

## General Conditions of Service (In vitro Diagnostics)

### 1. DEFINITIONS & INTERPRETATION

#### 1.1. DEFINITIONS

In these General Conditions unless otherwise indicated to the contrary:

**Additional Fee** means a charge for Additional Services calculated in accordance with Siemens' then current rates for labour, travel and materials;

**Additional Services** means any services or other deliverables in addition to the Maintenance Services which Siemens agrees to provide to the Customer for an Additional Fee;

**After Hours (AH)** are the hours outside of Normal Business Hours or outside the coverage period referred to or specified in the Contract;

**Authority** means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) other person (whether autonomous or not) charged with the administration of a Law;

**Business Day** means Monday through Friday (inclusive) excluding public holidays where the Equipment is located or where the Maintenance Services are being performed;

**Commencement Date** means the commencement date set out in the Offer;

**Confidential Information** has the meaning given in clause 15;

**Consumables** means items that are designed to be consumed or deteriorate and be replaced as a result of the ordinary operation of the Equipment;

**Contract** means the agreement between Siemens and the Customer for the supply of Maintenance Services consisting of:

- (a) the Offer
- (b) these General Conditions;
- (c) any qualifications to these General Conditions agreed between the parties in writing; and
- (d) any Annexures to these General Conditions

as may be amended from time to time in accordance with the Contract;

**Contract Term** means the term of the Contract as set out in the Offer, or shorter period where the Contract is terminated in accordance with clause 14;

**Contract Year** means the period from the Commencement Date (and each anniversary of the Commencement Date) and ending 12 months later (or on any such earlier date at the end of the Contract Term);

**Corrective Maintenance Services** means any unscheduled remedial maintenance services that are required to keep the Equipment operating in accordance with the manufacturer's specifications, if and to the extent included in the Offer;

**Customer** means the person specified in the Offer for whom the Maintenance Services and any Additional Services are performed;

**Customer Care Centre** means the 24/7 telephone support hotline (0800 310 300) provided by Siemens

**Customer's Personnel** means the Customer's agents, consultants, employees, officers, representatives or contractors;

**Defect** means an error or defect in the Maintenance Services or Spare Parts due to Siemens' faulty material or workmanship;

**Defects Liability Period** means the period of:

- (a) for Spare Parts, 90 days from the date Spare Parts are installed; and
- (b) for any Maintenance Services, 12 months from the completion of the particular Maintenance Service;

**Equipment** means the medical equipment, system, analyser or other instrument located at the Site and listed in the Offer which is to be the subject of the Maintenance Services and any Additional Services, but does not include Consumables and any other exclusions as stated in the Offer.

**Force Majeure Event** means any event beyond the reasonable control of a party including, without limitation:

- (a) acts of God, acts of war, acts of foreign interference or hostilities (whether war be declared or not), civil war, insurrection, military or usurped power or terrorism (including cyber terrorism);
- (b) contamination caused by any hazardous or toxic materials or waste (including asbestos); shipping congestion at port of loading/unloading, blockades, embargos, shortage of transport, general shortage of materials, import restrictions or currency restrictions, viral outbreaks or epidemics;
- (c) act (or failure to act) of Authorities; power failure, power fluctuations, failure of telecommunications networks or air conditioning failure;
- (d) breakdown of plant, machinery or equipment (other than the Equipment);
- (e) explosion, smoke, or collapse of building; and
- (f) sabotage, cybercrime, vandalism, theft, strikes or any other industrial dispute or disturbance;

**General Conditions** means these General Conditions of Service (In vitro Diagnostics) as amended from time to time;

**GST Law** means the Goods and Services Tax Act 1985 and the related provisions of the Tax Administration Act 1994;

**Insolvency Event** means:

- (a) in relation to a company, that the company: (i) is Insolvent; (ii) has an administrator, controller, liquidator, receiver, receiver and manager, mortgagee in possession, trustee, inspector under any companies or securities legislation or other like officer appointed to it or over all or any of its assets; or (iii) experiences any analogous event having a substantially similar effect; or (iv) otherwise fails to meet the solvency test set out in the *Companies Act* 1993; and
- (b) in relation to an individual, that he or she: (i) is insolvent; (ii) enters into a debt agreement or personal insolvency agreement; or (iii) commits an act of bankruptcy or is bankrupt;

**IP Rights** means any intellectual or industrial property whether or not registered or registrable or protected by statute, at common law or in equity, including any patent, invention, copyright, design, trade secret, circuit layout design or right in relation to circuit layouts, confidential information and know how;

**Latent Conditions** means physical conditions on Site and near its surrounds, which differ materially from the physical conditions which should have been reasonably anticipated by Siemens at the date of the Contract if Siemens had inspected the Site and its near surrounds;

**Law** means:

- (a) statutes, rules, regulations, by-laws, orders, awards, codes, standards, ordinances and proclamations applicable to the jurisdiction where the Maintenance Services or a particular part is being carried out; and
- (b) authorisations and requirements of Authorities or organisations applicable to the jurisdiction where the Maintenance Services or a particular part is being carried out;

**Maintenance Services** means the provision of Corrective Maintenance Services and/or Preventative Maintenance Services, (physically or remotely) in accordance with the Offer;

**Normal Business Hours** are the hours from 8:30 am to 5.30 pm (NZST) on a Business Day;

**OEM** means the original equipment manufacturer or company that produces the products or software supplied or installed by Siemens;

**Offer** means the Siemens Offer to which these General Conditions are attached or incorporated.

**Peripheral Item** means items such as printers, mouse, keyboards, hand-held barcode readers, uninterrupted power supplies (UPS) which are not part of the Equipment;

**Personal Information** has the meaning given in the *Privacy Act* 1993;

**Preventative Maintenance Services** means any planned Maintenance Services recommended for the Equipment in the relevant manufacturer's specifications in order to ensure that the Equipment remains operational;

**Related Company** has the meaning given to that term in the Companies Act 1993, but with that meaning extended by reading section 2(3) of that Act as if "Company" included any body corporate wherever incorporated;

**Serial Number** is the individual number assigned by the manufacturer to each item of Equipment;

**Service Fee** means the fee charged by Siemens for performing Maintenance Services as set out in the Offer (as may be adjusted from time to time in accordance with the Contract);

**Siemens** means Siemens Healthcare Limited ((NZBN: 9429041698822) of Millennium Centre, Level 2, Building A, 600 Great South Road, Ellerslie, Auckland;

**Siemens' Personnel** means all persons engaged by Siemens to perform the Maintenance Services;

**Site** means the site at which the Equipment is located as detailed in the Offer;

**Software** means any software supplied by Siemens to the Customer for use in or in connection with the Equipment and includes, as applicable:

- (a) the machine-executable object code version of the software;
- (b) any microcode (firmware) embedded in the Equipment;
- (c) any related user documentation; and
- (d) any adaptation, copy, derivation, development, enhancement, improvement, modification, translation, Update or Upgrade of that software;

**Spare Parts** means any parts supplied by Siemens for Equipment (other than Consumables) which are considered to be field replaceable and which are replaced on a like-for-like basis and which may be new or factory refurbished;

**Specifications** means the Equipment user manual and technical specifications issued by the Equipment manufacturer;

**SRS Connection** has the meaning given in Annexure 1;

**System Down** means the Equipment is unable to produce clinical results;

**System ID** means the unique six digit system identifier as per label on the Equipment;

**Update** means any Software or hardware supplied by Siemens which has been produced primarily to improve the operation of the Equipment (including bug fixes and patches) without significantly improving the functionality or performance of the Equipment; and

**Upgrade** means any Software or hardware supplied by Siemens which has been produced primarily to extend, alter or improve the Equipment by providing additional functionality or performance enhancements.

## 1.2. INTERPRETATION

In the Contract, unless otherwise indicated to the contrary:

- (a) a reference to the Contract or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word “include”, “includes” or “including” shall be interpreted to mean “include”, “includes” or “including” without limitation;
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa and reference to a gender includes the other genders;
- (e) a reference to “\$” or “dollars” is to New Zealand dollars;
- (f) a reference to a party to this Contract or another agreement or document includes the party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal personal representatives);
- (g) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- (h) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time;
- (i) if a payment or other act is required to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day;
- (j) a reference to a ‘person’ includes a firm, partnership, joint venture, association, unincorporated body, corporation, the Crown or other entity;
- (k) a reference to “in writing” includes in electronic form;
- (l) a reference to a clause or Annexure is to a clause of or annexure to the Contract; and
- (m) if a term is defined in these General Conditions, it shall have the same meaning wherever used in the Annexures (unless otherwise defined in such Annexures).

## 2. TERM OF CONTRACT

The Contract shall commence upon the Commencement Date and shall continue for the Contract Term.

## 3. NO OTHER CONDITIONS

Notwithstanding any acceptance by Siemens of any order from the Customer that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from such acceptance shall be subject to these General Conditions unless and to the extent only that Siemens expressly agrees in writing to any variation.

## 4. MAINTENANCE SERVICES

### 4.1. Provision of Maintenance Services

- (a) Siemens will perform the Maintenance Services during the Contract Term either at the Site or remotely using an SRS Connection.
- (b) The Customer shall place all requests for Corrective Maintenance Services or Additional Services with the Customer Care Centre.
- (c) Unless otherwise agreed between the parties, Siemens will provide Maintenance Services at a mutually convenient time during Normal Business Hours. The Customer acknowledges and agrees that if the Customer requests Siemens to provide Maintenance Services After Hours, Siemens may charge an Additional Fee.
- (d) Siemens will provide all Maintenance Services in accordance with Siemens’ occupational health, safety and environmental policies and procedures. Any costs associated with specialist safety equipment or requirements shall be paid by the Customer.
- (e) The Customer shall not operate any item of Equipment after receiving notice from Siemens that a condition exists which constitutes a hazard to such Equipment until such condition has been rectified.
- (f) Siemens may request access to the Equipment for the purposes of making Updates or technical adjustments or modifications at no additional charge, which Siemens considers desirable for the existing or future operation of the Equipment and the Customer will provide access to the Equipment at a mutually convenient time.

### 4.2. Preventative Maintenance Services

If the Offer states that Preventative Maintenance Services are included under the Contract, Siemens will provide Preventative Maintenance Services during the Term. The intervals or times may be specified in the Offer. Siemens may at its discretion review and amend the intervals and times for Preventative Maintenance Services.

### 4.3. Corrective Maintenance Services

If Siemens has agreed to provide Corrective Maintenance Services under the Contract, the following conditions shall apply:

- (a) if the Customer reports an Equipment fault (which has resulted in a System Down) with the Customer Care Centre during Normal Business Hours, Siemens will as soon as reasonably practicable arrange for trained Siemens Personnel to attend to the Equipment (physically or remotely) and provide Equipment support. If the work extends beyond Normal Business Hours and resolution is anticipated within the next hour, then Siemens will continue to work on the Equipment. If the resolution is anticipated beyond that time, Siemens will, in consultation with the Customer, either work until 10pm to attempt resolution as an Additional

Service or defer support and recommence within Normal Business Hours;

- (b) if the Customer reports an Equipment fault (which is of a minor nature and there is no System Down) with the Customer Care Centre during Normal Business Hours, Siemens will as soon as reasonably practicable arrange for its trained personnel to attend to the Equipment during Normal Business Hours; and
- (c) if the Customer reports an Equipment fault of any kind with the Customer Care Centre After Hours, Siemens will attend to the Equipment fault After Hours, if requested to do so by the Customer, as Additional Services provided that Siemens has trained personnel available.

#### 4.4. Additional Services

Siemens may, at its option, provide Additional Services if requested by the Customer to do so or otherwise pursuant to these General Conditions. The terms of the Contract will govern the provision of those Additional Services. The Customer shall pay the Additional Fees for all Additional Services.

#### 4.5. Excluded Services

Unless otherwise agreed between the parties in writing, the following services are not included as part of the Maintenance Services and if Siemens agrees to provide such services at the Customer's request, they will be treated as Additional Services:

- (a) services on equipment that is not listed in the Offer, including Peripheral Items;
- (b) modifications to the Equipment requested by the Customer including changes or alterations to the configuration or specifications of the Equipment;
- (c) repair of Equipment arising from any repair, relocation, maintenance, service, addition to or modification to the Equipment (or any attempt to do so) by a person not authorised by Siemens;
- (d) services required by reason of the Customer's failure to ensure that the Equipment is operated and used in accordance with the manufacturer's Specifications;
- (e) services (including repair of damage) necessitated by any act, error, fault, neglect, negligence, misuse or omission of the Customer or the Customers' Personnel or any other person not under the control of Siemens;
- (f) services (including repair of damage) required due to the use of operating supplies or Consumables not approved by Siemens or caused by non-Siemens supplied equipment, components, parts or software including any problems with the Customer's network;
- (g) the replacement of Consumables;
- (h) services connected with the relocation, removal and reinstallation of the Equipment and the repair of any damage associated with such relocation, removal or reinstallation;

- (i) services required as a result of any breach of this Contract by the Customer, including any failure to engage a sufficient number of qualified personnel;
- (j) services required on account of any Force Majeure Event;
- (k) services required by reason of any failure of electrical power, utilities, telecommunications networks, air conditioning, humidity control or any environmental factor;
- (l) services required by reason of spillage of liquid or fluids onto or into the Equipment causing malfunction or failure;
- (m) electrical, air-conditioning, building, construction or environmental work external to the Equipment;
- (n) services required to rectify hazardous conditions which pose a threat to the health and/or safety of Siemens' Personnel or Equipment;
- (o) supply of any services or accessories, attachments, supplies, or other items associated with the Equipment which are not detailed in the Offer or which Siemens determines are not related to the Equipment;
- (p) Software support for Customer customisations;
- (q) OEM updates for software operating systems that have been declared by the OEM as "End of Support" (e.g. Microsoft Windows XP); and
- (r) any other items or service identified as being excluded in the Offer.

