

## Terms and Conditions of Sale Siemens Healthcare Limited

These Terms and Conditions of Sale apply to any sale of product, including equipment, and services by Siemens Healthcare Limited ("Siemens"), together with any other document included or referenced herein (the "Agreement"). These terms apply to all business area products of Siemens unless otherwise specified herein. The acceptance of these Terms and Conditions of Sale is a condition of sale. Siemens objects to any additional or different terms proposed by Customer, including those contained or appended with a request for quotation, purchase order, confirmation, pre-printed forms or similar document, unless agreed to in writing by a duly authorized representative of Siemens. Any lack of response by Siemens to such Customer-proposed terms shall under no circumstances be deemed to be a consent thereto. Customer, on delivery and/or acceptance of products and services, shall be deemed to have accepted the terms and conditions contained herein, unless a written objection is provided to Siemens within five (5) days of receipt of these terms and conditions.

### 1. CREDIT APPROVAL

All quotations and acceptance of orders are subject to credit approval satisfactory to Siemens in its sole and absolute discretion.

### 2. PRICES / TAXES / TRANSPORTATION / HANDLING CHARGES

All prices are in Canadian dollars and are DDP (Incoterms, 2010). Unless otherwise specified, prices do not include Goods & Services Tax, Provincial or Municipal sales, use, value-added or similar tax. In addition to the purchase price specified herein, the amount of any present or future sales, use, value-added or similar tax applicable to the products or services shall be paid by Customer. All quoted prices are based on the current exchange rates, tariffs and costs to manufacture. For laboratory diagnostic products, Siemens may add a handling charge to the invoice for orders less than \$1,000.00. Rush orders may be subject to an additional charge to be specified on an individual basis.

### 3. TRANSIT CLAIMS / RECEIPT DISCREPANCIES

**3.1 Initial Inspection:** Immediately upon receipt, Customer shall inspect the products for damages and confirm the number of pieces received for the purpose of confirming any receipt discrepancies. Claims for shipping damage, partial loss of shipments or receipt discrepancies based on an initial inspection on delivery must be supported by the carrier's bill of lading indicating "Damage Visible", "Partial Loss of Shipment" or "Receipt Discrepancy" and Siemens' Customer Service Department must be notified of such claims within twenty-four (24) hours of delivery. Any Customer claim for credit will be denied if Customer signed for more pieces that were actually received as visible on initial inspection.

**3.2 Detailed Inspection:** When verifying products received by detailed inspection (comparing physical product to packing slip), Customer shall note any receipt discrepancy or concealed damage on the packing slip and contact Siemens' Customer Service Department to report any discrepancy or damage within seven (7) business days of delivery.

**3.3** Any claims not made within the periods and by the means set out in this Section may be denied without cost or liability to Siemens.

### 4. LIABILITY AND DISCLAIMER

**4.1** Notwithstanding any other provision of this Agreement:

- i) the sole obligation and maximum liability of Siemens and of Siemens' affiliates (collectively, the "Siemens Group") and Customer's sole remedy for breach of warranty, breach of contract, negligence or for any other liability in any way connected with or arising out of this Agreement or the products and services provided by Siemens under this Agreement shall be as follows: (i) in all situations involving any product supplied by Siemens, Customer's sole remedy shall be, at Siemens' option, the repair or replacement of the product; (ii) in all situations involving performance of services, Customer's sole remedy shall be re-performance of the services; and (iii) for any other claim in any other way related to this Agreement, any order made under this Agreement or any products or services provided by Siemens under this Agreement, Customer shall be entitled to recover actual and direct damages only.
- ii) in no event shall any member of the Siemens Group be liable for any loss of use, profits, revenue, interest goodwill, expected savings, opportunity, business interruption, costs of capital, costs of replacement or substitute use or performance, lost data or information, or any type of special, indirect, consequential, collateral, incidental, liquidated, exemplary, or punitive losses, damages or expenses incurred or suffered arising out of this Agreement or any products, goods or services provided under this Agreement, even if any member of the Siemens Group is aware of the possibility of such damages.
- iii) the limit of the Siemens Group's liability to Customer in any manner related to this Agreement or products or services provided under this Agreement, for any and all claims, shall not in the aggregate exceed the value of the product(s) purchased or fees paid in the preceding twelve (12) month period prior to the claim for services rendered under this Agreement.
- iv) except as expressly set out herein, Siemens disclaims any further conditions, representations or warranties, whether written or oral, including without limitation the

conditions, representations and warranties of merchantability, merchantable quality, fitness for a particular purpose and those arising from statute.

**4.2** The limitations, exclusions and disclaimers set out herein apply irrespective of the nature of the cause of action, demand or claim, including without limitation breach of contract (including fundamental breach), warranty, tort (including negligence), strict liability, indemnity, or any other legal or equitable theory and shall survive termination of this Agreement, any breach and/or failure of the essential purpose of this Agreement or any remedy contained herein. The allocations of liability in this section represent the agreed and bargained for understanding of both parties.

**4.3** Customer agrees to indemnify, defend and hold harmless the Siemens Group, its respective directors, officers, shareholders, employees and agents against all claims, proceedings, actions, fines, losses, costs and damages (including legal fees) arising out of or relating to a breach of or failure to perform Customer's obligations in this Agreement by Customer or its employees, subcontractors, agents and affiliates.

### 5. DELIVERY

Proposed delivery schedules are approximate and based on prevailing market conditions applicable respectively at the time of Siemens' quotation and order acceptance. Delivery depends on prompt receipt of the necessary information from Customer to allow maintenance of the manufacturer's schedules. The applicable delivery date shall be mutually agreed upon by the parties in writing. Time is a material element and not of the essence in the performance of this Agreement. Deliveries will be shipped by Siemens using methods and carriers set out in Siemens' sole discretion. Should the agreed delivery date be postponed by Customer, Siemens has the right to deliver to storage at Customer's risk and expense, and payments due upon delivery shall become due when Siemens delivers to the storage location.

