End User Agreement for ShowCase Onboard CD/DVD Viewer Software

*** SHOWCASE CD/DVD VIEWER LICENSE ***

This End User Agreement ("Agreement") by and between Trillium Technology, Inc., with a place of business in Ann Arbor, Michigan U.S.A. ("Trillium") and you ("User") states the terms and conditions under which the User may use the SHOWCASE ONBOARD CD/DVD Image Viewer software (the "Software"). Please read this Agreement carefully before accessing and using the Software. By using and accessing the Software you indicate that you have read and understand this Agreement and that you are and agree to be bound to this Agreement. If you do not accept this Agreement neither access nor use the Software.

1. ARTICLE 1. CONDITIONS OF USE

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1.2 <u>Distribution</u>. Trillium grants to User the limited right to distribute CDs and DVDs that contain the Software to patients and medical staff for use in viewing medical studies written to the CD or DVD using equipment licensed to copy and distribute the Software. The viewer should not be redistributed or used for any other purpose.

2. ARTICLE 2. INTELLECTUAL PROPERTY

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2.2 <u>Confidentiality</u>. User hereby acknowledges that the Software and Documentation contain information that is trade secret and proprietary to Trillium. User hereby agrees not to disclose such information except to persons and organizations expressly authorized by Trillium to receive such information.

2.3 <u>Confidential Information</u>. User must keep all Trillium Confidential Information to which User has access in strict confidence. User may not disclose Confidential Information, except to persons authorized by Trillium.

3. ARTICLE 3. WARRANTY LIMITATION

3.1 **WARRANTY LIMITATION.** EXCEPT AS EXPRESSLY PROVIDED HEREIN THE SOFTWARE AND USER'S USE THEREOF IS PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH USER. IN NO EVENT WILL TRILLIUM BE LIABLE FOR ANY DAMAGE WHATSOEVER ARISING OUT OF THE USE OF OR INABILITY TO ACCESS THE SOFTWARE OR TO USE THE SOFTWARE, EVEN IF TRILLIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TRILLIUM DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. USER ACKNOWLEDGES AND AGREES THAT USER HAS NOT RELIED ON ANY EXPRESS OR IMPLIED REPRESENTATION OF DISCREET, WRITTEN OR ORAL, AS AN INDUCEMENT TO ENTERING INTO THIS AGREEMENT. Some jurisdictions do not allow limitation of certain warranties, so the above limitation may not apply to User. This limited warranty gives User specific legal rights.

3.2 Indemnification. User shall defend, indemnify and hold Trillium and its officers, directors, employees, and agents harmless from and against any and all threatened or actual claims, actions, liability, suits, expenses, costs, fees (including attorney's fees), damages, or losses arising from or relating to (i) use of the Software by persons authorized by User; (ii) User's acts (or any failure to act) hereunder; and (iii) any breach by User of User's obligations hereunder.

3.3 Limitation of Damages. TRILLIUM SHALL NOT BE LIABLE TO USER UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SOFTWARE FOR ANY PERSONAL INJURY, LOST PROFITS, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, AND REGARDLESS OF WHETHER TRILLIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR WHETHER SUCH DAMAGES ARE REASONABLY FORESEEABLE. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE LIABILITY OF TRILLIUM FOR ANY REASON AND FOR ANY CAUSE OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE OR USER'S USE THEREOF SHALL NOT EXCEED AMOUNTS PAID TO TRILLIUM HEREUNDER.

4. ARTICLE 4. MISCELLANEOUS

4.1 Term. This Agreement shall terminate immediately upon User's breach of the Agreement. Articles 2, 3, and 4 shall survive the termination of this Agreement.

4.2 Assignments.   All delegations, transfers or assignments of rights, duties or obligations under this Agreement by User without the prior written consent of Trillium shall be null, void and without effect.

4.3 Restricted Rights. The Software and documentation have been developed entirely at private expense and is commercial computer software provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, 227.7202-1(a) and 227.7202-3(a) or subparagraphs (c)(1) and (2) of the

Commercial Computer Software-Restricted Rights at 48 CFR 12.212(a), or 52.227-14(41 & III), 52.227-19, as applicable.

4.4 <u>Entire Agreement</u>. This Agreement contains the entire understanding of the parties and supersedes previous verbal and written communications, proposals and agreements between the parties concerning the subject matter hereof.

4.5 <u>Amendments and Modifications</u>. Unless specifically provided in this Agreement, waivers, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by an authorized representative of both parties.

4.6 <u>Severability</u>. If a provision of this Agreement is rendered invalid, void or unlawful, the remaining provisions shall remain in full force and effect.

4.7 <u>Counterparts</u>. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

4.8 <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of Michigan without regard to any rules of conflict or choice of laws. The parties consent to the exclusive jurisdiction of the state and federal courts in the Eastern District of Michigan with respect to all disputes arising from or related to this Agreement.

4.9 <u>Relationship of the Parties</u>. It is agreed that the relationship of the parties is primarily that of an independent contractor. Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other.