported by the Customer to Align within 24 hours of receipt of the Scanner. The delivery date for the Scanner, as notified by Align, is an estimate. Time for delivery is not of the essence.
- (c) The Customer must notify Align immediately of any damage to the Scanner at any time.

## 3. Scanner sleeves

Align will provide the Customer 1 free box of scanner sleeves with the Scanner. The Customer may request additional free boxes of scanner sleeves from Align during the Rental Period up to a maximum of 2 boxes per month.

## 4. Payment terms

During the Term, the Customer will pay the Rental Fee to Align. The requirement to pay the Rental Fee begins on the Registration Date and will be billed by Align towards the end of each month. The Customer must pay any invoices within thirty (30) days from their invoice date.

## 5. Purchase of new iTero scanner

At any time during the Rental Period and after expiry of the Rental Period, the Customer will have the option to purchase a new iTero intraoral scanner (any model), by entering into a purchase agreement with Align for the purchase of the new iTero scanner. The Customer is not permitted to purchase the Scanner which is the subject of this Agreement.

## 6. Software Licence

- (a) Any Align Software is licensed by Align, not sold, to Customer and is provided upon the terms in the applicable Licence Terms, which are fully incorporated in this Agreement by reference. The Customer will be deemed to have agreed to the applicable Licence Terms by opening the media envelope or installing or using the Align Software or the Scanner in which it is installed. All rights in and to such Align Software not expressly granted to Customer are expressly reserved. Customer may not copy or duplicate the Align Software, in whole or in part (other than one unaltered back-up copy, bearing all original copyright notices, for archival purposes), or transfer, reverse engineer, sub-licence, distribute, sell, lease, rent, or otherwise provide or disclose any Align Software, or portion thereof, to any third party.
- (b) Unless terminated earlier pursuant to this Agreement, the licence to use the Align Software granted in the applicable Licence Terms by Align to Customer will terminate upon the earlier of: (i) termination of this Agreement for any reason; or (ii) sale, transfer, loss, or disposal of the Scanner.
- (c) Align grants no licence or right of use of any Software provided by a third party, the terms and conditions of which licence or right of use will be exclusively determined by the third party providing such Software.

## 7. Return of Scanner

- (a) At the expiration of the Rental Period or earlier termination of the rental of the Scanner, the Customer must return the Scanner (with any spare parts, together with all manuals and other items supplied, with the Scanner) in good working order and condition (reasonable wear and tear excepted) and sanitised (**Scanner Return Condition**) to such place as Align may reasonably direct in writing (**Return Location**).
- (b) Align will be responsible for all reasonable fees associated with shipment and will bear all risk of loss from the Customer location until delivery at the Return Location. The Scanner must be returned in the original packaging unless the original packaging was damaged in the initial shipment and is unsustainable for use.
- (c) The Customer is not entitled to return the Scanner damaged or otherwise in a condition other than the Scanner Return Condition. In the event the Scanner is damaged or otherwise not in the Scanner Return Condition, it must be repaired at the Customer's expense. All repairs must be performed by Align. If the Scanner is damaged and cannot be repaired, then it will be considered as sold at the fair market price (as notified by Align acting reasonably) and the Customer is required to pay such amount directly to Align within 30 days of written notification by Align.
- (d) If the Customer does not return the Scanner within 10 Business Days upon expiry of the Rental Period or earlier termination pursuant to the terms of this Agreement, the Customer will be liable for the fair market replacement value of the Scanner and any and all costs and/or damages associated with not returning the Scanner (as notified by Align acting reasonably). The Customer is required to pay such amount directly to Align within 30 days of written notification by Align.
- (e) Align is allowed, acting reasonably, to act in the Customer's name and on the Customer's behalf to take any steps necessary to protect Align's interests in the Scanner.

## 8. Acknowledgements, representations and warranties

- (a) The Customer acknowledges that Align is the owner and supplier of the Scanner and at all times the Scanner remains Align's property. Any accessories, parts or other items supplied with or for the Scanner will become and remain Align's property.
- (b) The Customer warrants that:
  - (i) it has disclosed to Align all the information that is material to an assessment by Align of the risks that Align assumes by entering into this Agreement;
  - (ii) it will attend the New Doctor Onboarding Program or Growth Program (as applicable) in full;
  - (iii) it will use the Scanner:
    - (A) in accordance with this Agreement;
    - (B) with due care and skill and in a professional manner to a standard of care and diligence in accordance with accepted practice for the relevant field of expertise; and
    - (C) in compliance with all relevant laws (including Privacy Laws), regulations, standards and the requirements of government authorities;
  - (iv) it will not sub-let, sub-rent or sub-hire the Scanner without the prior written consent of Align;
  - (v) as at the date of entering into this Agreement, the Customer has the ability to pay all financial commitments as and when they become due and payable; and
  - (vi) neither the Customer nor any of its subsidiaries, directors, officers, affiliates, agents or other person acting on behalf of the Customer has engaged in any activity or conduct which would violate any anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules applicable to it in Australia.

## 9. Casualty Event

- (a) If the Scanner is lost, stolen or damaged beyond economic repair (**Affected Scanner**), the Customer must promptly notify Align and pay to Align the fair market replacement value of the Affected Scanner and any and all costs and/or damages associated with not returning the Affected Scanner (as notified by Align). Upon receipt of such moneys this Agreement will terminate with respect to the Affected Scanner.
- (b) If Align receives insurance proceeds in respect of the Affected Scanner, such proceeds will be credited to the Customer to the extent of any payment received from the Customer under clause 9(a).

## 10. Insurance

- (a) The Customer must take out insurance for the Scanner (against loss, accidental damage (in whole or part and howsoever caused) or theft) with Align as a named insured on or before taking delivery of the Scanner and maintain insurance over the Scanner throughout the Term for the full insurable value of the Equipment at the Customer's expense.
- (b) If Align notifies the Customer, Align may take over the Customer's rights to make, pursue or settle an insurance claim. Align may exercise those rights in any manner which Align chooses.
- (c) Align is entitled to receive all amounts which are payable to the Customer by an insurer or other person.
- (d) If the Customer receives the proceeds from an insurance claim, the Customer:
  - (i) must promptly notify Align;
  - (ii) must hold the proceeds on trust for Align and Customer must pay Align so much of them as Align require as soon as Align asks the Customer; and

- (iii) must use them as Align directs. Align may direct the Customer to use the proceeds to reinstate the Scanner.

## **11. Ownership and right to use scans.**

The Customer will assign and hereby irrevocably assigns to Align to the fullest extent permitted by law the entire right, title and interest in and to the copyright to all scans created using the Scanner. If local laws do not permit Customer assignment of the copyright to all scans to Align, the Customer hereby grants to Align a non-exclusive, irrevocable, worldwide, fully-paid up license to use the scans from the Scanner for the purposes of complying with applicable laws and regulations, research, education and development, data analytics, management, improvement and provision of Align products and services. Notwithstanding the foregoing, the Customer may use the scans from the Scanner for purposes of treatment, patient records, education and training. For further clarity, any individual patient records (separate from records relating to the scans) and any other information that the Customer maintains for patient care purposes will remain the property of the Customer and/or Customer's patient as the case may be. The Customer will be solely responsible for obtaining patient consent prior to transferring any patient records to Align.