#### 4.6. Unserviceable Equipment

If Siemens reasonably considers that any item of Equipment is unserviceable including without limitation due to age or any other circumstance:

- (a) that item of Equipment will be removed from the list of Equipment to be serviced pursuant to the Contract;
- (b) Siemens will give the Customer thirty (30) days written notice of its intention to withdraw Maintenance Services in relation to that Equipment;
- (c) any Service Fee received by the Customer in advance will be refunded (via a credit note) to the Customer for the period the Equipment is deemed to be unserviceable; and
- (d) the parties shall discuss whether and under what conditions the further maintenance of such item of Equipment is possible.

#### 4.7. Force Majeure

- (a) If a Force Majeure Event prevents a party from partially or wholly complying with its obligations under the Contract (other than payment obligations), then that party shall be excused from performance of the affected obligations until the Force Majeure Event ceases and shall be granted a corresponding extension of time to perform the obligations.

- (b) If a party is prevented by a Force Majeure Event from carrying out its material obligations under the Contract for more than six (6) months, either party may terminate the Contract with immediate effect by giving written notice to the other party.
- (c) If a party terminates the Contract under this clause, the rights and obligations of the parties will cease and the accrued rights of remedies of each party will not be affected.

## 5. CUSTOMER'S OBLIGATIONS

### 5.1. General Obligations

During the Contract Term, the Customer shall:

- (a) maintain environmental conditions within the Equipment manufacturer's recommended range and otherwise observe the Equipment Specifications;
- (b) ensure operator maintenance is performed in accordance with the Equipment Specifications;
- (c) ensure sufficient number of qualified personnel are engaged to operate the Equipment;
- (d) subject to 5.1(b), not permit any third party not authorised by Siemens (while the Equipment is under the Contract) to install, alter, adjust, maintain, repair or otherwise interfere with the Equipment without Siemens' prior written consent;
- (e) ensure that an authorised representative of the Customer is available to approve any Additional Services requested by the Customer;
- (f) provide Siemens' Personnel with full and free access to the Equipment and the Site at all reasonable times whenever servicing is required;
- (g) arrange for an authorised representative of the Customer to be present in the vicinity of the Equipment if Siemens' Personnel are performing Maintenance Services or Additional Services outside of Normal Business Hours and if Siemens considers this to be necessary for safety and/ or security reasons;
- (h) promptly notify Siemens of any Equipment faults
- (i) keep such records relating to the use and performance of the Equipment as may be requested by Siemens from time to time and shall permit Siemens Personnel to have access to and copies of such records for the purposes of performing or preparing for the provision of Maintenance Services, any Additional Services and otherwise in connection with the Equipment;
- (j) not substitute the Equipment or remove Equipment from the Site or otherwise relocate the Equipment without Siemens' prior written consent;
- (k) be responsible for security on Site at all times; and

- (l) If Siemens loans any equipment to the Customer whilst any Equipment is being repaired, the Customer will arrange and pay for the loan equipment to be returned to the place nominated by Siemens within 10 (ten) Business Days after Customer's receipt of the repaired Equipment. The Customer acknowledges that Siemens is the owner of and shall retain title to all loaned equipment. The Customer shall not permit or allow any attachment, lien, security interest, or other encumbrance to be filed against the loaned equipment by any individual or entity other than Siemens. Any loaned equipment that is not returned to Siemens within time may, at Siemens' option, be invoiced to the Customer at the fair market value for such equipment. The loaned equipment shall be at Customer's risk until delivered to Siemens Personnel.

### 5.2. Site Responsibilities

If the Maintenance Services include any on-Site Maintenance Services, the Customer shall:

- (a) take all necessary measures to ensure that Siemens' Personnel have full and safe access to the Equipment and Site at all reasonable times for the purposes of performing any Maintenance Services required on-Site and that such access conforms to any specifications issued by Siemens from time to time;
- (b) take all reasonable measures to anticipate and avoid the creation of hazardous conditions on-Site which may jeopardise the health and/or safety of Siemens' Personnel providing the Maintenance Services;
- (c) ensure that Siemens' Personnel can perform the Maintenance Services in an uninterrupted manner including ensuring that areas adjacent to the Equipment are clear so that Siemens has unimpeded and unrestricted access to the Equipment;

The Customer shall indemnify Siemens upon demand for all additional costs, charges and expenses arising or incurred by Siemens as a result of Customer breach of this clause 5. Enclosed Areas

If any of Siemens' Personnel are required to perform on-Site Maintenance Services or Additional Services in enclosed areas, the Customer shall ensure that such areas have windows, doors or other openings of sufficient size to permit the entry of items of the type required by Siemens' Personnel.

### 5.3. Latent Conditions

Siemens will promptly notify the Customer upon becoming aware of any Latent Condition while carrying out the Maintenance Services or Additional Services and will give details of the Latent Condition encountered and the additional services, resources, time and cost which Siemens estimates to be necessary to deal with the Latent Condition, which shall be Additional Services under clause 4.4 of these General Conditions.

#### 5.4. Supply of Information, Facilities and Services

The Customer shall supply (at the Customer's expense) all information, auxiliary goods, facilities and services reasonably deemed necessary by Siemens for the performance of the Maintenance Services including the provision of:

- (a) adequate lighting of all areas necessary to perform the Maintenance Services;
- (b) adequate telephone and other communication facilities requested by Siemens; and
- (c) mains and auxiliary electrical power necessary for the provision of the Maintenance Services

and upon request, the Customer shall provide a suitably qualified or informed Customer representative to advise the Supplier of any matter within the Customer's knowledge or control which will assist the Supplier to perform the Maintenance Services. If the Customer does not provide or procure the provision of the above information, goods, facilities, services and assistance to the satisfaction of Siemens, Siemens may do so (at the Customer's expense) provided that the Customer has first been informed of the non-compliance and been given an opportunity to remedy the non-compliance.

#### 5.5. Appointment of Customer Representative

- (a) The Customer shall appoint and provide Siemens with the name, address, telephone number, facsimile number (if any) and email address of a qualified person authorised to represent and bind the Customer prior to the date upon which any Siemens' Personnel are required on Site. Matters within the knowledge of the Customer's representative shall be deemed to be within the Customer's knowledge.
- (b) The Customer shall ensure that the Customer's representative is contactable by Siemens during Normal Business Hours and that the Customer's representative attends all meetings reasonably requested by Siemens.
- (c) The Customer shall notify Siemens of the details of any changes to the details of the Customer's representative. If Siemens makes a reasonable objection to the appointment of a representative, the Customer shall replace that representative.

#### 5.6. Supervision of Customer Personnel

Siemens has no responsibility, authority or obligation to supervise or control Customer's Personnel. If Siemens provides any advice on the use of the Equipment, this is not to be considered clinical advice. Customer remains fully responsible for clinical advice, diagnosis and therapy and releases and indemnifies Siemens from and against any claims or liability arising as a result of

the provision of clinical advice, diagnosis or therapy using or following the use of the Equipment.

