



# VeriPULSE IOS

## Terms and Conditions/Warranty

**Rx ONLY** - Federal law restricts this device to be sold by or on the order of a Dentist and any other practitioner licensed by the law of the State in which the practitioner practices to use or order the use of the device.

### Definitions:

- (a) **Whip Mix Corporation** ("Whip Mix", "we", "us", or "our") means the seller of the Products.
- (b) **Customer** ("Customer", "purchaser", "you", or "your") means the person, company, business, organization, or entity purchasing the Products from Whip Mix.
- (c) **Contract** means any this and any other document signed, initialed, or otherwise agreed to by you without alteration, and conditions or such addendums that you sign, initial, or otherwise agree to (per Section 8.7 below) in connection with the Products you are purchasing from Whip Mix.
- (d) **Effective Date** means the date signed, initialed, or otherwise agreed to by you.
- (e) **Product(s)** means the VeriPulse IOS Intraoral Digital Impression Scanner, including all hardware, Software, and accessories.
- (f) **Software** means the software provided for use of the Products, including any updates generally provided to customers.
- (g) **Consumables** means accessories that are used with the Products subject to wear and tear (e.g., autoclavable scanner tips).

### 1. License and Sale.

**1.1 License Grant.** Subject to these terms and conditions and any addendums or amendments, we (i) grant you a worldwide, non-transferrable, non-exclusive license to use the Software during the term of such license ("Software License"), (ii) sell you the hardware ("Hardware") which you are purchasing, and (iii) agree to provide mutually agreed-upon services as set forth in the Contract.

**1.2. License Terms.** The License for each Product comprising Software is that we deliver to you at the site identified by you and permits you to make one copy of the Software solely for backup and archival purposes. You may not:

- (a) use or copy the Software except as permitted in this Contract;
- (b) translate, reverse engineer, decompile or disassemble the Software, except as expressly permitted by applicable law;
- (c) rent, lease, assign or transfer the Software or Software License, except as expressly permitted by this Contract;
- (d) modify the Software;
- (e) use the Software other than in connection with the patients of your own dental practice; or
- (f) use the Software to provide service bureau services.

These limitations will survive termination of this Contract for any reason. You obtain no rights other than the License granted in this Contract and we reserve all rights not expressly granted herein.

### 2. Fees; Payments, Taxes.

**2.1 Payment.** You shall pay to Whip Mix the relevant prices for the Products according to the quotation provided to you.

**2.2 Shipping & Handling.** We will deliver Product(s) to the address you specify to us. We will invoice you for the transportation charges. Shipping and handling charges are subject to change. You will bear the risk of loss of, and damage to, the Products after delivery except that we will bear the risk of loss for damages incurred during shipping that you report to us within five days of delivery if you inspect the Products promptly upon arrival and promptly report all visible damage to the shipper.

**2.3 Returns of Cancelled Product(s).** Product returns are permitted only with prior authorization from Whip Mix, which Whip Mix may deny in its sole discretion. Approved returns will be issued a Return Merchandise Authorization ("RMA") number by Whip Mix, along with return instructions. The RMA number must be included on the packing slip for returned material(s). Returns must be delivered to Whip Mix within 14 days after the RMA is issued. Late returns may be refused. All returned Products must be in good working order and include all original packing materials and accessories. Whip Mix may impose a restocking fee on all returns and deduct that amount from the credit issued to the account. Consumables, including autoclavable tips, are not eligible for returns unless permitted by Whip Mix. Shipping and handling fees on the initial purchase and on the return, shipment are not eligible for refund or credit. You are responsible for return shipping expenses. Returns will not be authorized if requested more than 60 days from date of shipment.

### 3. Nondisclosure and Confidentiality.

**3.1 Disclosure.** Each party may disclose to the other party or become aware of Proprietary Information (as defined herein) of

the party or of the party's associated companies, suppliers, or customers. "Proprietary Information" means Trade Secrets (as defined under applicable law), the Software, and other information that is of value to its owner and treated by its owner as confidential. Proprietary Information does not include:

- (a) information already known to recipient without an obligation to keep such information confidential;
- (b) information received by recipient in good faith from a third party lawfully in possession of the information and having no obligation to keep such information confidential; or
- (c) information publicly known at the time of recipient's receipt from the disclosing party.