## **12. Customer Obligations.**

Customer agrees and understands that to the extent permitted by law and without excluding, limiting or modifying Customer's rights under the Australian Consumer Law, Customer's rights under this Agreement, including the right to claim any Warranty or obtain any Support Services, is dependent on the fulfilment of Customer's obligations hereunder and as described in this clause 12. Customer will:

- (a) ensure cables and fittings and electric supply to the Scanner are in good working condition;
- (b) not make any modification to the Scanner without Align's prior written consent at its sole discretion;
- (c) maintain and operate the Scanner in accordance with the assembly guide, user guide, operation manual and related documentation;
- (d) ensure that only authorised and trained personnel are allowed to operate or use the Scanner;
- (e) ensure that external surfaces of the Scanner remain in good condition and are cleaned utilising Align recommended surface and disinfectant products;
- (f) not attempt to adjust, repair or maintain or modify the Scanner unless instructed in writing by Align;
- (g) not request, permit or authorise anyone other than Align or an authorised Align representative to carry out any adjustments, repairs or maintenance of the Scanner unless instructed otherwise in writing by Align;
- (h) use the Scanner only on an operating system recommended by Align in writing or as published on its website;
- (i) not use any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by Align;
- (j) promptly implement in accordance with instructions from Align any Updates that may be provided, at Align's sole discretion, to Customer from time to time;
- (k) obtain any and all applicable third party licences necessary to operate third party Software, including in connection with the Customer's laptop to be used in connection with the Scanner or delivery of the Support Services, if any;
- (l) be the only end-user of the Scanner or Support Services;
- (m) ensure that any user of the Scanner is a qualified and registered health-care provider in Australia;
- (n) maintain physical and cyber security controls to mitigate the risk of theft, misuse, or unauthorised access to the Scanner and any confidential or Personal Information stored on the Scanner; and
- (o) comply with all applicable laws and regulations in connection the Scanner and Support Services.

### 13. Warranty

- (a) To the extent permitted by law and without excluding, limiting or modifying Customer's rights under the Australian Consumer Law, the Scanner is warranted (i) against defects in materials and workmanship under normal use; and (ii) to operate in accordance with the specification, in accordance with the applicable limited warranty set out below ("**Warranty**"). Claims under the Warranty must be sent directly to Align. The Warranty is given by Invisalign Australia Pty Limited of Level 6, 154 Pacific Highway, St Leonards, NSW 2065, Australia, which can also be contacted via telephone on +61 1800 468 472 and email at iTeroCSApac@aligntech.com. Claims under the Warranty must be sent to such postal or email addresses. The Warranty is effective on and including the Registration Date ("**Warranty Effective Date**"). No employee, agent, dealer, reseller, or other person is authorised to modify, vary, or extend the Warranty or to assume for Align any other liability in connection with its Scanner.
- (b) Align's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law:
  - (i) For major failures with the service, the Customer is entitled:
    - (A) to cancel the Customer's Agreement with us; and
    - (B) to a refund for the unused portion or to compensation for its reduced value.
  - (ii) The Customer is also entitled to choose a refund or replacement for major failures with goods.
  - (iii) If a failure with the goods or a service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable amount of time. If this is not done the Customer is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.
  - (iv) The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- (c) The Warranty excludes any accidental damage, loss or theft with respect to the Scanner or any part thereof.

### 14. Remedies available under the consumer guarantees regime.

- (a) To the extent permitted by law, Align limits its liability for failure to comply with a guarantee with respect to the supply of goods, other than the guarantees in sections 51 to 53 of the Australian Consumer Law to one of the following as determined by Align: (1) the replacement of the goods or the supply of equivalent goods; or (2) the repair of the goods. Replacement of non-conforming goods may be made by substitution of similar or upgraded goods having the same or similar functionality. Replacement parts will be provided on an exchange (refurbished) or new part basis, as determined by Align acting reasonably.
- (b) To the extent permitted by law, Align limits its liability for failure to comply with a guarantee with respect to the supply of services to the following as determined by Align: (1) the supply of the services again; or (2) the payment of the costs of having the services supplied again.