#### 6. RISK

Risk of loss and/or damage to Spare Parts supplied as part of the Maintenance Services shall transfer to the Customer at the time of delivery to Site.

#### 7. REPLACED PARTS AND SPARE PARTS

##### 7.1. Title to replaced parts

Where parts of the Equipment have been replaced by or on the instruction or at the recommendation or direction of the manufacturer or Siemens, title in the replaced parts shall pass to Siemens upon their removal.

##### 7.2. Title to Spare Parts

Title and property in all Spare Parts for the Equipment supplied by Siemens:

- (a) as part of the Maintenance Services shall pass to the Customer upon installation; and
- (b) as part of the Additional Services for an Additional Fee shall remain with Siemens until full payment of the Additional Fee is made to Siemens.

#### 8. TIME

##### 8.1. Delays due to circumstances outside of Siemens' control

Siemens shall not be liable for any delay or failure to supply the Maintenance Services or Additional Services where such delay or failure is caused by a Force Majeure Event or caused by the Customer or the Customer's Personnel. In such cases, where a time for performance has been expressly agreed, the time for performance shall be extended by the period of the delay. In all other cases, times for performance are provided on a best estimate basis. If any Maintenance Services or Additional Services are delayed as a result of an act or omission of the Customer or the Customer's Personnel, the Customer shall be liable for Siemens' reasonable costs incurred as a result of such delay.

##### 8.2. Delays caused by Siemens

If any delay is caused by reasons within the control of Siemens and if as a result of the delay the Customer has suffered loss then, Siemens shall pay the Customer liquidated damages for each complete week of delay at the rate of 0.5% of the Service Fee in respect of the delayed Maintenance Service but no more than 5% in total of the Service Fee for the delayed Maintenance Service. Such payment shall be the sole and exclusive remedy for delay and shall be in lieu of any other claim against Siemens.

#### 9. SERVICE FEES

##### 9.1. Payment

- (a) Siemens shall invoice the Customer at the frequency specified in the Offer. The Customer shall pay Siemens the Service Fees and any Additional Fees within 30 days of the date of invoice.

- (b) Siemens may charge interest on overdue amounts (at the rate of 5% above the 90-day Bank accepted bills daily rate published by the Reserve Bank of New Zealand for the next Business Day after payment became due), calculated daily from the next Business Day after payment became due until the date of payment in full of the overdue amount. Monies received by Siemens may be applied by Siemens against such interest prior to application against any overdue amounts. Siemens may suspend Maintenance Services without liability if amounts due and owing under the Contract are not paid.
- (c) The occurrence of any Equipment faults or malfunctions does not entitle the Customer to reduce or withhold due payment.
- (d) The Customer must reimburse Siemens upon request for all collection costs, including legal costs and disbursements calculated on a solicitor and own client basis incurred by Siemens in connection with any default in payment.

## 9.2. Pricing Variations

- (a) The Service Fee is subject to an annual New Zealand Consumer Price Index (CPI) variation per the Stats New Zealand Tauranga Aotearoa Index (Based on March Qtr index).
- (b) Should the exchange rate of the New Zealand Dollar to the US Dollar which was used to calculate the Service Fee vary by more than 5% over a 12 month period, Siemens reserves the right to further review the Service Fee.

## 9.3. GST

- (a) The Service Fee is expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply is the amount specified in this plan, plus GST. Siemens and the Customer must provide each other with all documentation, including a Tax Invoice required to claim any Input Tax Credit, set-off, rebate or refund for or in relation to any GST included in any payment made under the Contract.
- (b) In this clause 9.3, "GST", "Input Tax Credit", "Tax Invoice" and "Taxable Supply" have the meaning given to them in the GST Law.

## 9.4. Changes in Law

If after the date of Siemens' Offer a Law changes, is revoked or comes into effect which causes Siemens to incur more cost than otherwise would have been incurred, the Service Fee shall be adjusted to take into account the difference. If the change, revocation or introduction of the Law causes delay to Siemens, then Siemens shall be entitled to a corresponding extension of time.

## 10. DEFECTS LIABILITY

### 10.1. Defects

Siemens shall rectify any Defects which occur during the Defects Liability Period, at its option, by repair,

replacement or supply of equivalent goods or services (or by payment of the cost of doing so), provided that:

- (a) the Customer notifies Siemens of the Defect as soon as the Customer becomes aware of or should have become aware of the Defect;
- (b) the applicable Spare Part has been properly handled, used, operated and maintained in accordance with instructions issued by Siemens or if no instructions have been issued, in accordance with good industry practice;
- (c) such Defects are not caused by a breach of Contract by the Customer;
- (d) the Spare Part is not a Consumable;
- (e) the Defects have not resulted from any refusal by the Customer to accept an Update or Upgrade recommended by Siemens;
- (f) such Defects are not caused by the use of other equipment and/or material supplied by the Customer; and
- (g) such Defects are not due to fair wear and tear.

### 10.2. Customer's obligation with respect to repair or replacement

- (a) Where the Customer has notified Siemens of an alleged Defect in accordance with clause 10.1, the Customer shall, at Siemens' request do those things necessary to enable Siemens to repair or replace the Defective part or to re-perform the Maintenance Services.
- (b) Where any Defective part has been replaced, that Defective part shall become the property of Siemens upon its removal. All replacement parts shall become the property of the Customer upon installation.

### 10.3. Exclusive remedy

To the extent permitted by Law and subject to clause 10.4:

- (a) Siemens' obligation to rectify Defects in accordance with this clause 10 shall be the Customer's sole and exclusive remedy and represents the full extent of Siemens' liability for Defects; and
- (b) all representations, warranties and conditions of any kind, whether express or implied (including any warranties and conditions of merchantability and fitness for a particular purpose or arising from a course of dealing or usage or trade) relating to the Maintenance Services that are not contained in the Contract are excluded.
- (c) as permitted by Law, for the purposes of section 5D of the Fair Trading Act 1986 ("FTA"), the parties acknowledge and agree that they are contracting out of sections 9, 12A, 13 and 14 of the FTA in respect of all matters covered in this Contract. Siemens and the Customer acknowledge and agree that it is fair and reasonable to be bound by this clause

#### 10.4. Implied conditions, warranties and consumer contracts

- (a) If any goods or services to be supplied by Siemens are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the Contract in respect of those goods or services and that Siemens' liability in respect of the goods or services will be limited in accordance with the Contract.
- (b) The Customer acknowledges that Siemens does not provide any express guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by Siemens in writing.
- (c) The Customer shall indemnify Siemens upon demand against any liability or cost incurred by Siemens under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these General Conditions.
- (d) Nothing in these General Conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 (or any other Laws) except to the extent permitted by that Act (or those Laws), and these General Conditions are to be modified to the extent necessary to give effect to that intention.

