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Merge Service Description

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HSL
HOSPITAL SERVICES LIMITED

Merge Imaging Suite VNA Departmental Service Description

This Service Description describes the Software as a Service ("SaaS"). The applicable order documents provide pricing and additional details about Client's order.

1. Software as a Service ("SaaS")

The SaaS is designed to securely communicate, store, and orchestrate medical images and associated data across a healthcare enterprise in a hybrid cloud architecture.

2. Data Processing and Protection Data Sheets

Merge's Data Processing Addendum at

https://www.merative.com/content/dam/merative/terms/privacy/Data_Processing_Addendum.pdf (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the SaaS and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies to personal data contained in Content, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at

https://www.merative.com/content/dam/merative/terms/privacy/EU_Std_Contractual_Clauses_and_UK_Supplement.pdf apply.

https://www.merative.com/content/dam/merative/terms/privacy/dpa/DPA_Exhibit.pdf

3. Technical Support and Service Level Agreement

Technical support for the SaaS is provided via email at MergeSupport@merative.com or phone at 877-741-5369. Information about support services for the SaaS is available at www.merative.com/support. Technical support is offered with the SaaS and is not available as a separate offering.

Merge provides Client with the service level agreement (SLA) available at

https://www.merative.com/content/dam/merative/terms/ancillary/Merge_Service_Level_Agreement.pdf. While Merge reserves the right to modify the SLA to make improvements to the SaaS, any such modifications shall not reduce the percentage of service availability or applicable compensation.

4. Entitlement and Billing Information

4.1 SaaS Charge Metrics

Client's entitlement to use the SaaS is measured based upon an **Annual Exam Volume (AEV)** charge metric, in the amount specified in the Transaction Document pursuant to which Client obtains a subscription to the SaaS. Annual Exam Volume is calculated based upon the number of Exams processed and stored by the SaaS in a 12-month period, as measured from when Client is first provided access to the SaaS and upon each anniversary thereof (or such other twelve-month period as agreed to, in writing, by the Parties), using a price per Exam.

An **Exam** is a DICOM exam with a unique DICOM study instance Unique Identifier (UID), or other non-DICOM exam consisting of a collection of medical imaging data sharing the same unique reference identifier.

In the event Client's measured use of the SaaS in a given measurement period exceeds Client's AEV entitlement, Client must obtain additional entitlements in an amount no less than that by which actual use exceeded Client's existing entitlement as calculated in Section 4.3, below.

4.2 Monthly Subscription Charges

Your monthly subscription payment will be calculated as follows:

Monthly Subscription Charge = (AEV x price per Exam)/12

4.3 Entitlement Use Measurement and Overages

During the subscription term, Merge will assess Client's usage of the SaaS for variances above Client's subscription entitlement on a monthly basis, calculated based on Client's actual average use over the prior six months. If Client's actual monthly use of the SaaS exceeds by more than five percent (5%) the estimated AEV divided by 12, Client's entitlement will automatically increase to the actual AEV, rounded to the nearest thousand Exams. Any such increases are on a go-forward basis only and will be reflected in future monthly charges for the duration Client's subscription.

4.4 Pre-Production Fee

The Pre-Production Fee includes the provisioning, deployment and testing of Client's instance of the SaaS by Merge and is charged as specified in the Transaction Document pursuant to which Client obtains a subscription to the SaaS.

5. Additional Terms

5.1 Prohibited Components

Notwithstanding any provision in the Agreement, Client is not authorized to use any of the following components or functions of the Program:

XDS (cross enterprise document sharing)

3rd Party PACS Integrations

5.2 Enabling Software

Client is entitled to use the following Enabling Software to facilitate your use of the SaaS:

Merge Imaging Suite Gateway – Supports secure communication and caching between on-premise devices and the SaaS Imaging Suite. The Prohibited Components in the 5.1 section above apply to this on-premise Software.

Client's subscription to the SaaS includes technical support for the Enabling Software.

5.3 Definitions

Capitalized terms not otherwise defined in this Service Description are defined elsewhere in the Agreement and have the same meaning in this Service Description as the Agreement.