### 15. Limitation of liability

- (a) TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING THE CUSTOMER'S RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW, NONE OF ALIGN NOR ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, OR AGENTS (COLLECTIVELY, **ALIGN PARTIES**) WILL BE LIABLE FOR THE NON-PERFORMANCE OR DELAY IN PERFORMANCE OF ANY OBLIGATION TO THE EXTENT CAUSED BY EVENTS OR CIRCUMSTANCES BEYOND SUCH ALIGN PARTY'S REASONABLE CONTROL. FOR DELAYS RESULTING FROM SUCH CAUSES, PERFORMANCE WILL BE CORRESPONDINGLY EXTENDED. ANY ACTION AGAINST ALIGN ARISING FROM OR RELATING TO THE PRODUCTS

OR TRANSACTIONS TO WHICH THESE TERMS APPLY MUST BE BROUGHT WITHIN 6 YEARS. AFTER THE CAUSE OF ACTION ARISES OR PERFORMANCE HEREUNDER IS COMPLETED OR TERMINATED, WHICHEVER FIRST OCCURS.

- (b) WITH RESPECT TO BODILY INJURY, EACH PARTY WILL BE RESPONSIBLE IN SUCH PROPORTION AS REFLECTS ITS RELATIVE FAULT FOR DAMAGES ARISING FROM OR RELATED TO THE USE OR OPERATION OF THE PRODUCTS PROVIDED, THAT ALIGN WILL HAVE NO RESPONSIBILITY WHATSOEVER AND, UNLESS PROHIBITED BY APPLICABLE LAW, THE CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS ALIGN FROM AND AGAINST, ALL LOSSES, LIABILITIES, OR DAMAGES ARISING OUT OF IMPROPER USE, HANDLING, STORAGE, OR OPERATION, OF ANY PRODUCT OR THIRD PARTY PRODUCTS.
- (c) IN NO EVENT WILL ANY ALIGN PARTY, INDIVIDUALLY OR COLLECTIVELY, BE LIABLE FOR ANY CONSEQUENTIAL OR INDIRECT LOSS OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR LOST OR CORRUPTED DATA ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, THIRD PARTY PRODUCTS OR SERVICES.
- (d) TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING THE CUSTOMER'S RIGHTS (IF ANY) UNDER THE AUSTRALIAN CONSUMER LAW, AND NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ALIGN'S OR ANY ALIGN PARTY'S MAXIMUM LIABILITY FOR DAMAGES ARISING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ARISING OUT OF OR RELATED TO THE PRODUCT, THIRD PARTY PRODUCTS, AND/OR SERVICES, WILL NOT EXCEED, IN THE AGGREGATE, THE RENTAL FEES ACTUALLY RECEIVED BY ALIGN FOR THE SCANNER RENTED HEREUNDER. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- (e) TO THE EXTENT PERMITTED BY LAW AND WITHOUT EXCLUDING, LIMITING OR MODIFYING CUSTOMER'S RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, WILFUL MISCONDUCT, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE. SOME JURISDICTIONS DO NOT PERMIT THE LIMITATION OR EXCLUSION OF CERTAIN LIABILITIES SO THE ABOVE LIMITATIONS MAY NOT APPLY IN WHOLE OR IN PART IN SUCH JURISDICTION.

## **16. Intellectual Property**

All rights in intellectual property (including all patents, trademarks, service marks, registered designs, utility models, design right, database rights, copyright (including copyright in software and computer algorithms), trade secrets and other confidential information, know-how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world) in or relating to the Scanner, any materials, information, software, documents or items that Align prepares or produces for the Customer or makes available to the Customer will belong to Align absolutely.

## **17. Confidentiality**

- (a) The Customer must keep the terms of this Agreement confidential.
- (b) The Customer will not disclose Confidential Information of Align to anyone other than those employees who need to know the Confidential Information for the purpose set out in this Agreement and who have entered into binding obligations of confidentiality substantially similar to the obligations set forth herein.

## **18. Dispute resolution**

If a dispute arises out of this Agreement neither Party may commence any form of proceedings (other than proceedings for urgent interlocutory relief) unless the parties have sought to resolve the dispute or difference

amicably and in good faith for a period of at least 30 days.