#### 11. LIABILITY

##### 11.1. Limitation of liability

Notwithstanding any other provision of the Contract and except to the extent that liability cannot legally be limited or excluded:

- (a) Siemens' total aggregate liability arising out of or in connection with the Contract for each Contract Year shall be limited to the Service Fees paid or payable by the Customer to Siemens under the Contract for that Contract Year; and
- (b) Siemens will under no circumstances be liable for economic loss; loss of contract; loss of profit or revenue; business interruption; loss of production; production stoppage; loss of data; costs of data reconstruction and Equipment reset; indirect or consequential loss or damage.

This limitation and exclusion of liability shall apply whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise.

In this clause, "Contract Year" means the period starting from the Commencement Date (and on each anniversary of the Commencement Date throughout the Contract Term) and ending 12 months later (or on the date that the Contract ends, if it ends during any such 12 month period).

##### 11.2. Third party benefit

Siemens holds the rights under clause 11.1 for itself in its own capacity and as agent of and trustee for its Related Companies, other contractors, subcontractors, consultants, employees, directors, officers, agents and suppliers ("**Associates**")

respectively. For the purpose of this clause 11.2, each of the entities comprising the Associates must be treated to this extent as a party to the Contract and may plead the Contract as a bar to any claims by the other party under the Contract.

#### 12. IP RIGHTS

##### 12.1. Ownership of IP Rights

- (a) Title to the Software and all IP Rights subsisting in the Equipment and the Software (including designs, drawings and patents) shall remain the exclusive property of Siemens or Siemens' third party suppliers or licensors. The Customer will not take any action that jeopardises such IP Rights or acquire any right in the Software, other than pursuant to a Software licence of the type referred to in clause 12.2.
- (b) The Customer shall not remove any confidentiality, copyright, trademark or other proprietary notices appearing on the Equipment or included in the Software or any media upon which the Software is provided.
- (c) The Customer shall not permit any IP Rights subsisting in the Equipment to be reproduced or disclosed in any way without Siemens' prior written consent.
- (d) To the extent permitted by Law, as between the parties, Siemens shall own all IP Rights in any adaptation, copy, derivation, development, enhancement, improvement, modification, translation, Update or Upgrade of or to the Equipment and any Software.

##### 12.2. Software Licences

- (a) If any Software is supplied by Siemens, the Customer's use of that Software shall be governed by the terms of the associated licence. If there is no separate licence, the Customer is hereby granted a non-exclusive, non-transferable licence to use that Software in conjunction with the Equipment. This licence does not extend any right to the Customer in respect of source code to the Software and is without prejudice to any licence fees provided for in the Contract.
- (b) Access to the service Software is limited by password to the level to which the Customer's employee has been trained.
- (c) The Customer shall not directly or indirectly reverse assemble or reverse compile the whole or any part of any Software or otherwise attempt to:
  - (i) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Software; or
  - (ii) derive any source code from the Software.
- (d) The Customer shall not (without Siemens' prior written consent):
  - (i) modify the Software or merge all or any part of the Software with any other software;
  - (ii) copy or reproduce the Software by any means or in any form; or
  - (iii) make the Software available to any third party.

- (e) Subject to Siemens' Defects Liability Period obligations under clause 10:
  - (i) Siemens is not obliged to provide Updates or Upgrades under the Contract; and
  - (ii) Siemens reserves the right to charge the Customer for any Upgrades supplied by Siemens.
- (f) To the extent permitted by Law, Siemens may refuse to provide Maintenance Services for the Equipment or Software if the Customer refuses to accept any Update or Upgrade recommended by Siemens.

### 12.3. Indemnity

- (a) Siemens will indemnify the Customer against any claims which the Customer is legally liable for, in respect of any infringement of a third party's copyright or registered design, trademark or patent, the specification of which is published prior to the date of the Contract, relating to any parts supplied by Siemens as part of the Maintenance Services supplied by Siemens (except if the part is based on a design specified by the Customer, or if the claim is due to use of the part not in accordance with the Contract or use of the part in conjunction with goods not supplied by Siemens) ("**Infringing Part**"). Siemens' obligation to indemnify the Customer against claims is subject to the Customer:
  - (i) giving Siemens prompt written notice of the claim;
  - (ii) not making any admission or prejudicing Siemens' defence of the claim or Siemens' ability to negotiate a satisfactory settlement;
  - (iii) allowing Siemens the opportunity to control at Siemens expense the conduct of the defence and any negotiations for the settlement of the claim; and
  - (iv) giving Siemens (at Siemens' expense) such assistance and information as may reasonably be required by Siemens to assist Siemens with the conduct of the defence and any negotiations for the settlement of the claim.
- (b) Siemens' obligation to indemnify the Customer under the Contract shall be reduced to the extent that:
  - (i) an act or omission of the Customer or Customer's Personnel has contributed to the claim; or
  - (ii) the Customer has failed to mitigate its loss,

and shall cease two years after the earlier of termination or expiry of the Contract or completion of the Maintenance Services under the Contract.

### 12.4. Remedies

- (a) Siemens will, at its option, either replace or modify the Infringing Part with a non-infringing part or procure for the Customer the right to use such infringing part.
- (b) The remedies set out in this clause 12 shall be the sole and exclusive remedy of the Customer for any infringement of a third party's IP Rights.

### 12.5. Warranty by Customer

The Customer warrants that use by Siemens of any design materials, documents and methods of working provided or directed by the Customer to enable Siemens to perform Maintenance Services under the Contract, will not cause Siemens to infringe any third party's IP Rights and the Customer will indemnify Siemens upon request for any loss or damage incurred by Siemens in connection with such infringement.

## 13. DISPUTE RESOLUTION

### 13.1. Notice of Dispute

Any dispute or difference between the parties arising out of or in connection with the Contract ("**Dispute**") shall be notified to the other party by written notice of that Dispute, giving details of the subject-matter of the dispute ("**Notice of Dispute**").

### 13.2. Escalation of Dispute

Upon the giving of a Notice of Dispute, the following shall apply:

- (a) The Dispute shall be submitted for negotiation by each party to a senior executive of that party who has authority to resolve the Dispute;
- (b) If within 14 days of the giving of the Notice of Dispute (or such further period agreed by the parties) the Dispute has not been resolved:
  - (i) if the Dispute is for an amount less than \$100,000, a party may commence legal proceedings to resolve the Dispute; or
  - (ii) otherwise, the parties agree to refer the Dispute to mediation in accordance with and subject to the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc ("**AMINZ**") by a professionally trained and qualified mediator who is independent of the parties, has relevant experience and who has been agreed to by the parties, or failing agreement, by a mediator appointed by the President of the AMINZ or the President's nominee.
- (c) Subject to compliance with the steps under clauses 13.2(a) and 13.2(b) and if the Dispute has not been resolved within 21 days of the date of any referral to mediation under clause 13.2(b) (or within such further period as agreed between the parties), either party may submit the Dispute to arbitration in accordance with, and subject to, the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). The arbitration shall be conducted by one professionally trained, qualified and experienced arbitrator who shall be a lawyer, be independent of the parties, and who shall determine the matter according to principles of law and in writing. If the parties are unable to agree on the arbitrator, the arbitrator shall be nominated by the President of the AMINZ.