- a. **BAA** – has the meaning set forth in HIPAA.
- b. **HIPAA** – the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act, both as amended, including their implementing regulations promulgated at 45 C.F.R. Parts 160 and 164.

5.4 Protected Health Information and Required Consents

Protected Health Information (PHI) may only be used with the SaaS provided that a BAA that will govern such PHI has been validly executed between Client and Merge and is linked to the transaction documents by which Client has acquired access to the SaaS. Such BAA shall govern any PHI used with the SaaS, and is incorporated herein by reference. Client represents and warrants it shall obtain all required patient consents to enable the transmission, storage and use of such patient's health information to a data center located in the United States. Client is solely responsible for any claims, damages, penalties, fines or any other losses for failing to obtain such consent.

5.5 Data Use

The following prevails over anything to the contrary in the Content and Data Protection section of the base SaaS terms between the parties: Merge will not use or disclose the results arising from Client's use of the SaaS that are unique to Client's Content (Insights) or that otherwise identify Client. Merge may however use Content and other information (except for Insights) that results from Content in the course of providing the SaaS that has been anonymized; so that the data is rendered into a form that no longer

constitutes personal data. Merge will use such data only for research, testing, and offering development. In addition to the permitted uses and disclosures granted in the BAA, Client also provides Merge the right, as well as the necessary permission as a business associate, to create de-identified data sets from Content as well as create limited data sets and perform data aggregation services. Additionally, Merge has the right to use, modify, disclose and distribute those data sets for any purpose during and after the term of the Agreement and Client's subscription to the SaaS.

5.6 Program Updates

The SaaS is a single-tenant instance of Merge VNA (the "Program") made available as a service. After the latest release, the customer will have 9 months to be upgraded **to the latest release** from any version that is not the latest release or the one immediately prior, (i.e. customers on 1.x will have 9 months to upgrade to 3.x after it is released, as only 3.x and 2.x will be supported). If Client does not coordinate with Merge to implement an upgrade to a currently-supported version, within 9 months of the latest release being made generally available, then Merge will alert Client and specify the date Merge will implement the upgrade on behalf of Client. On that date, a scheduled maintenance event will be executed by Merge to implement the update. Merge will undertake reasonable measures to coordinate the timing of the upgrade with Client.

5.7 Medical Information Disclaimer

The SaaS enables Client to access and receive information from third party services that are Non-Merge Products and which are subject to the terms of use provided by the third party. If a Non-Merge Product is acquired from Merge, the third-party terms of use will be identified in the Transaction Document. The Non-Merge Products may be regulated medical devices that are intended to assist clinicians in making decisions; however, Client understands and agrees that Merge has no responsibility whatsoever for Client's use of Non-Merge Products, the results obtained from such products, or the conduct of Client's business or patient care. Client agrees that any use by Client or its Client End Users of the SaaS or Non-Merge Products accessed via the SaaS will not diminish Client's or its Client End Users responsibility for patient care.

In undertaking and providing the SaaS, Merge is acting solely as an information technology provider and does not purport to be engaged in the practice of medicine or any other professional clinical or licensed activity, and the SaaS consists solely of support to facilitate providing information to Client and Client's medical or other health care professionals who must evaluate the safety and security of such information, and exercise Client's independent professional judgment regarding any care decisions. Merge assumes no responsibility or liability for the accuracy, completeness, propriety, necessity, security or advisability of any medical information which is accessed from Non-Merge Products through the use of the SaaS, and Merge and its employees have no responsibility for any decisions made or actions taken or not taken in rendering medical care, or for information provided to patients or caregivers.

Merge has the sole right and responsibility for communicating with all regulatory authorities regarding the SaaS, including initiating, responding to, or participating in any discussions regarding the current or future regulatory status. Client shall not initiate contact with regulatory authorities regarding the SaaS. If regulators contact Client directly, Client shall promptly notify Merge while cooperating with such regulators only to the extent required by law. If Client has any questions or concerns about regulatory requirements or opportunities associated with the SaaS, Client should raise them with Merge.