

# General Terms

(Version: 22.05.2025)

These General Terms govern the provision of Deliverables by Siemens Healthineers.

## 0. Definitions and Interpretation

- 0.1. "Affiliate" means any company, now or hereafter, directly or indirectly, controlled by, or controlling, or under common control with a Party. For purposes of this definition "control" of a company shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a company, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.
- 0.2. "Agreement" means the Commercial Form, these General Terms and all other terms and conditions and other documents attached to or referenced in the Commercial Form.
- 0.3. "Australian Consumer Law" means the law set out in schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 0.4. "Business Day" means Monday through to Friday (inclusive) excluding gazetted public holidays in the State or Territory where the Work is performed
- 0.5. "Commercial Form" means a document (including a quote, offer form or order form) agreed between the Parties in writing or any other form provided for in the Agreement, specifying the Deliverables and prices and providing applicable details, such as deployment, license and/or service models, usage limitations, charges and charge metrics, duration of the Agreement or Subscription Period and mode of delivery.
- 0.6. "Commercial Third-Party Software" means proprietary software not developed by or on behalf of Siemens Healthineers or its Affiliates, including commercial standard software, whether royalty-bearing or free of charge.
- 0.7. "Confidential Information" means any information, know-how, data, or physical material in any format disclosed by a Party in connection with this Agreement which is either identified as "confidential" (or similar) or to be treated as confidential based on its content and/or the circumstances of its disclosure or is the type specified in section 275(1) of the *Personal Property Securities Act 2009* (Cth). The terms of this Agreement and trade secrets are deemed Confidential Information in any case.
- 0.8. "Consumer Price Index" means the consumer price index published and/or released by the Australian Bureau of Statistics.
- 0.9. "Customer Data" means any data and/or information sent or inputted into the Deliverables or otherwise provided by or on behalf of Customer, or extracted from the Deliverables by or on behalf of Siemens Healthineers and its Affiliates. Depending on the relevant Deliverables, this may include health-related data and/or information relating to a patient such as patient history, diagnosis, treatment, electronic medical records (EMRs), Customer-provided configuration data, such as Customer-provided protocols, and any analytical results and data sets that are derived or created from Customer Data by or on behalf of Siemens Healthineers and its Affiliates. Customer Data shall not include Technical Data.
- 0.10. "Customer" means the person or entity designated as contract party in the Commercial Form or otherwise in an online registration process for the Deliverables.
- 0.11. "Data Processing Agreement" means, as applicable, the standard Data Processing Agreement according to Art. 28 GDPR of Siemens Healthineers or a data processing agreement covering the processing of Personal Information in connection with the Deliverables that is or has been entered into separately by the Parties.
- 0.12. "Deliverables" means any hardware, software, reagents, consumables, Services, and other deliverables specified in the Commercial Form.
- 0.13. "Derivative Work" means (i) any modification (including any revision, adaption, copy, derivation, development, enhancement, improvement, upgrade, update, translation, training or extracting of parts) of a Deliverable or Siemens Healthineers Machine Learning Model; (ii) any work based upon such Deliverable that, if prepared, used or distributed without authorization from Siemens Healthineers, would constitute copyright or other intellectual property rights infringement of such Deliverable under applicable law; or (iii) any non-source form (for example object-code or intermediary code) of the foregoing (i) and (ii).
- 0.14. "Force Majeure" means any event beyond the reasonable control of a Party, including war, terrorism, riot, sabotage, cyberattacks, acts or omissions of civil or military authorities, natural disaster, earthquake, fire, flooding, epidemic, general labor disturbances (e.g., strike or lockout), or shortage of labor, raw materials, components or power. Delays or disruptions caused by suppliers of Siemens Healthineers due to such shortages in the market shall in any case be considered force majeure events.
- 0.15. "Open-Source Software" means software provided by a copyright holder in source code form under an open-source license, in particular as defined by the Open Source Initiative from time to time, or a similar license to anyone with the permission to modify and distribute.
- 0.16. "GST Law" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* and any regulations made pursuant to that Act.
- 0.17. "Normal Business Hours" means between 8.30 am and 5.00 pm (AEST) on a Business Day.
- 0.18. "Party" means Siemens Healthineers and/or Customer as applicable.
- 0.19. "Personal Information" has the meaning given in the Privacy Act 1988
- 0.20. "Personnel" means the employees, officers, agents, consultants, other contractors and sub-contractors of a party to the Agreement.
- 0.21. "PPSA" means the Personal Property Securities Act 1999.
- 0.22. "Resolution Institute" means the Resolution Institute (ACN 008 651 232) of Suite 2, Level 6, Tower B, Zenith Centre 821-843 Pacific Highway, Chatswood NSW 2067
- 0.23. "Services" means the services and works specified in the Commercial Form or any statement of work or project plan attached thereto.
- 0.24. "Siemens Healthineers" means the Siemens Healthineers legal entity designated in the Commercial Form or otherwise in an online registration process for the Deliverables.
- 0.25. "Siemens Healthineers Machine Learning Model" means any machine learning methods that analyze and parse patterns, relationships and/or correlations between multiple data elements (for example deep learning methods and neural networks) and/or parameter sets associated with the foregoing, which are provided by Siemens Healthineers.
- 0.26. "Specification" means Siemens Healthineers' summary description of the scope, function and operation of the Deliverables included or referenced in the Commercial Form or otherwise made available by Siemens Healthineers upon the

execution of the Agreement. Specification excludes all marketing materials and promotional information.

