

MAMMOGRAPHY QUALITY CONTROL LICENSE AGREEMENT

This Mammography Quality Control License Agreement (this “Agreement”) is made this _____ day of _____ (month) 2010 (the “Effective Date”) by and between Upstate Medical Physics, Inc., a New York corporation with offices at 1290 Blossom Dr., Victor, New York 14564 (“Upstate Medical”) and _____ (facility) a corporation with offices at _____ (address of the “User”).

WITNESSETH: WHEREAS, Upstate Medical is the owner of a certain Mammography Quality Control Excel Workbooks (the “QC Workbooks”); and **WHEREAS**, in order to continue and enhance the relationship between Upstate Medical and the User, the User desires to obtain, and Upstate Medical is willing to grant to the User, a limited license to use the QC Workbooks subject to the terms and conditions of this Agreement. **NOW, THEREFORE**, in furtherance of the above and in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. **GRANT OF LICENSE: USE.** On and subject to the terms and conditions of this Agreement, Upstate Medical hereby grants to User, and User hereby accepts from Upstate Medical, a limited, nontransferable, revocable license to use the QC Workbooks. The limited rights of use granted herein to User shall in no manner whatsoever be construed to, or be deemed to limit Upstate Medical’s rights to use the QC Workbooks in connection with its business and operations. Further the limited rights of use granted herein are in no manner exclusive to User. Upstate Medical may grant a limited license to any and all other clients of Upstate Medical. User shall have the right to use the QC Workbooks exclusively for the purpose of maintaining and documenting the Mammography QC Program within the User’s organization with respect to MQSA requirements. User shall not: (i) alter files on the QC Workbooks, (ii) sell the QC Workbooks to individuals outside of the User’s organization, or (iii) provide individuals outside of the User’s organization or other entities access to the QC Workbooks in any manner,

including providing individuals outside of the User's organization with any information contained on the QC Workbooks. Regulatory or accrediting agencies are specifically excluded from this requirement.

2. **TERM.** The rights granted hereunder shall continue until the expiration of a separate contract between the parties for Upstate Medical to perform medical physics services for the User, including all renewal periods thereunder (the "Services Contract"), or a period of five (5) years if no separate contract for medical physics services exist (the "Term").

3. **LICENSE FEE.** User shall pay to Upstate Medical a fee of \$95.00 per year for the Term of this Agreement (the "License Fee"). This fee has been included in the existing contract for medical physics services, and no additional charges apply.

4. PROTECTION OF QC WORKBOOKS.

Acknowledgement of Ownership. User expressly acknowledges and agrees that Upstate Medical is, to the extent permitted by law, the sole owner of all rights, title, and interest in and to the QC Workbooks and all associated goodwill relating thereto. Except for User's right to use the QC Workbooks pursuant to this Agreement, User shall not, directly or indirectly, make any claim to any right, title, or interest in the QC Workbooks, or attack or assist any other individual or entity in attacking or questioning the ownership or validity of the QC Workbooks. This paragraph shall survive the termination of this Agreement for any reason whatsoever.

Quality Control. User agrees that it shall use the QC Workbooks only for the approved uses set forth in paragraph 1 of this Agreement and shall not engage in any of the prohibited uses set forth in paragraph 1 of this Agreement. Further, User agrees to instruct its employees of the permitted and prohibited uses of the QC Workbooks and require compliance therewith.

5. NO JOINT VENTURE OR OTHER RELATIONSHIP. Nothing contained in this agreement is intended to create or be construed as creating a joint venture, partnership, or other relationship between Upstate Medical and User other than as independent contractors as to one another. Under no circumstances whatsoever shall User act as or represent itself to be an agent or representative of Upstate Medical.

6. EFFECT OF EXPIRATION OR TERMINATION. Upon the expiration or earlier termination of this Agreement (or the Services Contract), User's right to use the QC Workbooks shall immediately cease. User shall promptly discontinue use of the QC Workbooks. Any and all electronic copies of the QC Workbooks shall also be promptly destroyed, except that existing QC data entered into the QC Workbooks may be retained by the user as required by State or Federal law or regulation.

7. LIMITATION OF LIABILITY. UPSTATE MEDICAL SHALL NOT BE LIABLE TO USER OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR SPECIAL DAMAGES RELATED DIRECTLY OR INDIRECTLY TO THE OPERATION OR USE OR THE INABILITY TO USE THE QC WORKBOOKS, REGARDLESS OF THE LEGAL BASIS FOR SUCH LIABILITY, EVEN IF UPSTATE MEDICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDY IDENTIFIED HEREIN IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL UPSTATE MEDICAL'S LIABILITY EVER EXCEED THE TOTAL SUM PAID BY USER HEREUNDER.

8. TAXES. In addition to other amounts payable under this Agreement, User shall pay any and all sales, use or excise taxes, and any other taxes of any kind whatsoever, including, duties, fees or withholding currently or subsequently imposed on User.

9. NOTICE. Any notice or other communication required or permitted pursuant to this Agreement shall be in writing and shall be given by hand delivery, certified mail (return receipt requested), or by overnight express service at the following addresses: If to Upstate Medical: Robert Pizzutiello Upstate Medical Physics, Inc. 1290 Blossom Dr. Victor, New York 14564 With a copy to: Donald R. Fox, Esq. Evans & Fox LLP 95 Allens Creek Road, Suite 103 Rochester, New York 14618 If to User

_____ With a copy to:

_____ Or to such other address or addresses as either party may designate to the other by like notice as set forth in this paragraph 16. Any notice given hereunder shall be deemed to have been given if delivered and received on the date of hand delivery, or three (3) days after deposit with the United States Postal Service, or one (1) day after delivery to an overnight express service for next day delivery, as the case may be.

10. **GOVERNING LAW AND PROCEEDINGS.** The validity, construction and performance of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to the principles of conflict of law. The parties hereby consent to the exclusive jurisdiction of the State of New York, and further stipulate that the proper and sole venue for all actions and proceedings arising out of this Agreement, or associated with this Agreement, is the County of Monroe, State of New York.

11. **ATTORNEY'S FEES.** If a party commences any action against the other arising under or in connection with this Agreement or is otherwise made a party to any action or proceeding arising from this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs associated with the same.

12. **WAIVER.** No waiver of any term, provision of condition of this Agreement, whether by conduct or otherwise, including acceptance of the License Fee, in any one or more instances, shall be deemed to be, or construed as a further or continuing waiver of any such term, provision, or condition or of any other term, provision, or condition of this Agreement.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the final, complete, and entire Agreement between the parties with respect to the subject matter hereof, and replaces and supersedes all previous oral or written agreements, understandings or arrangements, if any, between the parties with respect to the subject matter hereof and cannot be modified in any respect except by an amendment in writing signed by both parties.

A handwritten signature in black ink, appearing to read "Robert D. Pyszczalski". The signature is written in a cursive style with a large, sweeping initial 'R'.

(USER) By:

Signature Name (print):

Date: