

# General SaaS Terms

(Version: dd.MM.yyyy)

These General SaaS Terms govern the provision of SaaS Services by Siemens Healthineers in addition to (i) the Commercial Form and (ii) the General Terms and the Digital Access and Use Terms (together “Terms”). These General SaaS Terms shall be read as complementary to the Terms and prevail in case of conflict.

## 0. Definitions

In addition to the definitions in the Terms the following definitions apply:

- 0.1. “API” means application program interface.
- 0.2. “Defect” means any failure to perform the Professional Services in a professional, competent, and businesslike manner and substantially in accordance with the Statement of Work.
- 0.3. “First Productive Use” means the date on which data is first processed for the own business purposes of Customer (i.e., hospital operations) by means of the SaaS Services outside any acceptance testing agreed with Siemens Healthineers.
- 0.4. “Major Defect” means a Defect that substantially interferes with the operation of the SaaS Services.
- 0.5. “Professional Services” means the installation, implementation, configuration and other ancillary services described in the Project Workplan and/or the Statement of Work related to SaaS Services, but does not include maintenance, warranty, support, Customer-specific programming or any other Customer-specific services.
- 0.6. “Project Workplan” means a document that outlines the tasks and responsibilities of the Parties as well as timelines for the performance of such tasks. The Project Workplan is usually part of the Statement of Work.
- 0.7. “SaaS” means Software-as-a-Service.
- 0.8. “SaaS Service Model” means the service and payment model described in the Commercial Form (referring to, for example, structure sets, patient reviews, patients, plans, kilo procedure, number of cases per year, hours per time).
- 0.9. “SaaS Services” means Digital Services as described in the Commercial Form which are based on a software application provided by Siemens Healthineers and made available to Customer on a subscription basis remotely through the internet, including (i) on the Platform, e.g., in the context of software-as-a-service or platform-as-a-service offerings, and/or (ii) by providing such Digital Services on the IT infrastructure of Customer, for example in the context of managed service offerings.
- 0.10. “Statement of Work” or “SOW” means the description of the project scope of Professional Services as specifically agreed between Customer and Siemens Healthineers.  
 “Subscription Fees” means the recurring fees which Customer shall pay to Siemens Healthineers as set out in the Commercial Form.

## 1. Scope

- 1.1. Siemens Healthineers provides the SaaS Services substantially in accordance with the features and functionalities set out in the Specification, as may be updated from time to time.
- 1.2. Siemens Healthineers shall be entitled to audit Customer’s use of the SaaS Services or embed software controls or counters to monitor Customer’s compliance with the SaaS Service Model and charge metrics or otherwise as necessary for payment or invoicing purposes. Siemens Healthineers will invoice any excess usage according to the current contracted rate. If Customer intends to exceed the permitted scope of use of the SaaS Services, Customer shall notify Siemens Healthineers within 30 days to execute a corresponding amendment to this Agreement.
- 1.3. The provision of SaaS Services always excludes (i) the provision of any software or services that are not provided to Customer

by Siemens Healthineers (including applications or on-premise software provided by third parties and external websites), even if they interoperate with the SaaS Services, can be accessed from the SaaS Services, or are offered in an online marketplace provided by Siemens Healthineers; (ii) the transmission of data or software to and from the exit of the wide area network of the data centers used by Siemens Healthineers to provide the respective SaaS Service; and (iii) any hardware intended for the connection of devices, systems, or other equipment to the Platform.