## **19. General**

- (a) Capitalised terms in this Agreement are defined in Schedule 1.
- (b) This Agreement may be altered only in writing and signed by each Party.
- (c) Customer must not assign, novate or otherwise deal with all or any part of its rights and/or obligations under this Agreement without Align's prior written consent, which may not be unreasonably withheld. Subject to Align providing Customer with such written notice as is reasonably practicable (as determined by Align) and to the extent permitted by law, Align may assign or novate any or all of its rights and obligations under this Agreement. Any assignment or novation takes effect at the expiration of the period of Align's notice; however this will not affect Customer's rights or obligations under this Agreement. Customer agrees that, in the event of any novation in accordance with this clause, Align is released from all obligations arising under this Agreement on and from the date the novation takes effect.
- (d) If a Party is prevented from or delayed in complying with an obligation (other than to pay money) by Force Majeure, performance by it of that obligation is suspended during the time, but only to the extent that compliance is prevented or delayed.
- (e) No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.
- (f) Any term by its nature intended to survive termination of this Agreement survives termination of this Agreement, including clauses 15, 17 and this clause 19.
- (g) A provision or part of a provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions or parts of the provisions of this Agreement continue in force.
- (h) A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
- (i) Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- (j) This Agreement is governed by the law of New South Wales and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (k) This Agreement may be executed in counterparts. All executed counterparts constitute one document.
- (l) Where this Agreement is executed by a person on behalf of a Party, that person represents and warrants that he or she has the authority and delegated power to execute the Agreement on that Party's behalf.

# Schedule 1: Definitions

In this Agreement:

**Agreement** means this agreement including all schedules to this agreement.

**Align Software** means any Software, including firmware and any updates of such Software or firmware provided by Align which is embedded in or included with the Scanner or otherwise provided by Align.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the principal place of business of a party.

**Force Majeure** means:

- (a) any acts of God or other natural disaster;
- (b) pandemic, epidemic, war, hostilities, invasion, riot, civil disturbance or acts of terrorism;
- (c) genuine power outage, telecommunication outage or degradation;
- (d) labour disputes (not involving a Party's own workforce) which involves complete or substantial stoppage of work; and
- (e) acts, restrictions, regulations, by-laws, refusals to grant a licence or permission, prohibitions or measures of any kind on the part of any governmental authority.

**Intellectual Property Rights** means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, the common law and equity, and any industry codes of conduct, each to the extent applicable to the Customer's performance of its obligations under this Agreement.

**Registration Date** means the date on which the Customer registers the Scanner with Align.

**Rental Period** has the meaning given to it in the Details section of this Agreement.

**Licence Terms** means the iTero Scanner Software Licence Agreement, or any applicable software license agreement to the Align Software included in the registration process of the Scanner.

**Party** means a party to this Agreement.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion, or as the term 'personal Information' is defined in any relevant Privacy Law.

**Privacy Law** means the Privacy Act 1988 (*Cth*) including the Australian Privacy Principles.

**Scanner** has the meaning given to it in the Details section of this Agreement and will be the scanner that the Customer has ticked under "Select Option".

**Service Plan** has the meaning given to it in the Details section of this Agreement.

**Software** means any software, including without limitation internal system code, firmware, and/or operating system software.

**Support Services** means the Service Plan, support and maintenance services for the Scanner during the Term or thereafter, in accordance with the terms of the Services Plan, support and maintenance services schedule, or if no such Support Services schedule is in effect, Support Services according to Align's then current Support Services policy and pricing.

**Term** means the duration of this Agreement as determined in accordance with clause 1.

**Updates** means a new version of, updates, patches, fixes, modifications, extensions, functional improvements, error corrections, enhancements to existing functions, revisions or changes to the Align Software, hardware updates or ancillary hardware provided by Align. Updates do not include new features, functionality or other similar upgrades unless specifically indicated in writing by Align and may require additional payments by the Customer. Updates are provided by Align based on the model of Scanner.

**Warranty** has the meaning given to it in clause 13.