### 6. WARRANTY

Siemens makes no warranty other than the one set forth herein. Such warranty is in lieu of all other warranties and constitutes the only warranty made regarding the product and any defects, deficiency or nonconformity in any products, service or other item furnished under this Agreement. The obligations of Siemens described in this Section 6 are Customer's sole and exclusive remedy for a breach of warranty for products and services.

#### A. Systems, Parts and Labour

**A.1** Siemens warrants purchased equipment and licensed software (except as otherwise set out in this Section 6) to be free of defects in material and workmanship under normal use and maintenance for a period of twelve (12) months from: (i) completion of delivery for products not installed by Siemens; or (ii) for installed products, (a) completion of Installation or Technical Acceptance (as defined in Section 7) (whichever is earlier) or (b) clinical validation of the products by Customer which shall be no later than 30 days from the later of Installation or Technical Acceptance. In any event, the warranty period stated herein shall be deemed to commence 30 days from completion of delivery or the date of Installation or Technical Acceptance (whichever is earlier).

**A.2** The warranty period for replacement parts provided hereunder is: (i) the remaining warranty period of the product for parts replaced under warranty; or (ii) twelve (12) months from the date of delivery and installation (where applicable) for separately sold replacement parts.

**A.3** Replacement parts will be new standard parts or refurbished parts of equivalent quality. Labour invoiced in connection with repairs performed at a Siemens or Siemens Group facility is warranted for a period of six (6) months from the date of shipment of the repaired product. Products and licensed software warranty terminates on transfer of title to the purchased product to a third party.

**A.4** All third party products including accessories that are not manufactured by Siemens will be subject to the terms and conditions of the original manufacturer's warranty. **A.5** The warranty period is three (3) months from the date of delivery in the case of parts in contact with the reagent stream, including flow cells, electrodes. Consumable supplies (including pump tubes, sample cups and chart paper as applicable in relation to the products) may be purchased from Siemens during warranty and post-warranty periods and are warranted to be free in defects in material and workmanship at the time of shipment. Chemicals/reagents are warranted to be free from defects in material and workmanship at the time of shipment and, provided Siemens' storage instructions are strictly adhered to, the manufacturer's specifications are warranted until the expiry date appearing on the container.

**A.6.** No replacement parts may be returned to Siemens without a Return Material Authorization (RMA) issued by Siemens. RMAs will be issued only for credit returns related to defective replacement parts exchanged in the field and for returns related to restocking, to which a restocking charge as outlined in Section 10. The amount of credit to be issued to Customer will be determined upon inspection of materials. Returned goods must be received by Siemens within ten (10) calendar days of RMA issuance in order to receive credit. Returns received after ten (10) calendar days will be returned to Customer collect with no possibility of returning the same goods in the future for credit.

#### B. Limitation of Remedy

**B.1** Siemens' warranty obligations to Customer are as follows: (i) in the case of purchased product, including equipment or licensed software, to repairing or replacing (with a new

component or one equivalent to new in performance) any component which Siemens finds to be defective in material or workmanship, at Siemens' option either at Customer's installation site or at Siemens or a Siemens Group facility designated by Siemens (shipment to such facility to be at Siemens' expense); (ii) in the case of labour invoiced in connection with repairs, at Siemens' election, to correcting any workmanship which Siemens finds to have been defective or refunding to Customer the labour repair charges paid to Siemens and; (iii) in the case of chemicals, to replacing any chemicals which Siemens finds to be nonconforming.

**B.2** No warranty extended by Siemens shall apply to products: (i) which have been damaged by fire, accident, misuse, abuse, negligence, hacker attacks, Customer network security vulnerabilities, improper application or alteration or by Customer's failure to operate the products in accordance with the manufacturer's instructions or to maintain the recommended operating environment and power line conditions; (ii) which are defective due to unauthorized attempts to repair, relocate, adjust, calibrate, test, maintain, service, add to or modify the products by Customer or any third party or due to the attachment and/or use of non-Siemens supplied equipment, parts or software without Siemens prior written approval; (iii) which failed due to causes from within non-Siemens supplied equipment, parts or software; or (iv) which have been damaged from the use of operating supplies or consumable parts not approved by Siemens.

**B.3** Repairs or replacements by Siemens shall not interrupt or extend the term of the warranty. Products that are networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by the Purchaser and/or end user against unauthorized access.

### C. Geography, No Transferability, Inconsistent Language, Warranty Service

**C.1** This warranty does not apply to products located outside of Canada. Service will not be performed outside of Canada except on payment of locally applicable service charges and, in the case of products located outside of such geographical area which is returned (in whole or in part) to a Siemens facility within such geographical area for warranty service, the transportation costs incurred in such return shall be at Customer's expense. This warranty is not transferable and may not be supplemented or amended except in writing referring specifically hereto and signed by Customer and Siemens. Without limiting the foregoing, any inconsistent language contained in a request for quotation, Customer's purchase orders, shipping instructions or similar documents, is specifically rejected by Siemens.

**C.2** Warranty service will be provided without charge during Siemens' regular business hours (8:30-17:00), Monday through Friday, except on recognized holidays. If Customer requires that service be performed other than during these times, such service can be made available at an additional charge, at Siemens' current rates. At Siemens' discretion, Siemens can provide the warranty services either on site or remotely as further described herein.

## 7. INSTALLATION

**7.1** For products newly purchased from Siemens which require professional installation, Siemens will uncrate, place, connect and make the product fully operational at no cost to Customer. This installation does not include the cost of preparation of the installation site. Preparation responsibilities of Customer prior to installation include without limitation dedicated electrical and telephone circuits, air conditioning, plumbing, humidity control, network lines and any structural changes that may be required.