### 13.3. Award, Seat and Language of Arbitration

Except to the extent provided by Law, an arbitral award shall be final and binding on both parties. Unless otherwise agreed between the parties, the seat of arbitration shall be Auckland, New Zealand. The language to be used in the arbitration shall be English.

### 13.4. No relief from performance of other obligations

Reference of a Dispute to arbitration under this clause shall not relieve either party from any other obligations under the Contract, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Contract is maintained.

### 13.5. No prejudice to injunctive or declaratory relief

Nothing in this clause shall prejudice the right of a party, where the law otherwise permits, to seek urgent injunctive or declaratory relief in respect of a dispute or matter arising under the Contract.

## 14. TERMINATION

14.1. Either party may terminate the Contract with immediate effect by providing notice to the other party in writing if the other party:

- (a) suffers an Insolvency Event; or
- (b) commits a breach of the Contract and fails to remedy that breach within 30 days after receiving written notice from the non-defaulting party specifying the details of the breach and requesting remedy of same.

14.2. Siemens may, without prejudice to any other rights available to Siemens, terminate the Contract (in whole or part) with immediate effect by notice to the Customer if:

- (a) the Customer ceases to own the Equipment or parts with possession of the Equipment (except to the extent otherwise agreed), or the Equipment is moved from the Site without Siemens' prior written consent;
- (b) any amounts payable by the Customer to Siemens pursuant to the Contract remain unpaid for more than 30 days beyond the due date; or
- (c) the Customer commits an unremediable breach of the Contract or does not remedy any other breach of the Contract within 30 days after being notified of the breach and requested to remedy same.

14.3. Rights and remedies accrued prior to termination shall survive termination. Any provisions of the Contract that are capable of surviving its termination shall do so.

## 15. CONFIDENTIAL INFORMATION

### 15.1. Confidentiality Obligations

Each party ("Recipient") shall keep confidential all information (in any form or media) of the other party ("Discloser") which is disclosed in connection with the Contract that is identified as confidential or that is of a confidential nature (including information comprised in or relating to IP Rights, data, drawings, specifications and other written information, samples and the like) ("Confidential Information"). This confidentiality obligation shall not apply to information which is already generally in the public domain other than through a breach of a confidentiality obligation.

### 15.2. Permitted Disclosure

- (a) Where a Recipient is required to disclose Confidential Information to comply with any Law or under the rules of a stock exchange, the Recipient may do so provided that the Discloser is given a reasonable opportunity to prevent the disclosure (including by making representation to a Court or other body as to why the information should not be disclosed) and Recipient uses all reasonable endeavours to ensure the ongoing confidentiality of the information.
- (b) A Recipient may disclose the Confidential Information of the other party to the Recipient's Related Bodies Corporate and to such of their employees and officers, as have a specific need to have access to the Confidential Information in connection with the Contract provided that those persons are put on notice of and agree to be bound by the confidentiality provisions of this clause.

### 15.3. No obligation to disclose Confidential Information

Unless otherwise agreed in writing between the parties, Siemens shall not be required to provide the Customer with any manufacturing drawings, know-how, software source codes, software keys or details of manufacturing practices, processes or operations.

### 15.4. Privacy

- (a) The Customer undertakes to obtain and maintain all consents in relation to the collection, handling, access, use and disclosure of Personal Information which are required by Law for Siemens' performance of the Contract.
- (b) The Customer shall remove any Personal Information from any Equipment or loan equipment, prior to its return to Siemens in connection with this Contract.
- (c) Siemens agrees to collect, use, hold and disclose Personal Information in accordance with this Contract, its privacy policy (available on Siemens internet site: <https://www.siemens-healthineers.com/en-au/> or on request) and otherwise in accordance with applicable Law.

## 16. NOTICES

### 16.1. Form of Notices

Any notice to be given under the Contract shall be given in writing and be delivered personally or be sent by pre-paid post (airmail if to or from a place outside New Zealand) to the address of the other party specified in the Offer (or as otherwise notified by a party to the other in accordance with this clause).

### 16.2. Service of Notices

Any notice shall be deemed to be served:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 5 Business Days (10 if to or from a place outside New Zealand) after the date of posting.

## 17. GENERAL

### 17.1. Precedence

If there is any inconsistency between the documents comprising the Contract, the following order of precedence shall apply (with the document referred to in clause 17.1(a) having the highest priority):

- (a) the Offer;
- (b) any qualifications to these General Conditions agreed between the parties in writing;
- (c) these General Conditions; and
- (d) any Annexures to these General Conditions.

### 17.2. Amendment

The Contract may only be varied by written agreement between the parties.

### 17.3. Entire Agreement

The Contract sets out the entire understanding between the parties with respect to the subject-matter contained in it. All prior agreements, arrangements, correspondence, communications, representations, understandings and warranties, affecting that subject-matter are superseded by the Contract and have no effect.

### 17.4. Severance

If a provision of the Contract is held to be illegal, invalid, void, voidable or unenforceable by a court of law or other competent authority, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down the provision in accordance with this clause, that provision shall be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions of the Contract.

### 17.5. Waiver

A failure or a delay in exercising any right, power or remedy by a party shall not operate as a waiver. A single or partial exercise or waiver of a right relating to the Contract does not prevent any other or a further exercise of that right, power or remedy. A waiver is not valid unless given in writing.

### 17.6. Assignment

The Customer shall not assign, pledge or transfer its interest in the Contract (or any part of it) without obtaining Siemens' prior written consent. Siemens may assign, pledge or transfer its interest in the Contract (or any part of it) to a Related Company. Siemens may also assign to any person all or part of any debt owing by the Customer to Siemens under the Contract

### 17.7. Governing Law and Jurisdiction

The Contract shall be governed and construed in accordance with the Laws of New Zealand and (subject to clause 13) the parties irrevocably submit to the jurisdiction of the New Zealand courts. The application of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (Vienna Convention) is excluded.

### 17.8. Non-solicitation

For the Contract Term and for 12 months following the expiry or earlier termination of the Contract Term, the Customer will not employ, solicit, entice or attempt to employ, solicit or entice any personnel engaged by Siemens or Siemens Personnel in connection with the Contract, to perform the same or similar work for the Customer, without obtaining Siemens' prior written consent.

### 17.9. Counterparts, electronic exchange and use of electronic signatures

The Contract may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument. Duly executed copies of the Contract may be exchanged electronically. The parties agree that electronic signatures may be used for execution and that if used, shall be binding upon the executing party and have the same legal effect as handwritten signatures.

### 17.10. Cybersecurity Obligations

The parties shall comply with the cybersecurity obligations set out in Annexure 2 to these General Conditions.

### 17.11. Augmented Reality

The Customer agrees to Siemens using a secure video and audio real time application (eg. SmartCollaborator) to enable Siemens' off site engineers to assist with the provision of Maintenance Services and confirms that it has obtained any required consent from Customer Personnel. Siemens shall not store or disclose Personal Information by the use of this application.