- 0.27. "Subscription Period" means the period of a subscription for a license or digital services, including any renewals thereof, as set forth in this Agreement.
- 0.28. "Technical Data" means any technical, support, performance, machine data, metadata solely describing Customer Data, and other non-Personal Information related to the Deliverables and collected and/or processed on-site or via a Siemens Healthineers remote connection, including (i) technical status, performance, and/or support related information, including application logfiles, errors occurred, device properties, quality control; (ii) asset and general configuration data, including asset and device configuration, software versions, patches, licenses, network settings; device service history; and (iii) utilization, operational, serviceability, machine diagnostic and system data, including sequences or performance of various tasks, used applications/licenses and interactions with the application, and the reagents and consumables loaded onto hardware.
- 0.29. "Third-Party Software" means Commercial Third-Party Software and/or Open-Source Software.
- 0.30. "User Documentation" means any information provided by Siemens Healthineers in order to assist Customer installing and/or using the Deliverables, such as user manuals, online help, installation guides, instructions for use, description of the intended use and any safety or security related information.
- 0.31. Interpretation

In these Conditions, unless otherwise indicated to the contrary:

- (i) a reference to the Agreement or any other document or agreement, includes any agreed variation, replacement or novation of them;
- (ii) Any words following the terms "including, in particular, for example, e.g.," or any similar expression shall be construed as illustrative and shall not limit the sense of the words or phrase preceding those terms;
- (iii) the singular includes the plural and vice versa;
- (iv) a reference to "\$" or "dollars" is to Australian dollars;
- (v) a reference to a party includes the party's permitted successors, substitutes and assigns (and where applicable, the party's legal personal representatives);
- (vi) where a word or phrase is defined, other parts of speech and grammatical forms of what word or phrase shall have corresponding meanings;
- (vii) a reference to all or any part of a Law includes that Law, as amended, consolidated, re-enacted or replaced from time to time;
- (viii) 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; and
- (ix) a reference to a "person" includes a firm, partnership, joint venture, association, unincorporated body, corporation or other entity.

## 1. Reservation of Rights, Feedback

- 1.1. Siemens Healthineers, its Affiliates and/or its suppliers and licensors retain ownership of all intellectual property rights, copyrights and trade secret rights in the Deliverables, Derivative Works, User Documentation, and any other software, including application program interfaces (APIs), and documents provided by Siemens Healthineers. Except where such rights cannot be limited under applicable law, Customer may not reverse-engineer, decompile or otherwise reverse-translate the Deliverables, Derivative Works, User Documentation, and any other software, including APIs, and documents provided by Siemens Healthineers.
- 1.2. Customer shall not alter, obscure or remove any copyright, patent, trademark, trade secret, or other proprietary notices relating to the Deliverables (collectively "Marks") and Customer shall include such Marks on any permitted copies thereof.

- 1.3. Siemens Healthineers may modify and/or deliver a new version of the Deliverables and the computing environment used to provide the Deliverables, as long as their agreed functionality, compatibility and security features are at least equivalent.
- 1.4. If Siemens Healthineers commercially releases a new version of any Deliverable, it may offer Customer the opportunity to accept such new version of the Deliverable, provided that such option must be exercised within the period notified by Siemens Healthineers, however latest before shipment (or, if there is no shipment, upon installation) of the Deliverable. If Customer desires to take the new version, Customer must pay for any price difference between the old and new versions and the cost of any additional required prerequisites.
- 1.5. Customer agrees that using, distributing, copying, duplicating or otherwise reproducing all or any part of any Deliverable, Derivative Works, User Documentation and any other software, including API's, and any documents provided by Siemens Healthineers, otherwise than in strict accordance with this Agreement will be considered a material breach of this Agreement that is incapable of cure, for which Siemens Healthineers may, in addition to any other remedies terminate this Agreement in accordance with section 14.3.
- 1.6. Any feedback or suggestions regarding Deliverables are voluntary and Siemens Healthineers shall have the exclusive, worldwide, perpetual, transferable and sub-licensable right, without any limitation in scope, to use such feedback and suggestions for its own business purposes. Customer shall keep any feedback and suggestions confidential and shall not share them with any third party.

## 2. Prices, Taxes, Payment

- 2.1. The prices are exclusive of and Customer shall pay, or reimburse Siemens Healthineers for, any taxes (such as value added taxes, sales taxes, good and services taxes, digital service taxes, or other similar taxes), customs and import duties and any other charges such as public charges applicable to the transaction under this Agreement ("Taxes").  
If Customer is exempt from Taxes, Customer shall provide a valid exemption certificate, direct pay permit, or other such government-approved documentation to Siemens Healthineers without undue delay.
- 2.2. All payments shall be made to Siemens Healthineers' bank account without any deduction. If and to the extent required by applicable law, taking into account any applicable double taxation treaty/international treaty, Customer shall (i) deduct withholding tax from the payments to Siemens Healthineers and pay it to the tax authorities in Siemens Healthineers' name and on Siemens Healthineers' behalf and (ii) send to Siemens Healthineers, without any requirement of notice and at Customer's own expense, the official tax receipt evidencing payment of such withholding taxes without undue delay. If the applicable double taxation treaty/international treaty grants a reduced withholding tax rate, Customer shall support in achieving such reduction.
- 2.3. Customer may only set-off claims or assert rights of retention regarding claims that are undisputed or have been confirmed by final and unappealable decision of a competent court or arbitration court.
- 2.4. Any amounts payable by Customer to Siemens Healthineers hereunder shall be due on the date or event specified in this Agreement or, if not specified, 30 days after the date of Siemens Healthineers' invoice. If Customer fails to make timely payment, Siemens Healthineers may charge interest on the arrears at a rate 5% above the 90-day Bank accepted bills daily rate published by the Reserve Bank of Australia. Any other rights and remedies of Siemens Healthineers due to the payment delay shall remain unaffected.
- 2.5. If any terms of payment provide for full or partial payment upon completion of installation or thereafter, and completion of installation is delayed beyond the agreed installation date for reasons attributable to Customer, then the balance of payments shall be due on the day following such installation date.

- 2.6. Except as otherwise provided in the Commercial Form, Siemens Healthineers shall be entitled to increase the prices or fees payable under an Agreement, or any distinct part thereof, once in any 12 months period, but not during the first 12 months of the term of the Agreement or relevant part. Such increase shall take effect no earlier than 1 month after Customer has been notified thereof. Any increase of prices or fees shall be based on the then current prices or fees and in proportion to the increase, if any, of the Consumer Price Index (CPI) in the 12 months prior to the notification date.
- 2.7. If this Agreement, or any distinct part thereof, provides for automatic renewals of the term, Siemens Healthineers reserves the right to adjust the pricing at the end of the initial term or each renewal period. In such a case Siemens Healthineers will inform Customer in writing at least one month ahead of the latest date stated in the auto-renewal provision at which Customer may issue the termination notice. Unless Customer terminates the Agreement, or part thereof, in accordance with its terms, the new pricing will apply from the start of the subsequent renewal period.
- 2.8. Customer shall make payments by wire transfer or cheque to a bank account of Siemens Healthineers named to Customer from a bank account held by Customer in its name and for its account. The Customer's bank account must be held with a bank in the country in which Customer has its principal place of business or as otherwise agreed in writing in accordance with applicable anti-money laundering laws. Siemens Healthineers accepts no cash payment.

### 3. Third-Party Software

- 3.1. Deliverables may contain Third-Party Software. The use of Third-Party Software by Customer shall be subject to any applicable license terms that are integrated into or provided with the Deliverables (e.g., through a Readme OSS or similar file). In addition, certain Commercial Third-Party Software is also subject to further (pass-through) license terms referenced in the Commercial Form or accessible through the following link: <https://www.siemens-healthineers.com/it-terms-conditions>. All such license terms shall prevail over any conflicting terms of this Agreement with respect to the Third-Party Software. For Deliverables remotely accessed by Customer (e.g., software-as-a service), the foregoing shall apply where required by the Third-Party Software license terms.
- 3.2. For Open-Source Software, no license fees shall be invoiced to Customer. To the extent and during the time required by applicable license terms, Siemens Healthineers shall provide source code which is Open-Source or related material (i) with the Deliverables or (ii) on Customer's written request against a reasonable handling fee.
- 3.3. Any license terms applicable to an update, upgrade or new version shall prevail over any terms that were applicable to the relevant part of the Deliverable prior to such update, upgrade or new version.
- 3.4. Customer hereby authorizes Siemens Healthineers to accept on Customer's behalf any license terms applicable to Third-Party Software if required by the respective suppliers during installation or configuration. Such license terms will not lead to additional costs or to additional restrictions on Customer's use of the Deliverables if Customer remains within the scope of the license originally granted. Customer may (i) access such license terms in the user interface or documentation of the respective Deliverables or (ii) request such license terms from Siemens Healthineers.

### 4. Intellectual Property Infringement

- 4.1. In case of a claim, suit, action or proceeding brought against Customer by a third party based on an infringement by the Deliverables of patents or copyrights ("Claim"), then subject to the following provisions of this Section 4, Siemens Healthineers shall, at its option and expense, either: (i) procure for Customer the right to use the affected Deliverables; or (ii) provide Customer with a non-infringing replacement or (iii) modify the Deliverables so that they become non-infringing. If in Siemens

Healthineers' assessment none of the foregoing is reasonably possible, Siemens Healthineers at its option may take back, delete or block Customer's access to the Deliverables, as applicable, and (a) in case of a subscription stop charging to Customer the subscription fees for the affected Deliverables or (b) in all other cases, refund to Customer the price for the affected Deliverables less reasonable depreciation accounting for Customer's prior use of the Deliverables.

- 4.2. Siemens Healthineers obligations in Section 4.1 are subject to the following conditions: Customer (i) gives Siemens Healthineers prompt written notice of any alleged Claim; (ii) does not acknowledge an infringement and provides Siemens Healthineers with the authority, information and assistance reasonably requested by Siemens Healthineers to defend or settle such Claim; and (iii) gives Siemens Healthineers sole control of the defense (including the right to select counsel), and the sole right to settle such Claim. If Customer ceases to use the Deliverables or any relevant portion thereof, it shall notify the third party in writing that this cessation of use is not an admission of the Claim.
- 4.3. Siemens Healthineers shall have no obligations under this Section 4 with respect to any Claim based on or related to: (i) Customer's use of the Deliverables in a manner not consistent with the User Documentation or the terms of this Agreement; (ii) specific demands of Customer; (iii) infringement of any method or process in which the Deliverables may be used but not covering the Deliverables when used alone; (iv) modifications of the Deliverables other than by Siemens Healthineers; (v) Customer's use of the Deliverables in combination with other software, technology, or devices not provided by Siemens Healthineers for use with the Deliverables; (vi) Customer's use of Deliverables which are not the most current update, upgrade or new version and if the Claim would have been prevented by using such update, upgrade or new version; or (vii) any Claim attributable to Customer for other reasons.
- 4.4. The foregoing Sections state the entire liability of Siemens Healthineers with respect to the infringement of any intellectual property rights, and any other claims, rights and remedies of Customer for the infringement of intellectual property rights shall be excluded.
- 4.5. Any claims against Siemens Healthineers resulting from the infringement of intellectual property rights shall be time-barred upon the expiry of (i) the applicable Subscription Period in case of a subscription license; or (ii) the applicable warranty period determined in the Supplemental General Terms in all other cases.

### 5. Limitation of Liability

- 5.1. Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, statute, in equity or otherwise any liability of Siemens Healthineers under or in connection with the Agreement shall be limited to:
  - a. the amount paid for the specific Deliverable in relation to which the claim arose; or
  - b. in case of Deliverables that Siemens Healthineers provides for a term (e.g., continuous supply, subscription license, support agreements), the total amount paid during the twelve 12 months immediately preceding the event giving rise to the claim. If a claim arises during the first contract year, the liability of Siemens Healthineers shall be limited to the total amount of payments projected for the respective Deliverables for such contract year.
- 5.2. In no event shall Siemens Healthineers be liable for any interruption of operations, loss of production, loss of interest, income, profit or saving, loss or corruption of data, loss of use, costs associated with data recovery or re-creation, or indirect, incidental, consequential, exemplary, punitive, or special damages, under contract, tort negligence, warranty, indemnity, equity or statute or otherwise under any other legal theory,

even if Siemens Healthineers was advised of, or otherwise should have been aware of, the possibility of such damages.

- 5.3. The limitation of liability in this Section 5.1 shall not apply to bodily injury and death, cases of willful misconduct and to the extent that liability cannot be limited under applicable laws.
- 5.4. Any claims against Siemens Healthineers shall be time-barred 12 months after the event giving rise to the respective claim or, in the case of continuous occurrence, its initial onset.
- 5.5. Any limitations and exclusion of liability shall also apply to the benefit of Siemens Healthineers' officers, directors, employees, agents and subcontractors.
- 5.6. This section shall survive termination, expiry or repudiation of the Agreement.
- 5.7. Customer shall effect and maintain with a reputable insurer the following insurances:
  - a. public and products liability insurance which provides cover for an amount of not less than AUD 20 million per occurrence or such other amount agreed in writing between the parties; and
  - b. workers compensation insurance to cover the to cover Customer's statutory and common law liability to its Personnel.
- 5.8. The Customer shall provide Siemens Healthineers with certificates of currency evidencing the insurances required pursuant to section 5.7.

## 6. Confidentiality

- 6.1. Each Party shall use Confidential Information of the other Party solely for the purposes for which it was provided, keep it confidential and shall not disclose it except to those of its employees, and/or to employees of its Affiliates or advisors or subcontractors, who reasonably need to know such Confidential Information for the purposes for which it was provided and who are bound to confidentiality either by their employment agreement or otherwise in writing to an extent not less stringent than the obligations imposed under this Agreement.
- 6.2. These obligations shall not apply to Confidential Information (i) which was already known to the receiving Party without any confidentiality obligation; (ii) which is generally in the public domain (other than through a breach of a confidentiality obligation) or subsequently becomes publicly available through no breach of confidentiality obligations by the receiving Party; (iii) which the receiving Party has obtained from a third party without any confidentiality obligation provided such third party is not, to the receiving Party's knowledge, in breach of any confidentiality obligation relating to such information; (iv) which the receiving Party has developed independently from any Confidential Information; (v) to the extent it is required to be disclosed by a binding decision of a governmental body, a court order or applicable law (other than section 275(1) of the *Personal Property Securities Act 2009* (Cth)) or under the rules of the stock exchange) provided that, unless it is impossible under the circumstances or prohibited by law, the receiving Party has given written notice of such ruling or order to the disclosing Party without undue delay so as to give the disclosing Party an opportunity to intervene, and provided further that the receiving Party uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially; or (vi) to the extent the disclosing Party has agreed that such information may be used otherwise under this Agreement.
- 6.3. These confidentiality obligations shall survive termination or expiry of this Agreement for a period of 7 years. Trade secrets and secrets of third parties, e.g., health data which are subject to professional secrecy, shall in any case be kept confidential according to the terms of this Agreement for an indefinite period of time.

## 7. PPSA

- 7.1. The parties contract out of the provisions of the *Personal Properties Securities Act 2009* allowed by section 115 to the following extent:
  - a. an exercise by Siemens Healthineers of any right, power or remedy will be taken not to be under a provision mentioned in that section to the extent that the right, power or remedy is granted under any other law or statute or under these conditions unless Siemens Healthineers so elects; and
  - b. any restriction on the exercise by Siemens Healthineers of a right, power or remedy, or any obligation of Siemens Healthineers to give notice, will not apply to the extent that the section so allows.
- 7.2. Customer waives its right to receive each notice which, pursuant to section 157(3) of *Personal Properties Securities Act 2009*, it is permitted to waive.
- 7.3. Customer waives its rights to receive anything from Siemens Healthineers pursuant to section 275 of the *Personal Properties Securities Act 2009* and agrees not to make any request of Siemens Healthineers under that section.
- 7.4. Customer consents to the grant of security to Siemens Healthineers in the Deliverables to secure payment of amounts owing to Siemens Healthineers. Customer consents to Siemens Healthineers perfecting its interest in any Deliverables by registration under the *Personal Properties Securities Act 2009* and agrees to do anything reasonably requested by Siemens Healthineers to enable it to do so.

## 8. Customer Responsibility

- 8.1. Customer is solely responsible for using the Deliverables in accordance with this Agreement, the User Documentation and all applicable laws, and for the legality, accuracy and adequacy of any information and data furnished for processing.
- 8.2. Customer is solely responsible for any practice of medicine or provision of medical or clinical services, including any medical or clinical decisions, judgments, and actions that Customer or its users may undertake. Siemens Healthineers and its Affiliates are not authorized to practice medicine and have no responsibility for any decisions made or actions taken or omitted by Customer in rendering medical or clinical care or providing medical or clinical services, or for information provided to patients or caregivers.
- 8.3. Customer shall fully cooperate with and support Siemens Healthineers and its subcontractors (e.g., by providing any required information, ensuring preparation of site, providing the hardware environment, maintaining the security of Customer networks to protect against cyber-attacks using the most current cyber avoidance strategies, procuring required approvals and permits, whitelisting of URLs specified in the data sheets). Customer shall obtain and maintain any approval licenses or permits that are necessary to enable Siemens Healthineers to supply the Deliverable. Customer shall ensure that third parties appointed by Customer also comply with these obligations.

Siemens Healthineers shall be relieved from any performance obligations if and to the extent their completion is prevented by Customer's non-performance or delay. In such a case agreed deadlines applicable for the Deliverables shall be extended accordingly and Siemens Healthineers shall be entitled to reimbursement of wasted and additional costs. Any other rights and remedies of Siemens Healthineers shall remain unaffected.

If a third party (including End Customers) becomes the owner of or acquires any right in the Deliverables, or if Siemens Healthineers performs or delivers Services at any location owned or operated by a third party (including End Customers), Customer shall ensure that the aggregate liability of Siemens Healthineers towards Customer and such third party will not exceed the limits of liability agreed in this Agreement. Customer shall compensate Siemens Healthineers to the extent that Siemens Healthineers' aggregate liability towards Customer and

the third party exceeds the limitation of liability agreed with Customer. „End Customer“ means the institution, hospital or any other legal entity which is the ultimate owner or end user of the Deliverables.

- 8.4. At Siemens Healthineers’ discretion, Siemens Healthineers can fulfill its legal and contractual obligations either on site or remotely. Customer shall provide Siemens Healthineers with both on-site and remote access to the Deliverables as reasonably required by Siemens Healthineers including for installation of any updates made available by Siemens Healthineers to eliminate or mitigate safety risks, security risks and/or defects. Customer shall permit a remote connection connecting the Deliverables which are capable of being connected to the secured Siemens Healthineers link, e.g., Smart Remote Services or Smart Connect. For remote connectivity the Remote Connection Terms of Siemens Healthineers apply. Customer shall establish at its cost and risk any technical requirements for such connection beyond the Deliverables, including a state of the art secured broadband connection unless otherwise agreed in the Commercial Form.
- 8.5. If Siemens Healthineers is not able to fulfill its obligations remotely or provide support, updates or trainings remotely for reasons not attributable to Siemens Healthineers (e.g. Customer not complying with its obligations, incorrect technical set-up at Customer site, lack of a Data Processing Agreement), Siemens Healthineers
  - (i) shall be released from any obligation to provide any Services. In the case of a platform-based Service, Customer’s access to the relevant platform and all associated Services may be blocked. Customer’s obligation to pay the fees applicable to such Services remains unaffected;
  - (ii) may fulfill its obligation or provide support, updates or trainings on-site while charging any additional costs to Customer based on Siemens Healthineers’ then existing prices and/or adjust any guarantees, schedules or milestones, or
  - (iii) may terminate the Agreement in whole or in part if the relevant obligation, support, update or training can only be provided remotely (e.g. monitoring Services).
- 8.6. Customer warrants that use by Siemens Healthineers of any design materials documents and methods of working provided or directed by Customer to enable Siemens Healthineers to provide the Deliverables under the Agreement, will not cause Siemens Healthineers to infringe any third party’s intellectual property rights and Customer will indemnify Siemens Healthineers upon request for any loss or damage incurred by Siemens Healthineers in connection with such infringement.
- 8.7. Customer warrants that it shall not operate any Deliverable after receiving a notice from Siemens Healthineers that a condition exists which constitutes a hazard until such condition has been rectified.

## 9. Indemnity

- 9.1. Customer shall indemnify Siemens Healthineers and its Personnel (the “**Indemnified**”) against all liabilities incurred by the Indemnified arising out of any loss of or damage to property and claims by persons in respect of personal injury or death, to the extent of the loss, damage, injury or death was caused by an act or omission of Customer, except to the extent loss or damage was caused by the negligent act, omission of Siemens Healthineers.
- 9.2. Where Deliverables are provided at Customer’s premises, Customer shall indemnify Siemens Healthineers from costs and expenses arising from any data loss caused by Customer or by its facilities.
- 9.3. Customer remains fully responsible for all clinical advice, diagnosis and therapy given by its Personnel and releases and indemnifies Siemens Healthineers from and against any claims or liability arising as a result of the provision of clinical advice,

diagnosis or therapy using the equipment or otherwise following training on the Deliverable.