**3.2 Requirement of Confidentiality.** The recipient of any Proprietary Information shall:

- (a) not disclose such information except to its employees, contractors, and subsidiaries who have a need to know and who are bound by confidentiality obligations substantially like those herein, and
- (b) use such information only in connection with the purposes of this Contract.

The obligations of this Section 3 with respect to Proprietary Information not constituting a Trade Secret will continue for the longer of any term of any Software License or of any warranty period, and for a period of three years thereafter. For Proprietary Information constituting a Trade Secret, the obligations of this Section 3 will continue for so long as such Proprietary Information remains a Trade Secret.

**4. Infringement Indemnity.** We will, at our expense, defend any action brought against you to the extent that it is based on a claim that a Product when used as authorized by this Contract infringes any valid and enforceable patents, copyrights, or trade secrets, provided that we are immediately notified in writing of any such claim and provided that we will have the exclusive right to control the defense thereof. If, because of such action you are enjoined from using the Product, then we may, at our sole option and expense, either procure for you the right to continue to use the Product or replace or modify the Product to avoid or settle such claim, litigation or litigation threat. If such settlement or modification is not reasonably practical in our sole opinion, then we may, at our option:

- (a) discontinue and terminate the license in the case of Software, or
- (b) accept return of the Hardware, upon written notice to you.

In either case, we will refund to you the book value of the Products so returned. This Section 4 describes our entire liability with respect to infringement, misappropriation, or alleged infringement or misappropriation of any trademarks, copyrights, patents or trade secrets by the Products.

**5. Data Security/HIPAA Compliance.**

**5.1 Data Security.** Consistent with all applicable regulations, we shall maintain appropriate security measures to protect personal information of your patients to which we are exposed while providing Products or related services under this Contract.

**5.2 HIPAA & HITECH.** You shall ensure that any data shared with Whip Mix for the purposes of troubleshooting meets the prevalent data privacy laws. Any patient information not pertinent to the purpose shall be redacted and/or removed by other means before forwarding such data to Whip Mix.

**6. Warranty, Remedies, and Limitations.**

**6.1 Warranty.** For the warranty period applicable to each Product as indicated in Exhibit A (the "Initial Warranty Period"), and thereafter for as long as you have purchased extended warranty (the "Extended Warranty Period"), we warrant the Product to be free from defects in material or workmanship under normal use and service, and warrant each Product to perform substantially in accordance with its documentation. You are solely responsible for using the Products and for the accuracy and adequacy of data entry. You have full responsibility for the care and well-being of your patients and any reliance by you upon the Products does not diminish that responsibility. These warranties are made only to the original purchaser/licensee of the Products and are not transferable.

**6.2 Remedies.** In the event of a breach of the foregoing warranties during the period within which the Product is covered, we will correct the breach in accordance with the applicable plan described in Exhibit A if you notify us of the breach during the Initial Warranty Period or Extended Warranty Period (as applicable). In the event of a breach of all other warranties and if you notify us of the breach during the Initial Warranty Period or Extended Warranty Period (as applicable), then we will repair or replace the Product where cure of the breach is possible through repair or replacement. If repair or replacement is not possible, then we shall be liable only for direct damages, subject to the maximum liability provided herein. This section provides your sole and exclusive remedy for any cause of action against us, regardless of the form of action, whether based in contract, tort (including negligence), strict liability or any other theory of law. The parties to this Contract have each agreed to the fees and entered into this Contract in reliance upon the remedies, warranties, limitations and disclaimers set forth in this Contract, and the same form an essential basis of the bargain between the parties.

**7. Limitation of Liability.**

**7.1 Limitation of Remedy.** In no event will either you or we, each of our affiliates (if any), or any of each of our officers, directors, employees, stockholders, agents or representatives be liable to the other or any other person or entity for any special, indirect, incidental, exemplary, punitive, or consequential damages, including but not limited to any loss of or damage to goodwill, loss of business, loss of revenue, or loss of anticipated profits or savings, even if the other party has been notified of the possibility or likelihood of such damages occurring, and whether such liability is based on contract, tort, negligence, strict liability, products liability or otherwise.