## 2. Service Changes

- 2.1. Siemens Healthineers provides the SaaS Services as a standard service to several customers and therefore reserves the right to change, reduce or discontinue certain SaaS Services or any functionality of the SaaS Services during the Subscription Period if and to the extent: (i) required to conform with applicable laws, a court decision, or a request from a governmental body, if such conformity cannot be ensured otherwise by Siemens Healthineers acting commercially reasonably; (ii) Siemens Healthineers’ relationship with a third-party supplier of services or technology required for providing the SaaS Services or functionality expires, terminates or requires Siemens Healthineers to change the way it uses such services or technology; (iii) Siemens Healthineers is no longer able to provide the SaaS Services due to circumstances beyond Siemens Healthineers’ reasonable control; (iv) required for mitigating security risks; or (v) Siemens Healthineers has decided to suspend or no longer offer the SaaS Services for business reasons.
- 2.2. Any material functional reduction or temporary interruption of SaaS Services by Siemens Healthineers in accordance with Section 2.1 shall be subject to a reasonable notice period, provided that any permanent discontinuation of a SaaS Service shall be subject to a notice period of 6 months. Customer may terminate any such SaaS Services within 30 days from the notification date.
- 2.3. In the event of such permanent discontinuation or termination of SaaS Services, Siemens Healthineers will refund any prepaid amounts for the applicable SaaS Services on a pro-rata basis for the remaining Subscription Period.

## 3. Use of SaaS Services

- 3.1. Siemens Healthineers grants Customer a non-exclusive, non-transferable, non-sublicensable, non-assignable, time-limited, and revocable right to access and use, and allow Individual Users to access and use, the SaaS Services for its internal purposes, subject to the limitations set out in this Agreement.
- 3.2. Any enabling software provided by Siemens Healthineers may only be used for the purposes of and in connection with Customer’s use of the SaaS Services and for the duration of Customer’s access thereto.
- 3.3. Customer is responsible for the development, content, management, use, and quality of Customer Content and the means how Customer acquires and shares Customer Content. This includes: (i) the technical operation of Customer Content including compatibility of any calls Customer makes to a SaaS Service with the Platform APIs; (ii) the transfer or copying of Customer Content to data centers outside Customer’s country of residence in compliance with applicable laws; (iii) taking steps to maintain legally required or otherwise appropriate security and protection, including backup and archiving, of Customer Content; and (iv) any document retention or archiving

obligations resulting from applicable laws or company policies. Customer shall properly handle any notices and claims sent to Customer claiming that Customer Content violates third party's rights or applicable laws.

- 3.4. Customer will provide any information or other materials related to Customer Content that Siemens Healthineers reasonably requests to verify Customer's compliance with this Agreement.
- 3.5. Siemens Healthineers will delete Customer Content during the Subscription Period only (i) for reasons justifying a Suspension in accordance with the Digital Access and Use Terms; (ii) if such deletion is reasonably required to avoid or limit the liability of Siemens Healthineers or any third party; or (iii) if such deletion is reasonably required for protecting the security of Siemens Healthineers' systems.
- 3.6. Unless otherwise stated in the Specification, the SaaS Services are not a substitute for Customer's primary data sources, are not intended for back-up purposes and do not substitute any back-up or storage system for electronic or health data. It is Customer's responsibility to ensure sufficient back-up of its Customer Content.
- 3.7. To the extent required for certain SaaS Services based on software applications that qualify as medical devices, Siemens Healthineers shall reasonably support Customer in the latter's capacity as an operator in complying with applicable medical device laws and regulations.
- 3.8. Customer shall limit access to SaaS Services classified as a medical device to Individual Users who have been trained with respect to the use of such SaaS Services. Customer shall ensure that Individual Users understand the instructions for use provided by Siemens Healthineers.

#### 4. Delay

- 4.1. If an Excepted Risk causes the supply of the SaaS Services to be delayed:
  - (a) Siemens Healthineers shall be granted such reasonable extension of time for performance of the service as deemed necessary by Siemens Healthineers to overcome the effect of such delay; and
  - (b) Customer shall pay to Siemens Healthineers all substantiated additional costs and expenses reasonably incurred by Siemens Healthineers as a result of such delay, except in the case that a Force Majeure event has caused Siemens Healthineers to be delayed; and
  - (c) The warranty period shall be reduced by the period of the delay unless otherwise agreed.
- 4.2. If Siemens Healthineers fails to perform its delivery obligations under the Agreement due to circumstances that are within Siemens Healthineers reasonable control and any such failure is not cured within 30 business days after receipt of a written request of Customer requiring the delivery of the SaaS Services, Customer may claim liquidated damages in the amount of 0.5 percent of the price of the fees of the delayed SaaS Services for each complete calendar week of delay, up to a maximum aggregate payment of 5 percent of the fees to be paid by Customer during the first 12 months for the SaaS Services.
- 4.3. Any claim for liquidated damages must be put forward in writing by Customer within three (3) months after the end of the respective delay, indicating the evidence to substantiate that Siemens Healthineers is responsible for the delay under the Agreement, the amount claimed and the calculation of the amount after elapse of that period, any claim for damages shall be forfeited.
- 4.4. The remedy under this Section 4 shall be the sole and exclusive remedy of Customer in respect of a delay, except as otherwise required by applicable laws.

#### 5. Warranties

- 5.1. Unless otherwise agreed, Siemens Healthineers warrants during the Subscription Period that the SaaS Services perform substantially in accordance with the Specification. If the SaaS

Services fail to perform as warranted hereunder, to the extent permissible under applicable law, Siemens Healthineers' sole obligation will be (i) to use commercially reasonable efforts to restore the non-conforming SaaS Services so that they substantially conform to the Specification, or (ii) if such restoration would not be commercially reasonable, to terminate the subscription of the non-conforming SaaS Services and refund any prepaid amounts for such SaaS Services on a pro-rata basis for the remaining Subscription Period.

- 5.2. To the extent permitted by Law and subject to section 5.4, Siemens Healthineers obligation to rectify Defects in accordance with this section 5 shall be the Customer's sole and exclusive remedy and represents the full extent of Siemens' Healthineers liability for Defects and replaces all other express or implied warranties, including any warranties of non-infringement, merchantability, or fitness for a particular purpose, course of dealing or usage of trade. Specifically, Siemens Healthineers does not warrant that the SaaS Services operate error-free, in an uninterrupted manner or in combination with third-party products, or that any specific results can be obtained by using the SaaS Services. This Section 5 does not apply to the extent prohibited by applicable law.
- 5.3. To the extent permitted by law and subject to clause 5.5:
  - 5.3.1. Siemens Healthineers obligation to rectify Defects in accordance with this clause 5 shall be the Customer's sole and exclusive remedy and represents the full extent of Siemens' Healthineers liability for Defects;
  - 5.3.2. all representations, warranties and conditions of any kind, whether express or implied (including any warranties and conditions of merchantability and fitness for a particular purpose or arising from a course of dealing or usage or trade) relating to the work that are not contained in the Commercial Form are excluded; and
  - 5.3.3. as permitted by law, for the purpose of section 5D of the *Fair Trading Act 1986* (FTA), the parties acknowledge and agree that they are contracting out of sections 9, 12A, 13 and 14 of the FTA in respect of all matters covered in this Agreement. Siemens Healthineers and the Customer acknowledges and agree that it is fair and reasonable to be bound by this clause.
- 5.4. If any goods or services to be supplied by Siemens Healthineers are acquired by the Customer for business purposes, the customer agrees that the *Consumer Guarantees Act 1993* does not apply to the Agreement in respect of those goods or services that Siemens Healthineers liability in respect of the goods or services will be limited in accordance with this Agreement.
- 5.5. The Customer acknowledges that Siemens Healthineers does not provide any express guarantees (as defined in the *Consumer Guarantees Act 1993*) other than those expressly confirmed by Siemens Healthineers in writing.
- 5.6. The Customer shall indemnify Siemens Healthineers upon demand against any liability or cost incurred by Siemens Healthineers under the *Consumer Guarantees Act 1993* as a result of any breach by the Customer of any of its obligations pursuant to these Conditions.
- 5.7. Nothing in these Conditions is intended to have the effect of contracting out of the provisions of the *Consumer Guarantees Act 1993* (or any other laws) except to the extent permitted by that Act (or those laws) and these Conditions are to be modified to the extent necessary to give effect to that intention.

#### 6. Intellectual Property

The Customer shall not, except to the extent expressly permitted under the Agreement or by law, copy, modify, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS Services in any form or media or by any means.

#### 7. Term and Termination

- 7.1. The Subscription Period starts at the date set out in the Commercial Form. Unless otherwise agreed in the Commercial

Form, the Subscription Period shall remain in effect for an initial term of 1 year. The Subscription Period shall automatically renew for additional renewal terms of 1 year (each) unless either Party provides the other Party with three months prior written termination notice, in which case the Subscription Period shall expire at the end of the initial term or applicable renewal term.

- 7.2. Termination rights of the Parties provided for in other parts of this Agreement (such as the General Terms) shall remain unaffected.

**8. Effects of Termination**

- 8.1. Upon any termination of this Agreement or any SaaS Services, Siemens Healthineers shall be relieved of its obligation to grant access to and provide the SaaS Services affected by the termination. Customer shall immediately: (i) cease using the affected SaaS Services; and (ii) return or, if instructed by Siemens Healthineers, destroy or delete all software, sample code, scripts, libraries, software development kits, technology, documentation, and other proprietary material or information made available to Customer by or on behalf of Siemens Healthineers in relation to the affected SaaS Services. Siemens Healthineers may take appropriate technical measures to prevent Customer’s continued use of the SaaS Services.
- 8.2. Except as otherwise provided in this Agreement or required by applicable laws, Siemens Healthineers shall be entitled to delete the associated Customer Content from the Platform upon the termination of this Agreement or any SaaS Service. Customer acknowledges that some Customer Content may be retained by Siemens Healthineers as part of its disaster recovery backup of the Platform until deletion of the relevant files in accordance with its policies.
- 8.3. Except as otherwise provided in this Agreement, Customer remains liable for: (i) all fees Customer has incurred until the termination date and (ii) all agreed fees for use of any (portion of) SaaS Services not terminated.
- 8.4. In the event of a legitimate termination by Customer for material breach by Siemens Healthineers according to the General Terms, Siemens Healthineers will refund any prepaid amounts for the applicable SaaS Services on a pro-rata basis for the remaining Subscription Period. In case of any other termination, Customer shall not be entitled to any refund unless otherwise provided in this Agreement.

**9. Professional Services**

- 9.1. Siemens Healthineers shall use commercially reasonable efforts to perform the Professional Services according to the Project Workplan. Whenever any event delays or threatens the timely performance of the Professional Services that is not due to Customer’s fault, then, Siemens Healthineers will make commercially reasonable efforts to notify Customer of such event and furnish all relevant details. If Siemens Healthineers is unable to meet the schedule for any Professional Services, Siemens Healthineers and Customer shall meet in good faith to discuss possible solutions, including revising the Project Workplan at no additional cost to Customer, provided that such revision does not add new Professional Services to the SOW.
- 9.2. Siemens Healthineers warrants that the Professional Services will be performed in a professional, competent and businesslike manner and substantially conform to the SOW.
- 9.3. Upon completion of any agreed Professional Services that are subject to acceptance, for example an implementation of SaaS Services, Customer will perform acceptance testing within the agreed testing period. Acceptance shall occur at the earlier of the following: (i) Customer’s signing of Siemens Healthineers acceptance form; or (ii) 14 days after completion of the agreed testing period, provided Siemens Healthineers has not received written notice from Customer of a Major Defect within such period; or (iii) First Productive Use.
- 9.4. If any Major Defects are identified during the acceptance testing or, in the case of Section 9.3 (ii), are reported within 14 days, Siemens Healthineers will correct such Major Defects within a

reasonable period. The testing period shall resume upon notification by Siemens Healthineers that the Major Defect has been corrected, and Customer shall have at least 10 days to test any corrections. Acceptance shall occur as set forth in Section 9.3. Defects that do not constitute a Major Defect shall not prevent acceptance but will be documented by the Parties and remedied by Siemens Healthineers within a reasonable period.

- 9.5. With respect to any Statement of Work or Project Workplan, each Party may submit written change requests concerning the change of content, dates or scope of the Professional Services. The other Party shall respond to a change request within 10 working days of receipt thereof. Any change shall only become effective if both Parties have amended the relevant Statement of Work or Project Workplan in writing.

**Customer-hosted SaaS Terms**

If SaaS Services or parts thereof are provided in a hosting environment on the Customer’s IT systems, these Customer-hosted SaaS Terms apply additionally and form part of the General SaaS Terms.