## Annexure 1 – Terms and Conditions for Remote Connection

### 1. Definitions

Unless the context otherwise provides, in this Annexure 1:

“**Affiliate**” means any company that is directly or indirectly majority owned or controlled by Siemens Healthineers AG;

“**Security Concept**” means the Siemens Healthineers IT security concept or Atellica Connectivity Manager Security White Paper (as appropriate) which can be found at <https://www.siemens-healthineers.com/en-au/services/customer-services/connect-platforms-and-smart-enablers/smart-remote-services> (as amended from time to time);

“**Smart Technical Data**” means correlated Technical Data derived from the Equipment to support prediction of Equipment service requirements;

“**SRS Conditions**” means these Terms and Conditions for Remote Connection (as amended from time to time);

“**SRS Connection**” or “**Smart Remote Services Connection**” is an on-line connection between Siemens or any of its Affiliates and the relevant Equipment at the Customer’s Site; and

“**Technical Data**” means information available through an SRS Connection and may include:

- (a) Application logfiles; errors occurred; device properties; quality control (Technical Status Information);
- (b) configuration; software versions, patches, licences, network settings; device service history (Asset and Configuration Data);
- (c) sequences or performance of various tasks; used applications/ licences and interactions with the application (Utilisation Data); and
- (d) any other data explicitly agreed between Siemens and Customer,

in each case not related to an identified or identifiable natural person.

### 2. Scope

2.1. These SRS Conditions and the Security Concept referred to in them set out the terms upon which Siemens will provide the Customer with an SRS Connection for the Equipment. Unless otherwise agreed by Siemens in writing, no other terms or conditions concerning this subject matter shall apply.

2.2. Capitalised terms used in this Annexure 1 which are not defined in these SRS Conditions shall have the meaning given to them in the General Conditions attached to this Annexure 1.

### 3. Customer’s Obligations

- 3.1. The Customer authorises Siemens, its Affiliates and any third parties engaged by them, to:
  - (a) access and use the SRS Connection for the purposes of providing the Maintenance Services, calibration and remote training and as otherwise stated in the Contract) and to use any Technical Data collected via the SRS Connection for these purposes; and
  - (b) carry out through the SRS Connection additional system monitoring services supported by the covered Equipment to ascertain the performance and condition of the Equipment, for the duration of the service Contract between Siemens and the Customer (and during any applicable warranty period for Equipment provided by Siemens).
- 3.2. The Customer shall permit an SRS Connection to be established by connecting the Equipment, at its own expense, to the secured telecommunications link via a broadband connection. The Customer shall bear the cost of any technical requirements for any such SRS Connection not being part of the Equipment (eg. for establishing a broadband connection).
- 3.3. The Customer acknowledges and agrees that to the extent permitted by law, the SRS Connection is provided “as is” and Siemens does not make any warranty or guarantee regarding the availability, performance or quality of the SRS Connection other than as addressed in clause 4.1 of this Annexure 1.
- 3.4. The Customer acknowledges and agrees that Siemens will not be able to provide an SRS Connection if:
  - (a) the provision is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions;
  - (b) there is a defect, malfunction or other problem with the applicable telecommunications network; or
  - (c) there is a defect, malfunction, insufficient configuration or other problem with the Customer’s infrastructure.

### 4. Security Concept

- 4.1. Siemens shall set up the technical and organisational process for SRS Connection and the IT infrastructure used by Siemens for the establishment of the SRS Connection in accordance with the Security Concept.
- 4.2. Siemens may provide the Customer with information about the connectivity status of any SRS Connection and general information on how to restore the SRS Connection if it is not working properly.

4.3. Siemens may vary these SRS Conditions and/or the Security Concept at any time to reflect technical progress, changes in Law and further developments to the offerings of Siemens and its Affiliates provided that:

- (a) such variations do not jeopardise the quality and execution of the SRS Connection;
- (b) Siemens gives the Customer a reasonable period of notice of at least 30 days; and
- (c) Siemens provides the Customer with access to any such varied SRS Conditions and/or Security Concept (as applicable).

4.4. In order to protect the Equipment against cyber threats, the Customer shall implement and continuously maintain a holistic, state-of-the-art security concept protecting the Customer's IT infrastructure. The Customer shall also support Siemens in protecting against cyber threats. In particular, this means that the Customer shall not:

- (a) connect any Equipment to the SRS Connection unless the Equipment complies with state-of-the-art security policies or is otherwise approved by Siemens;
- (b) use the SRS Connection in a way that impairs or disrupts the integrity of the SRS Connection or Siemens' IT infrastructure; and
- (c) transmit any data containing viruses, Trojan horses or other programs that may damage or impair the SRS Connection or Siemens' IT infrastructure.

#### **5. Access to Data and Use of Data**

5.1. Unless otherwise agreed, the Customer hereby authorises Siemens, its Affiliates and any third parties engaged by them, to access and use for their own business; product surveillance; research and/or development purposes (eg to determine usage trends of products and services and to improve products, services and software); for facilitating and advising on continued and sustained use of products and services; for substantiation of aggregated product/services marketing claims and for benchmarking purposes, without restrictions in terms of time, transferability, replication or content:

- (a) Technical Data that is collected via the SRS Connection; and
- (b) Smart Technical Data that is collected via the SRS Connection from the Equipment (for the duration of any applicable commercial relationship between Siemens and the Customer including under a service contract for the Equipment or during the defects liability period for the Equipment).

5.2. Siemens (and its licensors, where applicable) will retain all IP Rights relating to the Equipment and/or Software, including improvements, thereto, including any improvements derived from Technical Data or Smart Technical Data, as well as any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer which are hereby assigned to Siemens.

#### **6. Access to Personal Information**

6.1. Personal Information shall only be accessed via an SRS Connection if and to the extent necessary for the performance of the Contract.

6.2. If Siemens is able to gain access to any Personal Information via an SRS Connection, Siemens shall notify the Customer accordingly. In such case, Siemens shall not begin accessing any Personal Information before the Customer has consented to such access.

6.3. The Customer's consent shall cover the access and use of Personal Information by Siemens, and its Affiliates and any third parties engaged by them, if and to the extent required to perform the Contract provided that:

- (a) they observe all applicable privacy and data protection laws; and
- (b) the Personal Information is only used for purposes of the Contract.

6.4. In providing such consent, the Customer shall ensure that:

- (a) the Customer complies with all applicable privacy and data protection Laws and with all applicable confidentiality obligations;
- (b) the Customer has obtained all required consents to enable Personal Information to be accessed and used for the purposes of the Contract; and
- (c) the person authorising such access has the requisite capacity to do so on behalf of the Customer.