**7.2 Maximum Liability.** Except for our liability for infringement indemnity (as set forth in Section 6), and our liability for death, personal injury or physical property damage (to the extent arising out of or resulting from a proven manufacturing or design defect in a Product, or from our gross negligence or willful misconduct), in no event will our liability for damages to you, or to any other person or entity regardless of the form of action, whether based on contract, tort, negligence, strict liability, products liability or otherwise, ever exceed the amount received by us under this Contract.

## **8. Miscellaneous.**

**8.1 Relationship of Parties.** This Contract will not be construed to create any employment, partnership, joint venture or agency relationship or to authorize either you or us to enter into any commitment or contract binding the other.

**8.2 Assignment.** This Contract and all rights and obligations under it may not be assigned in whole or in part by you, including to a leasing company, without our prior written consent. Either party may assign this Contract in connection with a reorganization, merger, consolidation, acquisition, divestiture or restructuring involving all or substantially all such party's voting securities or assets, provided that any transfer of any Software License hereunder will be in accordance with Whip Mix policies and procedures. This Contract will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors and assigns.

**8.3 No Waiver.** No delay or failure in exercising any right under this Contract and no partial or single exercise of such right will be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Contract will constitute consent to any prior or subsequent breach.

**8.4 Contact.** By signing, accepting, or agreeing to this Contract, you agree that we may contact you at the phone number and email address provided by you for anything related to the Products purchased under this Contract.

**8.5 Force Majeure.** Neither party will be liable for failure to perform any of its respective obligations under this Contract, other than the payment of fees, if and during such time as such failure is caused by an event outside its reasonable control, including, but not limited to, an act of God, pandemic, epidemic, war (declared or undeclared), terrorism, civil unrest, strike, or natural disaster.

**8.6 Governing Law.** Notwithstanding the place where this Agreement is executed, or where obligations under this Agreement are performed, the parties expressly agree that this Agreement and any claim or controversy arising out of or relating to rights and obligations of the parties under it will be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky, United States of America, without regard to its conflicts of laws principles. The parties submit to the exclusive jurisdiction of the courts of the Commonwealth of Kentucky, United States of America.

**8.7 Amendments.** All modifications or amendments to this Contract will be ineffective unless made in writing and signed or otherwise accepted or agreed to by authorized representatives of the parties.

**8.8 Entire Agreement.** This Contract constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations, and proposals, whether written or oral. Any terms and conditions that are incorporated in your purchase order(s) or any similar document(s), if any, shall be considered contemporaneous proposals and therefore remain subject to the preceding sentence.

**8.9 Notices.** All notices and other communications under this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed or sent by other telegraphic communications equipment of the sending Party as follows:

Whip-Mix Corporation  
Attn.: Scott Frasure  
361 Farmington Avenue  
Louisville, Kentucky 40209  
Website: [www.whipmix.com](http://www.whipmix.com)

## **9. Implementation, Training and Conversion Services and Obligations**

**9.1 Implementation.** You are responsible for the installation of the Product at your site, unless otherwise indicated to you by us. Depending on the Product you have purchased, we may send you information explaining your upcoming implementation.

**9.2. Integration Restrictions.** You understand that integration of other (i.e., third party) software and hardware with the Products may not be feasible and we make no guarantee that such integration can be achieved other than as expressly provided in the Product documentation. You are responsible for any costs incurred by you because of our or your inability to integrate such other software and hardware with the Products. If you retain us to attempt integration, you agree to pay us for all services rendered in attempting to integrate such other software and hardware regardless of the ultimate outcome of that effort.

**9.3. Training.** We will provide the training to employees agreed upon by Whip Mix and you. Training may be available at your office, at a Whip Mix location or via the internet. Unless otherwise specified, you are responsible for any training expenses.

## Exhibit A

**This Limited Warranty provides for specific legal rights with respect to your VeriPulse IOS Intraoral Digital Impression Scanner. Please review it carefully.**

### What is Covered?

This Limited Warranty covers your VeriPulse IOS Intraoral Digital Impression Scanner. For purposes of this Limited Warranty, "VeriPulse IOS Intraoral Digital Impression Scanner" means only the hardware comprising: (i) your VeriPulse IOS Intraoral Digital Impression Scanner; and (ii) the peripherals included in the packaging with your VeriPulse IOS Intraoral Digital Impression Scanner.