**0. Definitions**

- 0.1. “Customer IT” means technical equipment, resources and other requirements owned, or otherwise made available, and operated by or on behalf of Customer and needed to access and use Customer-hosted SaaS Services, including but not limited to computer hardware, software, communication devices and internet connection in accordance with the Specifications. Customer IT does not include the Hosting Environment.
- 0.2. “Customer-hosted SaaS Services” means SaaS Services that are provided on the Hosting Environment, if and as specified in the Commercial Form.
- 0.3. “Hosting Environment” means an application hosting environment provided by Siemens Healthineers which is part of the SaaS Services.
- 0.4. “Patch” means an update containing a fix of a vulnerability that may be exploited with the potential to adversely impact the SaaS Services and/or the Hosting Environment via unauthorized access, destruction, disclosure, modification of information, and/or denial of service.

**1. Download of Hosting Environment and Responsibilities of Customer**

- 1.1. As a prerequisite for the provision of Customer-hosted SaaS Services, Siemens Healthineers or Customer may download and install the Hosting Environment remotely on the Customer IT to enable the processing of Customer Data and Technical Data in the Hosting Environment, as applicable. The SaaS Services and the Hosting Environment will be operated and updated by Siemens Healthineers without any further action by the Customer being required. Customer hereby agrees to and shall enable the installation (if applicable) and operation of the Hosting Environment, the operation of the SaaS Services, and the performance of updates by Siemens Healthineers.
- 1.2. After installation of the Hosting Environment, Customer shall follow any display compatibility or other installation checks made available by Siemens Healthineers. Customer shall confirm successful completion of such checks, and a record of such confirmation shall be stored by Siemens Healthineers. SaaS Services that are a medical device may only be used after successful completion of the check procedure provided by Siemens Healthineers. Customer shall repeat the checks in case of modifications made to the hardware on which the Hosting Environment is installed or as otherwise requested by Siemens Healthineers.
- 1.3. Any warranty, liability and cybersecurity obligations of Siemens Healthineers shall be subject to (i) Customer’s compliance with any instructions by Siemens Healthineers while installing the Hosting Environment and (ii) Customer’s proper performance of compatibility checks.

## **2. Vulnerabilities and Patches to SaaS Services and Hosting Environment**

- 2.1. Despite its security efforts, Siemens Healthineers does not warrant that the SaaS Services and the Hosting Environment are free of any vulnerability that may be exploited with the potential to adversely impact the SaaS Services and/or the Hosting Environment via unauthorized access, destruction, disclosure, modification of information, and/or denial of service. Siemens Healthineers' provision and/or application of Patches shall be Customer's exclusive remedy relating to any such vulnerabilities.
- 2.2. Siemens Healthineers will make available and/or apply Patches to the SaaS Services and the Hosting Environment during the agreed term of this Agreement, provided that (i) Siemens Healthineers becomes aware of a vulnerability which in its reasonable opinion is expected to be exploited and result in an impairment of the secure operation of the SaaS Services or Hosting Environment, taking into account the individual SaaS Service attributes and operating environment as well as workarounds and/or compensating controls provided or recommended by Siemens Healthineers, and (ii) in case of Third-Party Software, the Third-Party Software provider has issued an appropriate Patch to Siemens Healthineers (without Siemens Healthineers being responsible to ensure the availability of Patches for Third-Party Software).
- 2.3. Subject to the above, Siemens Healthineers will make available and/or apply Patches to the SaaS Services and Hosting Environment within a reasonable period taking into account any required testing and validation by Siemens Healthineers and, in case of Third-Party Software, after such Patches have been made available by Siemens Healthineers' licensors. Depending on the severity of the vulnerability, Siemens Healthineers may elect to provide a Patch as part of upcoming routine updates.

## **3. Termination**

Upon expiration or termination of the Agreement to the extent it relates to Customer-hosted SaaS Services, Customer shall cease using the Hosting Environment. Siemens Healthineers shall in all cases and without prior notice be entitled to prevent any further (unauthorized) use by taking appropriate technical measures, which may include accessing the Customer IT via remote connection if required for deleting the Hosting Environment.