## 10. Customer IT

- 10.1. In order to protect Deliverables against cyberthreats, it is necessary that Customer implements and continuously maintains a comprehensive, holistic, state-of-the-art security concept for its IT infrastructure, including regular vulnerability scanning, but subject to the proviso that (i) scanning or testing shall not be performed during clinical use, and (ii) the system configuration and/or IT security controls of the Deliverable must not be modified.
- 10.2. Customer is responsible for preventing unauthorized access to the Deliverables, including for changing passwords and other protective settings from their default values to individual ones. The Deliverables shall only be connected to an enterprise network or the internet if and to the extent such a connection is authorized in Siemens Healthineers’ instructions for use and if Customer ensures that appropriate security measures including firewalls, network client authentication and/or network segmentation are in place.
- 10.3. Customer is responsible for implementing and maintaining a state-of-the-art, immutable, back-up system, which is independently secured and separated from the Deliverables to prevent any loss of data generated and/or used by the Deliverables.
- 10.4. Customer may only connect USB-storage media and other removable storage devices to Deliverables if and to the extent such connection is authorized in Siemens Healthineers’ instructions for use and if Customer minimizes the risk of a malware infection of the Deliverables through malware scanners or other appropriate means.
- 10.5. Customer shall notify Siemens Healthineers without delay in case of suspected or actual cybersecurity incidents or vulnerabilities of the Deliverables. Customer shall ensure that such information is kept confidential unless disclosure is required by applicable law or Siemens Healthineers has given its prior written consent to the disclosure.

## 11. User Training for Medical Devices

- 11.1. On or before the start of operation of the Deliverables, Siemens Healthineers will provide user training required by law on the proper handling, use and operation of the Deliverables which are medical devices. Siemens Healthineers determines the scope and duration of such user training in accordance with its or its supplier’s instruction guidelines. Siemens Healthineers will provide such training at its discretion and in accordance with applicable law in remote sessions or on-site. Alternatively or in addition, to the extent legally permissible, the user training may require that Customer’s personnel perform prior mandatory self-study units made available for example via an online learning platform (such as Siemens Healthineers Academy or VarianThink) or a remote services infrastructure of Siemens Healthineers. In such case additional terms and conditions
- 11.2. Customer shall facilitate such user training, provide a qualified representative as contact partner for Siemens Healthineers, ensure that its personnel that will receive the user training has the required qualifications and will be available for the entire duration of such user training and that relevant accessories and consumables to be used for the user training are available and in good working order.

## 12. Data Privacy

- 12.1. Siemens Healthineers and Customer are each responsible for their respective compliance with applicable data privacy laws. Customer is solely responsible for how Customer acquires Personal Information, and Customer shall only disclose to Siemens Healthineers Personal Information which are covered by a legal authorization and for which Customer has a legal right of processing.
- 12.2. Customer undertakes to obtain and maintain all consents in relation to collection, handing, access, use and disclosure of

Personal Information which are required by law for Siemens Healthineers performance of the Agreement and any other reasonably related purpose. Siemens Healthineers shall comply with the Privacy Act 1988 (Cth) with respect to the Personal Information.

- 12.3. If Siemens Healthineers processes Personal Information provided by Customer as part of the provision of the Deliverables, such processing shall be governed by the privacy policy of Siemens Healthineers, (available on Siemens Healthineers internet site: <http://www.siemens-healthineers.com/en-au/> or on request) unless otherwise agreed.
- 12.4. Siemens Healthineers processes Personal Information, for example names of contact persons to the extent required for the implementation and performance of its obligations under the Agreement. and as described in the privacy notice of Siemens Healthineers and otherwise in accordance with the applicable Law.
- 12.5. Customer's employees and other personnel may request at any time, by sending a notice to [healthcare.dataprivacy.au@siemens.com.au](mailto:healthcare.dataprivacy.au@siemens.com.au), that Siemens Healthineers cease to provide them with information on additional offerings and/or approaching them for surveys and feedback.

### 13. Data Use

- 13.1. Subject to applicable data privacy laws, Customer acknowledges that Siemens Healthineers and its Affiliates, subcontractors and suppliers will access, use, and process Customer Data and Technical Data on a limited, non-exclusive basis to the extent required by Siemens Healthineers to implement the Agreement and provide the Deliverables, including for the purposes of (i) performing, distributing, displaying, processing, managing, administering, monitoring, modifying, supporting, and enhancing the Deliverables; (ii) creating anonymized data; (iii) fulfilment of legal or regulatory obligations, including product surveillance; and (iv) invoicing.

Customer permits Siemens Healthineers and its Affiliates to access, use, process, copy, aggregate, analyse, modify, combine with other data and create derivative works from Technical Data on a non-exclusive basis without restriction in terms of time, location, transferability and sublicensing, for the business purposes of Siemens Healthineers and its Affiliates, such as (i) facilitating and advising on a continued and sustained use of Deliverables or other products, software and services; (ii) the substantiation of marketing claims for their products, software and services by means of aggregated data; (iii) benchmarking; (iv) research or development purposes (for example to determine usage trends, or to improve existing and/or develop new products, software and services).

### 14. Suspension and Termination

- 14.1. Siemens Healthineers is entitled to suspend the performance of its obligations (i) if Customer is in delay for more than 30 days with any payment or with providing any agreed payment security or (ii) if Customer otherwise materially breaches the Agreement. Any additional costs incurred by Siemens Healthineers due to such suspension shall be borne by Customer.
- 14.2. This Agreement may not be terminated for convenience by either Party except as otherwise provided for in this Agreement.
- 14.3. If a Party materially breaches this Agreement and does not remedy such breach within 60 days from receipt of written notice specifying the breach by the other Party, or if a plan to remedy such breach has not been mutually agreed within the same period, the non-defaulting Party shall be entitled to terminate that distinct part of this Agreement which is affected by such breach. It shall always qualify as a material breach if Customer fails to make payment when due or as set forth in Section 2.8.
- 14.4. Either Party may also terminate this Agreement for cause with immediate effect in the case of the other Party ceasing to

operate in the ordinary course of business, making an assignment for the benefit of creditors or a similar disposition of its assets upon the appointment of a voluntary administrator, or becoming the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

- 14.5. Provisions which by their nature and/or content are intended to survive shall continue to apply after the termination of this Agreement.

### 15. Force Majeure

- 15.1. Neither Party shall be liable for any damage, delay or non-performance of its obligations (except for payment obligations) under this Agreement if a Force Majeure prevents or materially impedes the performance of its obligations. Each affected Party shall notify the other Party of such event without undue delay.
- 15.2. Each Party shall use reasonable efforts to minimize the consequences of such Force Majeure event. Any deadlines shall be reasonably extended, allowing sufficient time for the resumption of supplies and services. The Parties will negotiate without undue delay a fair and reasonable adjustment of this Agreement to take account of the consequences of the Force Majeure event.
- 15.3. If the Parties fail to agree to the terms of a variation and the Force Majeure event preventing or materially impeding the performance of the Agreement continues for more than 6 continuous calendar months, either Party may to the exclusion of further claims terminate any affected parts of this Agreement. Any accrued rights to which either Party is entitled at the date of such termination shall remain unaffected.
- 15.4. Upon termination of the Agreement, Customer shall pay to Siemens Healthineers:
- all amounts due to Siemens Healthineers for Deliverables;
  - the cost of materials and equipment reasonably ordered by Siemens Healthineers for the work under the Agreement and which Siemens Healthineers is liable to accept; and
  - other costs incurred by Siemens Healthineers as a result of the Force Majeure event or incurred in anticipation of performing the Agreement for the full term.

### 16. Third-Party Websites

Certain Deliverables may contain links to third-party websites. Siemens Healthineers has no influence on and accepts no responsibility or liability for any content or information provided on third-party websites. Any use of such third-party websites is at Customer's own risk.

### 17. Export Control

- 17.1. Customer shall comply with all applicable sanctions, embargoes and (re-)export control laws and regulations, and, in any event, with those of the European Union, the United States of America and any locally applicable jurisdiction (collectively "Export Regulations"). Customer shall not sell, export or re-export, directly or indirectly, to any sanctioned country any Deliverables supplied by Siemens Healthineers that are pursuant to applicable medical device legislation, neither (i) in-vivo medical devices, nor (ii) in-vitro medical devices except for instruments and apparatuses using optical radiation and shall undertake its best efforts to ensure that the re-export prohibition is not frustrated down the commercial chain.
- 17.2. Upon request by Siemens Healthineers, Customer shall without undue delay provide Siemens Healthineers with all information pertaining to the particular End Customer, the particular destination, the particular intended use of Deliverables and if applicable User(s), and location of use. Customer will notify Siemens Healthineers prior to Customer disclosing any information to Siemens Healthineers that is defense-related or requires controlled or special data handling pursuant to applicable government regulations and will use the disclosure tools and methods specified by Siemens Healthineers.
- 17.3. Customer shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals,

- (i) download, install, access, or use the Deliverables from or in any location prohibited by or subject to comprehensive sanctions or subject to license requirements according to the Export Regulations;
- (ii) grant access to, transfer, (re-)export (including any 'deemed (re-)exports') or otherwise make available the Deliverables to any entity, person, or organization identified on a restricted party list of the Export Regulations or owned or controlled by a listed party;
- (iii) use the Deliverables for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons);
- (iv) upload to any digital services platform of Siemens Healthineers any content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99).
- (v) facilitate any of the aforementioned activities by any User of the Deliverables.

17.4. Customer shall provide any entity, person, or organization to whom Customer grants access, transfers or otherwise makes available the Deliverables (collectively for the purpose of this Section 17 "User(s)") with all information necessary to ensure compliance with the Export Regulations. Customer shall

- (i) be responsible for the use of the Deliverables by any User;
- (ii) procure to pass on all of Customer's obligations under this Section 17 to each User;
- (iii) ensure that all Users comply with Customer's obligations under this Section 17.

Should Customer become aware of any violation of Export Regulations or any obligations under this Section 17, Customer shall immediately terminate the relevant User's access to the Deliverables, if applicable.

17.5. Customer will indemnify and hold harmless Siemens Healthineers, its Affiliates, subcontractors, and their representatives, against any claims, damages, fines and costs (including reasonable attorney's fees and expenses) in connection with Customer's noncompliance with this Section 17. Customer will compensate Siemens Healthineers for all losses and expenses resulting thereof.

17.6. Siemens Healthineers shall not be obligated to fulfill this Agreement if such fulfillment is affected by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. Customer acknowledges that Siemens Healthineers may be obliged under the Export Regulations to limit or suspend access by Customer and/or User(s) to the Deliverables.

17.7. If and to the extent the sale, licensing or provision of Deliverables is subject to prior authorization by the competent export control authorities this Agreement shall come into force only upon granting of such authorization.