**7.2** On installation of the product by Siemens, Customer or their appointed electrical contractor will connect the product to the requisite safety switches and power lines. Siemens will provide installation services during regular business hours (8:30-17:00), as Siemens, in its sole discretion, may determine. Customer shall provide Siemens free access to the premises and safe space thereon for storage of the product prior to installation by Siemens. Customer, at its sole cost and expense, shall meet all site requirements for the installation of product including obtaining necessary permits and approvals and making arrangements for rigging by Siemens. Customer, at its cost, shall provide clear and uninhibited access, including making any alterations or structural modifications/reinforcements/shoring to its building/facilities, to facilitate transportation of the product by Siemens from the unloading dock to the product installation location. Any overtime charges or other special expenses, as determined by Siemens, shall be paid by Customer as additional charges.

**7.3** If trade union or unions prevent Siemens from performing the above installation, Customer shall make all required arrangements with the trade union or unions to permit Siemens' completion of the said installation. Any additional costs incurred by Siemens related to such labour disputes shall be paid by Customer.

**7.4** Except as disclosed to Siemens, Customer represents and warrants that there is no asbestos or any other hazardous or toxic material, as defined in any applicable federal, provincial or local law, ordinance code, rule or regulation relating to public health or safety or protection of the environment ("Hazardous Materials"), present at Customer's location where installation will be performed. All prices provided by Siemens are in reliance of Customer's representation set forth herein. Customer shall be solely responsible for testing, abating, encapsulating, removing or neutralizing such Hazardous Materials and for the costs thereof. Siemens will receive an equitable extension of time to complete its installation and compensation for delays caused by Hazardous Materials remediation. If disclosed to Siemens, Customer shall provide in writing any and all information on the Hazardous Materials as well as

any and all relevant information required to be disclosed or maintained by federal, provincial or local laws, regulations or ordinances.

**7.5** After completion by Siemens of calibration procedures, performance checks of the functions and performance of the product permitting Customer to use the product for clinical use ("Installation"), hand-over and acceptance ("Technical Acceptance") shall be deemed to have occurred and Customer shall thereafter bear all risks of the product. Installation, Technical Acceptance and clinical readiness shall only be postponed if major deficiencies occur which render the product unsuitable for clinical use and will not be delayed by minor deficiencies which do not substantially interfere with the clinical or physical utilization of the product. In the case of major deficiencies, the product will remain under full control of, and be accessible to, Siemens engineering staff that will endeavour to rectify the deficiency as soon as possible. Any such problems will be rectified as part of the warranty and will be listed on the Siemens Medical Equipment Acceptance Form in accordance with Siemens Clinical Readiness Protocol for Medical Equipment or otherwise on the installation/field service checkout report provided by Siemens. In no event shall Customer's clinical validation of equipment and products exceed 30 days beyond the date of Technical Acceptance.

**7.6** Installation services do not include:

- i) work required due to Customer's failure to provide an environment suitable for the product or to adequately furnish all facilities required by the installation drawings, including without limitation proper electrical power, chilled water, structural mounting fixtures, air conditioning, and humidity control;
- ii) work required due to Customer's desire to make alterations which will include any deviation from Siemens' physical, mechanical, or electrical design of the product;
- iii) work required because of Customer's attachments (such attachments are defined as devices which Siemens has not designated as compatible with the product, but which are mechanically, electrically, or electronically connected to the product); or
- iv) work to set up and validate assays from other suppliers on the products.

**7.7** The product packaging will be retained by Siemens or disposed of at Customer's facility at Siemens' discretion.

## 8. DE-INSTALLATION, REMOVAL, RELOCATION OR EQUIPMENT TRADE-IN

**8.1** Unless specifically set out in this Agreement, Siemens is not responsible for any services pertaining to de-installation, removal or relocation of existing equipment from Customer's premises. Where such services are applicable, Siemens will commence services on the date set forth in this Agreement or, if none specified, on a mutually agreed date. Siemens personnel, including its subcontractors, shall be permitted site visits and given full and free access to the equipment and the facilities. Customer acknowledges that its policies and procedures regarding access, de-installation, relocation, removal or trade-in do not apply unless agreed to in writing by Siemens.

**8.2 For equipment removal and trade-in (as applicable):** Trade-in value provided herein is valid only until the de-installation date. The estimated value will be confirmed fifteen (15) days prior to de-installation of the trade-in equipment. After de-installation, a final value will be provided and credit of the actual trade-in value will be provided to Customer's account. Such credit will be adjusted in the final invoice of the herein purchased equipment or products and/or towards any post-warranty service fees. In consideration of the credit for the trade-in, (if any), Customer hereby grants, bargains, sells, assigns, transfers, conveys and sets over the designated trade-in equipment to Siemens. Unless otherwise agreed: i) Customer warrants the trade-in equipment to be fully operable and includes all options, accessories, service keys, documentation and all related items at the time of de-installation of such equipment; ii) Customer shall ramp down equipment not manufactured by Siemens prior to any de-installation services provided by Siemens; and iii) Customer shall ensure that all personal information and personal health information are removed from the equipment prior to handing over the equipment to Siemens. Title of the trade-in equipment shall pass on commencement of de-installation and risk of loss shall pass to Siemens on loading to the transport carrier.

**8.3** Siemens will not be liable for any loss or damage, costs and expenses resulting from causes beyond the reasonable control of Siemens including without limitation, any force majeure, unforeseen circumstances, concealed condition or defect, any attempt by Customer or other third party to de-install, relocate or remove equipment or negligence or intentional misconduct of Customer or any third party.

**8.4 FOR MR SYSTEMS:** Customer is responsible to ramp down and ensure cryogen levels are at least 65% upon time of de-installation. **FOR MOBILE SYSTEMS:** system must be road worthy and documentation of title transferring ownership to Siemens must be received by Siemens prior to the removal of the mobile system. **FOR MODALITY SYSTEMS:** The trade-in equipment must be available for inspection within four weeks of the scheduled de-installation date. In addition, Customer must provide a clear path for the removal of the trade-in equipment. Any additional costs due to the need to use a larger rig (other than a standard 80 ton rig), as well as any construction activities, street closings, permits, etc. required to de-install/remove the equipment are out-of-scope costs and will be the responsibility of Customer.

## 9. TERMS OF PAYMENT / TRANSFER OF TITLE, RISK

**9.1** Terms of payment are "Net thirty (30) days" from date of invoice with approved credit. Each overdue payment, including overdue interest, shall itself bear interest at the rate of

eighteen percent (18%) per annum, calculated on the daily outstanding balance and compounded monthly from its due date, both before and after demand, default and judgment, until paid. The charging of such interest shall not be construed as obligating Siemens to grant any extension of time in terms of payment.

**9.2** Title to the products or any part thereof shall remain with Siemens until products are delivered and all payments due hereunder have been duly made. Risk of loss to the products shall pass to Customer on delivery.

## **10. CHANGES / CANCELLATION / RETURNED GOODS (AS APPLICABLE)**

**10.1** Orders accepted by Siemens are not subject to changes or cancellation by Customer, except with Siemens' written consent and 90 days prior written notice. This includes without limitation sequestered batches where specific quantities of product have been allocated to Customer (as applicable). In such cases where Siemens authorizes return, changes or cancellation, Siemens reserves the right to charge Customer a handling/restocking charge and/or for reasonable expenses already incurred and commitments made by Siemens, including without limitation any labour done, material purchased, cancellation charges from Siemens' suppliers and also including Siemens' usual overhead and reasonable profit and cancellation charges from Siemens' suppliers.

**10.2** Subject to the foregoing Section 10.1, as a condition to returning any product(s) provided by Siemens hereunder, Customer must obtain a "Return Goods Authorization Number" from Siemens' Customer Service Department and provide the representative with the following information: invoice number and/or order number and/or purchase order number, product number, quantity and reason for return. Upon receipt of Customer request and if Siemens deems appropriate, a Return Goods Authorization Number will be issued if product is to be returned. Customer must clearly indicate the Return Goods Authorization Number on the outside of the external packaging and not on the actual product. Unauthorized returns and/or collect shipments will be refused and returned to Customer at Customer's expense. Where permitted, products may be returned to Siemens for credit only under the following conditions:

- i) All returns must be supported by the invoice number and a pre-authorized Siemens Return Goods Authorization Number.
- ii) Customer is responsible for transportation charges back to Siemens on authorized returns.
- iii) Hazardous materials may only be returned with proper authorization and documentation. If approved, materials must be packed and labelled in accordance with all regulations which apply to the transportation of hazardous materials. Shipping documents must also be prepared which meet such regulations.
- iv) The following items will not be authorized for return:
  - a. Temperature sensitive consumable products (credit may apply);
  - b. Open, partially used product or marked boxes (controls and reagents);
  - c. Partial units of sale (consumables);
  - d. Expired or short dated products;
  - e. All damaged hazardous products (credit may apply);
  - f. Some damaged products (credit may apply);
  - g. Items not purchased from Siemens; or
  - h. Products ordered in error.

**10.3** A credit may also be approved where a product is not returned to Siemens. In such cases, a Product Destruction Certificate will be supplied by Siemens and is to be completed and returned by Customer. Once confirmation has been received that the product has been destroyed, a credit may be applied against Customer's account.

## **11. INTELLECTUAL PROPERTY CLAIMS**

**11.1** If Customer receives a claim that any such products, or parts thereof, infringe upon the rights of others under any intellectual property rights, Customer shall notify Siemens immediately in writing. As to all infringement claims relating to products or parts manufactured by Siemens or one of its affiliates:

- i) Customer shall give Siemens information, assistance and exclusive authority to evaluate, defend and settle such claims; and
- ii) Siemens shall then, at its own expense, defend or settle such claims, procure for Customer the right to use the products, or remove or modify them to avoid infringement.

**11.2** If none of these alternatives is available on terms reasonable to Siemens, then Customer shall return the products to Siemens and Siemens shall credit Customer the purchase price paid by Customer less reasonable depreciation for Customer's use of the products.

**11.3** The foregoing states Siemens' entire obligation and liability, and Customer's sole remedy, for claims of infringement.

**11.4** If some or all of the products sold hereunder are made by Siemens pursuant to drawings or specifications furnished by Customer, or if Customer modifies or combines, operates or uses the products other than as specified by Siemens or with any product, data, software, apparatus or program not provided or approved by Siemens, the obligations of Siemens under this Section shall be null and void and should a claim be made that such products infringe the rights of any third party under any intellectual property rights or otherwise, then Customer shall indemnify and hold Siemens harmless against any liability or expense, including reasonable legal fees, incurred by Siemens in connection therewith.

## **12. DESIGN AND TRADE SECRETS, LICENSED SOFTWARE**

**12.1** Any drawings, data, designs, pricing, service offerings, software programs, value adds or other technical information supplied by Siemens to Customer in connection with the sale of the products are not included in this sale of the products to Customer and shall remain Siemens' property and shall at all times be held in confidence by Customer. Such information shall not be reproduced or disclosed to others without Siemens' prior written consent.

**12.2** Appendix "A" hereto shall apply with respect to Operating Software (as defined herein).

## **13. REFURBISHED/USED PRODUCTS**

For products identified in this Agreement as used or refurbished products, these products have been previously owned and used. When delivered to Customer, the products may have received mechanical, electrical and/or cosmetic reconditioning, as needed, and will comply with the manufacturer's specifications. The sale of such products to Customer cannot be guaranteed and is subject to continuing availability at the time Customer accepts Siemens' offer to sell the products. If the products are no longer available, Siemens will use commercially reasonable efforts to identify other products in its inventory that may be suitable for purchase by Customer, and if substitute products are not acceptable to Customer, then Siemens will cancel the order and credit to Customer any deposits previously paid. No warranty is extended by Siemens for any used or refurbished products.

## **14. THIRD PARTY PRODUCTS**

If this Agreement includes the sale of third party products not manufactured and/or imported by Siemens, then Customer agrees that: (i) the products are being acquired by Siemens solely for the benefit of Customer (ii) unless otherwise stated, no representation, warranty or guarantee has been made by Siemens with respect to the products; (iii) the obligation of Customer to pay Siemens for the products is absolute and unconditional; (iv) Customer will assert no claim whatsoever against Siemens with respect to the products and will look solely to the manufacturer regarding any such claims; (v) Customer will be responsible and indemnify and hold Siemens harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the products or any work or service provided by the manufacturer of the products or any other party; (vi) use of the products may be subject to Customer's agreement to comply with any software licensing terms imposed by the manufacturer, as well as any applicable laws, rules and regulations; and (vii) the manufacturer, and not Siemens, is solely responsible for any required installation, testing, validation, tracking, product recall, warranty service, maintenance, support, and complaint handling, as well as any other applicable regulatory requirements.

## **15. FINANCING**

Notwithstanding any arrangement that Customer makes for the financing of the purchase price of the products, the parties agree that any such financing arrangement has no effect on Customer's payment obligations under this Agreement, including without limitation Section 9 above.

## **16. END USER CERTIFICATION**

Customer represents, warrants and covenants that it is acquiring the products for its own end use and not for reselling, leasing or transferring to a third party (except for lease-back financing).

## **17. PRODUCT RECALL**

In the event of a recall or field corrective action, Siemens will provide Customer with a bulletin to inform Customer of the issue. Customer may also receive a completion notification form which is used to indicate that Customer has read and understood the bulletin. If a completion notification form is provided, Siemens requires that Customer return the form to Siemens within seventy-two (72) hours of receipt, failing which Customer shall be deemed to have acknowledged and accepted such notification.

## **18. REGULATORY COMPLIANCE**

- 1.1. Siemens will ship only products licensed by Health Canada and/or applicable regulatory agency that have met all safety requirements set forth under applicable law. Siemens will not be responsible for ensuring the safety (e.g. safety advisories, updates or recalls) of the product if such product is relocated or resold within or outside Canada by Customer. Customer shall notify Siemens of any removal or destruction of Siemens product and agrees it shall cease receiving any performance, safety or other product related updates or upgrades via mail or other communication methods whatsoever upon such notification. Exchanged parts which are removed from the equipment shall become the property of Siemens unless such exchanged parts constitute "hazardous wastes", "hazardous substances", "special wastes" or similar materials, as such terms are defined by any federal, provincial or local laws, rules, or regulations, in which case, at the option of Siemens, the exchanged parts shall remain the property of Customer and shall be disposed of by Customer in strict compliance with all applicable laws, rules and regulations.

## **19. RESERVATION**

Siemens shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.



## 20. NO CONTRA PROFERENTEM

This Agreement has been reviewed by each party's professional advisors, and revised during the course of negotiations between the parties. Each party acknowledges that this Agreement is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any of its provisions, no rule of interpretation favouring one party over another based on authorship will apply.

## 21. PRIVACY

**21.1** In the course of inspection or maintenance of automated procedures, data processing systems or servicing by Siemens, the possibility of access to personal information about an identifiable individual ("Personal Information") cannot be ruled out. When accessing, collecting, processing or using Personal Information, Customer and Siemens (which hereinafter includes their respective agents, affiliates, and parent company) are each responsible for complying with their respective obligations under applicable data and privacy protection laws, codes of practice and other legal and regulatory obligations (collectively "Privacy Laws").

**21.2** If collecting, processing or using Personal Information is required in order to carry out servicing or remote service, Customer hereby provides consent to do so. Siemens shall not use any Personal Information received during servicing or remote service in any form whatsoever or for any purpose other than providing such services. In such circumstances, Customer agrees to the transfer of Personal Information to employees of i) Siemens Healthcare GmbH, ii) to corporate affiliates of Siemens or iii) other companies commissioned by Siemens or Siemens Healthcare GmbH to provide remote service (including outside of Canada), provided the transfer of such data is solely for the purpose of carrying out the services or remote service described herein.

**21.3** With respect to Personal Information transferred or otherwise made available to Siemens by Customer or by any third party on Customer's behalf, including any Personal Information of Customer's employees, contractors, partners, clients and suppliers, Customer warrants, covenants and agrees that:

- i) the Personal Information has been legally obtained;
- ii) Customer has the authority and has obtained all necessary consents from the subject individuals required under applicable Privacy Laws to enable the Personal Information to be: (i) accessed, transferred, disclosed or otherwise made available to Siemens; and (ii) processed, copied, analyzed, altered, combined, stored, destroyed, transferred or otherwise used by Siemens, provided such use by Siemens is in accordance with or consistent with these terms and conditions; and
- iii) none of the activities for which Customer has engaged Siemens under these terms and conditions will involve the commission by Siemens of any act which is in contravention of Privacy Laws applicable to Siemens, provided Siemens performs such activities in accordance with or consistent with these terms and conditions.

**21.4** In the event that any transfer to or use of Personal Information by Siemens is or, in Siemens' reasonable opinion may, constitute an infringement of applicable Privacy Laws, Siemens is not required to perform any further activities under this Agreement regarding such Personal Information (to the extent such activities are or may be infringing) and both parties together shall use commercially reasonable efforts to agree to a non-infringing method of performing such activities with respect to such Personal Information.

**21.5** Customer shall make all reasonable efforts to remove Personal Information and confidential information from records and documents provided to Siemens in fulfilling its obligations hereunder. To the extent Siemens provides Customer with Personal Information, as defined under applicable Privacy Laws, Customer shall comply with applicable Privacy Laws, including in its use, disclosure, storage and destruction thereof.