### Express Warranty

Subject to the terms and conditions of this Limited Warranty, Whip Mix warrants to the Purchaser that the VeriPulse IOS Intraoral Digital Impression Scanner will be free from defects in materials and workmanship under normal consumer use for an Initial Warranty Period of twenty-four (24) months from the delivery of the Product to the Customer ("Warranty Period"). This express warranty is not transferable to others.

### Implied Warranty

You may also have implied warranties under the laws of some jurisdictions. To the extent permitted by applicable law, such implied warranties are limited to the duration of the Initial Warranty Period. Some jurisdictions do not allow limitations on the duration of an implied warranty, so this limitation may not apply to you. You may not assign or otherwise transfer such implied warranties. However, some jurisdictions extend the protection of implied warranties to subsequent consumers, so this limitation may not apply to you.

### WHAT IS NOT COVERED BY THE WARRANTY?

The following is not covered by the warranty:

- A. Service or replacement required as a result of any alteration of the Products, or repairs made by anyone other than Whip Mix or an authorized service provider.
- B. Damage or other failure due to the failure to maintain the Product according to the owner's manual instructions including the cleaning and service requirements in the manual, faults or negligence, vandalism, theft, fire, flood, wind, freezing, power failure, inadequate power supply, unusual atmospheric conditions, acts of war, acts of God or other force majeure events.
- C. Service or replacement necessary because of improper storage, improper ventilation, reconfiguration, or the failure to place the equipment in an area that complies with the published space or environmental requirements.
- D. Cosmetic damage such as, but not limited to scratches, dents, rust, stains.
- E. Consumables (normal wear and tear).
- F. Pre-existing conditions (incurred prior to the effective date of coverage) known by the Customer.
- G. Operational or mechanical failure covered by a recall, warranty extension, or factory bulletins.
- H. Operational or mechanical failure which is not reported prior to expiration of this Contract.
- I. Damage as a result of violation of existing legislation.
- J. Transit or delivery damage, damage caused by packing, unpacking, assembly, installation, or removal.
- K. Short circuit, loss of use, lack of maintenance, bodily injury, adjustments, periodic checkups or maintenance.
- L. Any software and malfunctions caused by any software, including but not limited to, application programs, network programs, upgrades, formatting of any kind, databases, files, drivers, source code, object code or proprietary data, or any support, configuration, installation or reinstallation of any software or data.

Whip Mix shall have no obligation to make repairs, replacements, or refunds in case a defect of the Product is caused by any of the events not covered by the warranty.

### WHAT OTHER LEGAL TERMS APPLY TO THIS LIMITED WARRANTY?

#### Disclaimer

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS LIMITED WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHIP MIX SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS NOT EXPRESSLY PROVIDED FOR IN THIS LIMITED WARRANTY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SECURITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST HIDDEN OR LATENT DEFECTS.

## **Modification**

No employee or representative of Whip Mix or its affiliates or any third party is authorized to make any modification, extension or addition to this Limited Warranty. If any term of this Limited Warranty is held to be illegal or unenforceable, the remaining terms of this Limited Warranty will remain in full force and effect.

## **Exclusion of Indirect Damages**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER WHIP MIX NOR ITS AFFILIATES NOR ITS LICENSORS WILL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR OTHER INDIRECT DAMAGES ARISING FROM, RELATING TO OR CONNECTED WITH YOUR PURCHASE OR USE OF YOUR VERIPULSE IOS INTRAORAL DIGITAL IMPRESSION SCANNER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUE OR LOST DATA, REGARDLESS OF THE CAUSE OF ACTION ON WHICH THE CLAIM IS BASED, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, TORT, CONTRACT, STRICT LIABILITY, PRODUCT DEFECT OR MISREPRESENTATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Some US states do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusion may not apply to you.