## Annexure 2 – Cybersecurity Conditions

### 1 Definitions

Unless the context otherwise provides, in this Annexure 2:

**Cyberthreat** means any circumstance or event with the potential to adversely impact a Product via unauthorised access, destruction, disclosure, modification of information and/or denial of service;

**EoS means** End of Support, being the date Siemens notifies Customer from which service parts and any other services for a Product are no longer available after which support for any software components of the Product terminates;

**Insignificant** means a categorisation of a Vulnerability the exploitation of which, taking into account the individual Product attributes and/or the respective operating environment, is not reasonably expected and/or would not result in a foreseeable impairment of the secure operation of the Product;

**IT Security** means safeguarding the uninterrupted operation of the Product against interference caused by exploited Vulnerabilities as well as the availability, confidentiality and integrity of data and information;

**Patch** means a software Update with a fix for a **Vulnerability**;

**Product** means the products, solutions, applications and /or service offering consisting of hardware and/or software which are sold, licensed or otherwise made available to the Customer by Siemens under the Contract, whether or not Siemens is the manufacturer (also referred to as the “Equipment” and “Software” in the General Conditions attached to this Annexure 2) provided always that ‘making available’ does not include procuring of respective transactions between the Customer and any third parties, such as brokering third party Apps on the Siemens Healthineers Digital Ecosystem or other Siemens Healthineers platforms;

**Siemens teamplay Fleet** is an online portal which enables the Customer to manage the performance and maintenance of its Siemens Products;

**Vulnerability** means a weakness in a Product which could be exploited by a Cyberthreat.

Capitalised terms used in this Annexure which are not defined shall have the meaning given to them in the General Conditions attached to this Annexure.

### 2 Scope

This Annexure 2 sets out the cybersecurity terms that apply between Siemens and the Customer and seek to provide a fair balance between the Customer’s co-operation duties and Siemens’ obligations with regards to appropriately handling Cyberthreats. These cybersecurity conditions are intended to supplement the General Conditions attached to this Annexure 2 and these cybersecurity conditions shall prevail to the extent of any conflict.

### 3 Customer’s Co-operation Duties

- 3.1 In order to protect Products against Cyberthreats, the Customer shall implement and continuously maintain a holistic, state-of-the-art security concept for its IT infrastructure, including undertaking regular scanning, provided however, that:
- (a) scanning or testing shall not be performed during clinical use;
  - (b) the system configuration and/or IT Security controls must not be modified; and
  - (c) if during the deployment of a Product, Vulnerabilities are identified by the Customer, the Customer shall align with Siemens regarding the severity of the Vulnerabilities taking into account the individual Product attributes and intended operating environment and shall not refuse acceptance of the Product, if Siemens classifies the Vulnerability to be Insignificant.
- 3.2 The Customer shall prevent unauthorised access to the Products including but not limited to changing passwords and other protective settings from their default values to individual ones. The Products shall only be connected to an enterprise network or the internet if and to the extent such a connection is authorised by Siemens in the instructions for use and only when appropriate security measures (e.g. firewalls, network client authentication and/or network segmentation) are in place.
- 3.3 USB-storage media and other removable storage devices shall only be connected to a Product if and to the extent such connection is authorised by Siemens in the instructions for use and only when the risk of a malware infection of the Product is minimised through malware scanners or other appropriate means.

- 3.4 The Products undergo continuous development to further improve their IT Security. Siemens strongly recommends that Product Updates be applied as soon as they are available and that the latest Product versions are used by the Customer. The latter might include the purchase of Upgrades of hardware and software by the Customer. Use of Product versions that are no longer supported, and failure to apply the latest Updates and/or Upgrades may increase Customer's exposure to Cyberthreats.
- 3.5 Customer shall notify Siemens without delay in case of suspected or actual cybersecurity incidents or Vulnerabilities of the Product. Disclosure of such information to third parties requires prior consent by Siemens.
- 3.6 If the Customer resells a Product, the Customer shall inform Siemens in writing of the name and address of the new owner and shall impose upon that new owner a corresponding obligation in case of further resale.
- 3.7 If Siemens provides Patches via a SRS Connection or for download via Siemens teamplay Fleet, the Customer shall promptly install all Patches in accordance with the respective installation instructions given by Siemens. Otherwise, the Customer shall permit Patches to be physically installed on-Site pursuant to clause 4.2 of this Annexure 2.
- 3.8 In order to get access to the Siemens teamplay Fleet and to Patches made available for download the Customer shall register and maintain its registration with Siemens teamplay Fleet for the duration of the Customer's Product usage.
- 4 Siemens' Obligations**
- 4.1 Except to the extent prohibited by law:
- (a) if Siemens becomes aware of a Vulnerability that Siemens does not classify as Insignificant, Siemens shall make available patches as set forth below for the period agreed in the Contract, or otherwise until the earlier to occur of EoS or up to ten (10) years following Product delivery, provided that:
- (i) the Customer's Product version is the most recent or at least the penultimate version at the given time in accordance with clause 3.4 of this Annexure 2; and
- (ii) in the case of third-party software, the third party software provider has issued the respective Patch from Siemens (provided always that Siemens is not responsible for ensuring that such third-party software provider issues or continues to issue Patches).
- (b) Siemens will make the Patches available pursuant to clause 4.1(a) of this Annexure 2 within a reasonable period of time. In the case of third-party software patches provided by Siemens' licensors, Siemens will make the Patches available to Customer within a reasonable period of time after such Patches are made available by Siemens' licensors and Siemens has performed the required testing and validating. Depending on the severity of the Vulnerability, Siemens may elect to provide the Patches (including third-party patches) at the time and as part of upcoming routine Updates.
- 4.2 If the Product is connected via an SRS Connection and the Customer enables remote distribution of Patches via the SRS Connection, or if Patches are made available for download via Siemens teamplay Fleet (and the Customer has opened a Siemens teamplay Fleet account), no installation fee will be charged. Otherwise, if the Patch needs to be physically installed on-Site by Siemens, then Siemens may charge the Customer for the installation at Siemens' then current time and materials rates.
- 4.3 For Products covered by a valid post-warranty service contract, clauses 4.1(a) and 4.1(b) of this Annexure 2 shall apply accordingly. In case of any conflict, the terms of the post-warranty service contract shall prevail. Installation of Patches by Siemens is not included in contract scope unless expressly agreed by Siemens in writing.
- 4.4 To the extent permitted by law, the performance by Siemens of its obligations under this clause 4 shall be the Customer's sole and exclusive remedy for any loss or damage sustained by the Customer arising from a Cyberthreat, whether in contract, tort (including negligence) under statute, in equity or otherwise. Upon request by the Customer, Siemens shall provide commercially reasonable assistance with the Product reset at Siemens' then current standard rates.
- 4.5 Notwithstanding any other clause of the Contract, Siemens is not responsible for any loss or damage caused by the following:
- (a) Customers' intrusive IT Security testing;
- (b) unauthorised, modification of the system configuration or IT Security controls of the Product;
- (c) the installation of patches which are not authorised by Siemens; or
- (d) the Customer delaying the self-installation of Patches made available by Siemens via a SRS Connection or download via Siemens teamplay Fleet.