## 22. CONFIDENTIALITY

Siemens and Customer shall maintain the confidentiality of any information provided or disclosed to the other party relating to the business, customers and/or patients of the disclosing party, as well as this Agreement and its terms, including the pricing and other financial terms under which Customer will be obtaining the services hereunder. Each party shall use reasonable care to protect the confidentiality of the information disclosed, but no less than the degree of care it would use to protect its own confidential information, and shall only disclose the other party's confidential information to its employees, agents and subcontractors having a need to know this information. The obligations of confidentiality set forth herein shall not apply to any information i) in the public domain at the time of disclosure, ii) which was known to any of the parties before disclosure without having violated a confidentiality obligation or iii) that is required to be disclosed by applicable court order or by law.

## 23. DISPUTE RESOLUTION

**23.1** Any dispute, controversy or claim arising out of this Agreement or relating to any breach thereof (a "Dispute") shall initially be referred to the project manager/project team lead for each party who shall attempt to resolve the Dispute through consultation and negotiation in good faith without recourse to legal proceedings.

**23.2** If the project managers/project team leads are unable to resolve the Dispute after fifteen (15) working days from the date such Dispute is referred to them, the Dispute shall be referred to executive management of the parties who shall attempt to resolve the Dispute through consultation and negotiation in good faith without recourse to legal proceedings.

**23.3** If the executive management of the parties is unable to resolve the Dispute within ten (10) working days (or such other period as mutually agreed by the parties) from the date such Dispute is referred to them, a mediator, agreeable to the parties, shall be appointed within five (5) working days.

**23.4** If the mediator is unable to resolve the Dispute within an agreed upon timeframe, such Dispute shall be referred to a single arbitrator mutually agreed to by the parties or failing agreement, to a panel of three arbitrators, one chosen by each party and one chosen by the first two so chosen. The seat of the arbitration shall be Toronto, Ontario. The arbitration shall be conducted in accordance with the *Arbitration Act, 1991* (Ontario) as amended. The arbitration award shall be final and binding without any right of appeal and shall deal with the question of costs of the arbitration.

## 24. EXPORT COMPLIANCE

If Customer transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Siemens or works and services (including all kinds of technical support) performed by Siemens to a third party, Customer shall comply with all applicable national and international (re-) export control regulations. In any event, Customer shall comply with the (re-) export control regulations of Canada, of the Federal Republic of Germany, of the European Union and of the United States of America, to the extent permissible under Canadian law. If required to conduct export control checks, Customer, upon request by Siemens, shall promptly provide Siemens with all information pertaining to the particular end customer, the destination and the intended use of goods, works and services provided by Siemens, as well as any export control restrictions existing.

## 25. MISCELLANEOUS PROVISIONS

**25.1** The terms and conditions of Sections 4, 21, 22, and 25 shall survive the termination of this Agreement.

**25.2** This Agreement may not be assigned or otherwise transferred, nor may any rights or obligations be assigned or delegated, by either party without the prior written consent of the other party hereto, except that Siemens may assign this Agreement in whole or in part and/or its rights and obligations hereunder without the consent of the other party or extend this Agreement: (a) to an affiliate of Siemens; or (b) to a third-party successor in interest of all or part of the business to which this Agreement relates, whether as a result of: (i) a change of ownership (including by stock purchase, merger or consolidation); (ii) the sale of all or a substantial part of the assets and/or all or a part of the business to which this Agreement relates; (iii) any type of spin-off, (de)merger, consolidation, divestiture, dissolution and any other type of business combination or business reorganization, including the establishment of joint venture companies; or (iv) otherwise. Siemens shall also be permitted to assign accounts receivable under this Agreement for factoring purposes.

**25.3** Neither party will be responsible or liable for any defect, loss or damage incurred by the other party resulting from causes beyond their reasonable control, including without limitation acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, third party attacks (eg. hacker attacks), lock-outs, strikes or labour disputes, or the failure of Siemens' suppliers to meet their delivery promises.

**25.4** It is understood and agreed that Customer and Siemens are independent parties, not an agent of each other, and the parties are fully responsible for their own actions. Siemens or Customer shall in no event be responsible for any of the other party's actions, and each party agrees not to represent or imply to any third party that it is an authorized service representative of the other party.

**25.5** This Agreement, including any documents incorporated in it, may be amended from time to time only in writing signed by authorized representatives of each party.

**25.6** No failure or delay by Siemens in exercising any right, power or privilege hereunder shall operate as a waiver thereof unless confirmed in writing, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

**25.7** If any provision of this Agreement is declared invalid, illegal, or unenforceable under any applicable law, such provision shall be deemed omitted from this Agreement, but the remaining provisions shall continue in effect. The headings included in this Agreement are for convenience of reference only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement.

**25.8** This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to principles of conflicts of law.

**25.9** This Agreement together with any documents that are expressly appended/annexed hereto constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, contracts, understandings and discussions, written or oral, between Customer and Siemens. There are no conditions, covenants, representations or warranties or other provisions, statutory or otherwise, relating to the subject matter hereof, except as set forth in this Agreement.

**25.10** Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Customer and Siemens without the express written consent of both parties.

## Appendix “A”

**A1** To the extent the product(s) purchased hereunder utilizes software for its operation (the “Operating Software”), Siemens grants Customer a non-exclusive, non-transferable, non-sublicensable, limited license to use the executable form of the Operating Software, to the extent to which the same has been enabled for Customer’s use in Canada for the operation of the product(s), and only in accordance with the documentation provided by Siemens. Any other use of the Operating Software constitutes an infringement of Siemens’ intellectual property rights and a material breach of this Agreement. Customer may reproduce the Operating Software for its internal use by its authorized representatives only, provided Customer includes on or in all copies (in any form) all copyright, trade secret or other proprietary notices contained on or in the Operating Software as provided by Siemens. The rights of use of the Operating Software shall apply *mutatis mutandis* for documentation, any updates, upgrades and follow-on products provided to or purchased by Customer. Customer agrees that the Operating Software and related documentation contain proprietary information, is confidential information, and shall not be disclosed to any third party without the prior written consent of Siemens.