## 18. Changes in Law

If applicable laws, rules, regulations, engineering standards, codes of practice, or decisions or guidance by courts or public authorities are issued or changed after an Agreement, or part thereof, comes into effect that is subject to recurring fees (such as agreements for Services), Siemens Healthineers is entitled to a reasonable adjustment of the Agreement to reflect the effects of such changes on its costs and ability to provide the Deliverables.

## 19. Applicable Law, Dispute Resolution

19.1. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Victoria and the laws of the Commonwealth of Australia. The principles of conflicts of laws and the UN Convention on the Sale of Goods are excluded.

19.2. The courts of Victoria shall have exclusive jurisdiction for all disputes arising out of or in connection with this Agreement.

19.3. Customer acknowledges that a breach or threatened breach of any term relating to Confidential Information, data or intellectual property rights would cause Siemens Healthineers

irreparable harm not compensable in monetary damages and, accordingly, Siemens Healthineers is, in addition to all other remedies available under the Agreement, at law or in equity, entitled to seek immediate injunctive relief in any court of competent jurisdiction without the necessity of posting any form of security and Customer agrees to not object to such an application.

19.4. Any dispute or difference between the parties arising out of or in connection with the Agreement (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).

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

- a. The Dispute shall be submitted for negotiation by a fully authorized representative of each party; and
- 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 of less than a \$100,000, a party may commence legal proceedings to resolve the Dispute; or

- (ii) The Dispute shall be referred to mediation in accordance with, and subject to, the Resolution Institute of Mediation Rules by a mediator who is independent of the parties, or failing agreement within 21 days of receipt of a party's Notice of Dispute, by a mediator appointed by the Chair of the Resolution Institute.

- (iii) Subject to compliance with the steps under clause 19.5(a) and 19.5(b)(ii), if the Dispute has not been resolved within 21 days of the date of referral to mediation under clause 19.5(b)(ii), either party may subject the Dispute to arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules by one arbitrator (who shall be a lawyer, be independent of the parties and give his or her decision in writing and based on legal substance) agreed by the parties or failing agreement within 7 days of referral to arbitration, as nominated by the Chair of the Resolution Institute.

- (iv) 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 Melbourne, Victoria. The language to be used in the arbitration shall be English.

- (v) Reference of a Dispute to arbitration under clause 19.5 shall not relieve either party from any other obligations under the Agreement, including if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceeding to ensure that the progress of the Agreement is maintained.

19.6. 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 Agreement.

## 20. Assignment, Subcontracting

20.1. This Agreement or any rights or obligations hereunder may not be assigned or otherwise transferred by either Party without the prior written consent of the other Party. However, Siemens Healthineers may (i) assign this Agreement in whole or in part and/or its rights and obligations hereunder without the consent of Customer, to an Affiliate or to a successor in interest of all or part of the business to which this Agreement relates and (ii) sell its accounts receivable or assign any of its claims for payment under this Agreement to any third party.

20.2. Siemens Healthineers may have any obligation hereunder performed by a subcontractor, including Affiliates.

## 21. Notices, Changes, Written Form

21.1. Any notice to be given under the Contract shall be given in writing and delivered personally or sent by pre-paid post (airmail if to or from a place outside Australia) addressed to the

other party at such address as a party notifies the other for the purposes of this clause.

- 21.2. 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, 3 Business Days (7 if to or from a place outside Australia) after the date of posting.
- 21.3. If a notice is deemed to be given under section 21.1 on a day which is not a Business Day in the place which the notice is received; or is deemed to be received after 4.00 pm in that place, the notice will be deemed to be given on the next Business Day in that place.
- 21.4. The Agreement may only be varied by written agreement between the parties. Despite any acceptance by Siemens Healthineers of any order from Customer that may contain any provision and/or Customer's terms and conditions which are inconsistent with or purporting to vary or reject any of these Conditions, any agreement arising from such acceptance shall be subject to these Conditions unless and to the extent only that Siemens Healthineers expressly agrees in writing to any variation of these Conditions.

## **22. Publicity**

Except as may be required by applicable law, neither Party shall issue a press release in connection with the subject matter of this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

## **23. Miscellaneous**

- 23.1. When implementing this Agreement, each Party shall comply with any applicable laws and regulations.
- 23.2. In case of a conflict the documents prevail in the following order: (i) Commercial Form; (ii) the Specification; (iii) these General Terms and any other terms and documents referenced in the Commercial Form in the order of precedence indicated in those terms and documents.
- 23.3. Any delay or failure (whether partially or otherwise) in exercising any right will not constitute a waiver or lapse of such right. A single or partial exercise or waiver of a right relating to the Agreement does not prevent a further exercise of that right or the exercise of any other right. A waiver is not valid unless given in writing.
- 23.4. This Agreement comprises the entire agreement between the Parties and supersedes any previous agreements relating to its subject matter. The reference to a document that refers to another document shall be deemed to also incorporate such other document, unless otherwise stated therein. Changes to this Agreement shall apply only if agreed by the Parties in accordance with Section 20. Other terms and conditions, including those of Customer in its purchase orders or other documents, shall not apply.
- 23.5. If any provision of this Agreement is illegal, invalid or unenforceable, all other provisions of this Agreement remain unaffected. The Parties shall replace such invalid or unenforceable provision by a provision which reflects as closely as possible the intention of the Parties.
- 23.6. The Agreement may be executed in counterparts which taken together shall constitute one instrument. 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.