## **Software Warranty**

Whip Mix warrants each software license and product firmware acquired by the customer during the described warranty period to perform the functions described in the then-current published documentation supplied by Whip Mix. During the warranty period, Whip Mix will use commercially reasonable efforts to provide a solution, on a non-priority basis, or workaround of the problem by means of remote desktop and telephone support. This solution may include patches, corrective software releases or other means reasonably determined by Whip Mix to correct a software or firmware products failure to conform to the warranty, provided that Whip Mix has notified in writing of the nature of the non-conformity.

## **Applicable Law**

This Limited Warranty is valid only in the United States of America, Canada and Mexico. Notwithstanding the place where this Agreement is executed, or where the obligations under this Agreement are performed, the parties expressly agree that this Agreement and any claim or controversy arising out of or relating to rights and obligations of the parties under it will be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky, United States of America, without regard to its conflicts of laws principles. The parties submit to the exclusive jurisdiction of the relevant courts of the Commonwealth of Kentucky. The laws of your state of residence may apply to any tort claims and any claims under any consumer protection statutes, as provided under applicable law.

## **Return of Defective Product(s).**

If we ship replacement parts or components, then we will provide a return shipping label required to return your defective Product. You will have 14 days from delivery of the replacement to ship the defective Product using the shipping label provided. If the defective Product is not returned as requested within 14 days, then you will be charged and agree to pay the full replacement cost of the replacement Product shipped to you. Any defective Product will be appropriately sanitized and/or decontaminated per prevalent clinical practices prior to transportation.

## **Availability**

We will provide you with reasonable technical support:

- A. If you have purchased the Product(s); or
- B. If it is relate to our warranty obligations during the Initial Warranty Period or Extended Warranty Period (as applicable), provided that you are current with any payments you may owe us.

## **Standardization, Performance Optimization, Controlled Versioning and Remote Access to Workstation.**

Whip Mix and its designated affiliate will retain remote access and administration rights to the workstation for the Warranty Period to assist with workstation standardization, performance optimization, controlled operating system updates and workstation specific optimizations. It is your responsibility to maintain HIPAA compliance on this workstation, and keep HIPAA-compliant backups of your data and applicable program files: you will be solely responsible for ensuring this compliancy and such backups.

## **Data Collection**

You acknowledge, consent and agree to the collection of Technical Data and its communication to Whip Mix for use by Whip Mix and its affiliates for the possible purposes of monitoring the performance of the Software and Hardware, improving the Software and Hardware, troubleshooting errors or problems incurred by the Software and Hardware, identifying new software and equipment products that may be helpful to you, and for other similar purposes. Technical Data shall be retained by Whip Mix or its affiliates no longer than necessary for such

purposes. Whip Mix shall not be liable for any cybersecurity breach of the site where the Whip Mix software are installed. As used herein, the term "Technical Data" shall mean and refer to data pertaining to the operation and performance of the Whip Mix Software and Hardware (and their sub-components) and shall include, without limitation, data related to operational activity, operational status, and errors or problems incurred. Technical Data shall not include patient personal information or patient health-related information.

### **Extended Warranty Options**

The Initial Warranty Period starts on the Effective Date and extends for 24 months. You have the option, via notification in writing to Whip Mix at any time during the Initial Warranty Period, to purchase a 1-year, 2-year, or 3-year extension to this Initial Warranty Period. Your Initial Warranty will terminate 24 months after the Effective Date should you choose not to notify us to extend your Warranty

### **System Updates**

Updates will be made available to you during and after the Initial Warranty Period or Extended Warranty Period (as applicable) at no charge. We make no warranties or representations regarding the frequency of updates or the extent to which updates are made available at all.

### **Limitations and Exclusions**

We will not be responsible for providing technical support relating to the following:

- A. Operation of the VeriPulse IOS on a system not supplied and/or supported by Whip Mix.
- B. Third-party software.
- C. Software (or third-party software) errors caused by changes, alterations or revisions made by you or on your behalf.
- D. Problems caused by your data, network, database, operational or other environmental factors not within our direct control.
- E. Problems caused by non-HIPAA compliant data backup procedures, third-party databases, or customizations to the Software.
- F. Problems caused by unqualified or untrained personnel.
- G. Damage to the workstation

Out of warranty service is available. Contact Whip Mix Technical support team for quote.