**A2** Customer shall not engage in, cause, or permit the reverse engineering, disassembly, decompilation or any similar manipulation of the Operating Software or any part thereof. Customer shall not use or permit the use of any mechanical, electronic, or other method to trace, profile, decompile, disassemble or identify the source code of the Operating Software or any part thereof. Customer shall not and shall not permit any other party to bypass, alter, or tamper with any security or lock-out features of the Operating Software. Customer shall not remove any copyright, trade secret or other proprietary right notices contained on or in the Operating Software or documentation provided by Siemens or sell, transfer or otherwise make available to others the Operating Software or documentation, or any copy thereof, except as expressly permitted herein. In the event that there are software elements contained in the medium delivered to Customer in respect of which rights are not granted by this Agreement, Customer shall be prohibited from accessing or using the said elements.

**A3** Where the Operating Software contains open source or third-party software, including firmware, freeware or shareware, Customer shall be entitled to use such open source or third-party software only in accordance with the open source license conditions or the licence conditions provided by the third-party owner, which conditions shall take precedence over the provisions of this Agreement. During installation, commissioning and configuration of products, Siemens is irrevocably entitled to acquire licences from third party software manufacturers and to accept the same on behalf of Customer. Such end user licences are available in the documentation, through automatic pop-up, in the ‘information’ section of the Operating Software or upon request by Customer. Customer acknowledges that Siemens shall not be responsible for defects or be liable with respect to such open source or third party software.

**A4** Title to the Operating Software and applicable rights in patents, copyrights, trade secrets and other intellectual property inherent in the Operating Software or related to its use remain with Siemens or relevant third parties. No transfer of title or ownership to such intellectual property passes to Customer and Siemens reserves for itself and such third parties all such intellectual property rights, subject only to the licences granted herein. In the event the product is disposed or sold to a third party, Siemens shall be notified of the same for the purposes of updating its records and providing updates, upgrades or follow-up products.

**A5** Customer hereby consents to all installations, repairs, updates, upgrades or de-installations of the Operating Software or the software product, by Siemens, its affiliates and/or its subcontractors anytime during the term of the Agreement. In the event personal information or personal health information is accessible by Siemens through the Operating Software or in the purchased software during performance of any technical services (eg: connectivity, trouble shooting, Performance Data analysis), Customer warrants that it has the authority and/or has obtained all consents required under applicable Privacy Laws to enable personal information or personal health information to be processed, copied, analyzed, altered, combined, stored, destroyed, transferred (within or outside Canada) or otherwise used by Siemens, its affiliates and/or its subcontractors. Customer may withdraw the aforesaid consent(s) or notify Siemens of any withdrawal of consent by the subject individual at any time during the term of the Agreement. In the event of such withdrawal of consent(s), Customer acknowledges that Siemens may not be permitted to provide applicable services under this Agreement and such non-performance shall not be deemed to be a breach of its obligations under this Agreement.

**A6** Where product(s) sold hereunder have remote service capability, Siemens shall be entitled to access data available from Customer for the product(s) maintained by remote service. Customer agrees to allow connection to Smart Remote Service (SRS), where available, for the product(s) covered by this Agreement. SRS connectivity is required for SRS-capable systems during the warranty and post-warranty service period (as applicable). The remote access shall be provided through Customer’s network as is reasonably necessary for Siemens to provide SRS under this Agreement. Any applicable performance guarantees or warranties shall be void if the SRS connection is not provided and available twenty-four (24) hours per day, seven (7) days a week.

**A7** Siemens constantly works on the improvement of its products and services. To be able to optimize system availability as well as to ensure quality, Siemens needs access to certain information such as technical data (e.g. device properties, performance parameters) and system specific usage data of the Siemens systems (collectively “Performance Data”). Customer authorizes Siemens, its affiliates or its subcontractors, to access, collect and store and make use of Performance Data and further consents that Siemens may keep and use for Siemens’ own business any Performance Data for periods as required without restrictions in terms of time, location or content.

**A8** The licence for the Operating Software may be terminated by Siemens by written notice to Customer upon any material breach of this Agreement which remains uncured for a period of thirty (30) days after such written notice from Siemens. Upon such termination of the licence, Customer shall have no further right to use the Operating Software.

**A9** Notwithstanding any other provision of this Agreement, where the product(s) provided pursuant to this Agreement are solely or primarily comprised of licensed software other than Operating Software (eg. Siemens imaging software such as *syngo.via*, *syngo.plaza* or *syngo Dynamics*), the above paragraphs A1–A8 shall apply *mutatis mutandis* to such software and the remaining Sections of this Agreement shall be interpreted and applied accordingly.

**A10** The licence fee for the Operating Software is included in the purchase price of the product. Any non-mandatory updates or upgrades to the Operating Software or follow-on products shall be purchased by Customer separately. Diagnostic/maintenance software is not included, and is available only as a special option under a separate Diagnostic Materials Licence Agreement, which may be subject to a separate licensing fee.

**A11** Customer’s obligations under this Section shall survive the termination of the licence provided hereunder or the Agreement.

## APPENDIX B

### General Terms of Remote Connection

#### Article 1: Scope and Definitions

**Scope:** The current Security Concept and these General Terms of Remote Connection shall apply in addition to **Siemens Terms and Conditions of Sale** and **Siemens Terms and Conditions of Service**. Customer general terms and conditions shall only apply if expressly accepted by Siemens.

**Definitions:** Capitalized terms shall have the meaning as given to them in this Section 1  
**“Technical Data”** means device properties, configuration and condition; device service history, performance parameters and utilization data in each case not related to an identified or identifiable natural person.

**“Product(s)”** means products and solutions consisting of hardware and/or software which are sold, licensed or otherwise made available to Customer by Siemens irrespective of whether manufactured by Siemens or not.

**“Security Concept”** means Siemens Healthineers IT security concept, which can be found <https://www.siemens-healthineers.com/services/customer-services/connect-platforms-and-smart-enablers/smart-remote-services> or which Siemens will send to Customer upon request.

**“SHC GmbH”** means the Siemens Healthcare GmbH.

**“SRS Connection”** means Smart Remote Services Connection, i.e. an online connection between Siemens and the relevant product at Customer site.

**Article 2: Subject Matter:** The SRS Agreement contains the terms and conditions under which Siemens will provide to Customer an SRS Connection for the products mentioned in a quotation. Any other services or deliveries that Customer may receive are subject to additional agreements and not covered under this SRS Agreement.

#### Article 3: Use of SRS Connection

Siemens, SHC GmbH, its affiliates and other companies engaged by Siemens or SHC GmbH are authorized to access, maintain, repair, calibrate, update or patch the products that are the object of this SRS Agreement through the SRS Connection and use any Technical Data collected via the SRS connection for the aforementioned purposes. If a service contract will be concluded between Customer and Siemens then Siemens, SHC GmbH, its affiliates and other companies engaged by Siemens or SHC GmbH are also authorized to carry out all the additional services in accordance with such service contract using the SRS Connection.

#### Article 4: Access to Data and Use of Data

In the case of additional services as described in Section 2.2, Customer hereby irrevocably permit Siemens, SHC GmbH and its affiliates to use Technical Data that is collected via the SRS Connection also for own business, research or development purposes (e.g. for the further development of our products and services) without restrictions in terms of time, location or content.

#### Article 5: Obligations of the Parties

Siemens shall setup the technical and organizational process for SRS Connection and IT infrastructure used by Siemens for the establishment of the SRS Connection according to Siemens' Security Concept. Siemens may provide Customer information about the SRS connectivity status and general information on how to restore the connection in case it is not properly working. Customer shall permit the SRS Connection to be established by connecting the products at Customer's own expense to the secured telecommunications link via a broadband connection. Customer shall bear the cost of any technical requirements for any such connection not being part of the products, e.g. establishing a broadband connection. In order to protect the products against cyber threats, it is necessary that Customer implement – and continuously maintain – a holistic, state-of-the-art security concept protecting Your IT infrastructure. Customer shall also support Siemens in protecting against cyber threats. This means Customer shall particularly not connect products to the SRS Connection that do not comply with state of the art security policies or use the SRS Connection in a way that impairs or disrupts the integrity of the SRS Connection or Siemens IT infrastructure or transmit any data containing viruses, Trojan horses or other programs that may damage or impair the SRS Connection or Our IT infrastructure.

#### Article 6: Limited Warranty

Unless explicitly otherwise regulated the SRS Connection is provided “as is” and Siemens do not provide Customer with any warranty or guarantee regarding the availability, performance or quality of the SRS Connection other than addressed in Section 4.1. Siemens will not provide an SRS Connection if: 1) the provision is prevented by any impediments arising out of national or international foreign trade or custom requirements

or any embargoes or other sanctions or 2) there is a defect, malfunction or other problem with the telecommunications network or 3) there is a defect, malfunction, insufficient configuration or other problem with Your infrastructure

#### Article 7: Update of Terms and Security Concept

Siemens is entitled to modify and/or update these General Terms of Remote Connection and/or Siemens Security Concept to reflect technical progress, changes in law and further developments of Our offerings. Such modifications and/or updates shall not jeopardize the quality and execution of the SRS connection. Siemens shall inform Customer of changes by giving Customer a reasonable period of notice of at least 30 days. Siemens will provide Customer with access to the updated terms and conditions.

#### Article 8: Certification

Siemens' service organization shall maintain a certified information-security management system for the purposes of the SRS Connection. In this regard, Siemens shall be subject to regular external audits by independent third parties. The scope and details of the certification are determined in the current Security Concept.

#### Article 9: Termination and Suspension

Unless otherwise agreed in prevailing terms and conditions this SRS Agreement may be terminated by either Party in writing at any time, giving a notice period of 8 weeks. The validity of any other agreements between Customer and Siemens shall be unaffected by a termination of this SRS Agreement. If other agreements have been concluded on the basis of this SRS Agreement, they may have to be adapted upon termination, e.g. in respect of remuneration or response times. Either Party shall be entitled to terminate this SRS Agreement with immediate effect if the other Party breaches this SRS Agreement and if such breach will not be cured for a period of 30 days from receipt of notice of the breach of the other Party. Siemens shall be entitled to suspend this SRS Agreement and/or the SRS Connection with immediate effect if Customer is in breach of this SRS Agreement or if Siemens, acting reasonably, is of the opinion that the SRS Connection to one or more of Customer products contains a risk for the security and performance of the IT Infrastructure used by Siemens.

#### Remote Update Agreement

**“Software Update”** shall mean a generally available subsequent release of the Software, supplied by Siemens or an Affiliate or certified partner of Siemens when available, which typically provides maintenance fixes, corrections and Fixes/Hotfixes only

**“Remote Services”** are services that Siemens can provide remotely, like pre-clarification, troubleshooting, repair or training, using the Smart Remote Services infrastructure, as defined in the general SRS Terms and Conditions. From time to time Siemens will make available software updates to improve general performance, reliability and security of Customer equipment. These software updates will be provided to Customer remotely, using the SRS Connection agreed as described in the general SRS Connection Terms and Conditions. If the software update needs to be installed on site by Siemens, Siemens may charge Customer for the expenses (time and material) resulting from the installation.

The scope of this annex only covers Software Updates. Any other Remote Services are not included in this agreement and require a separate agreement.