

## District / Sales Office

SIEMENS MEDICAL SOLUTIONS USA, INC.  
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Huntington Beach, CA 92647  
Attn: Debbie Pryer  
Phone: (714) 801-8062  
Email: deborah.pryer@siemens-healthineers.com

## Sold To

DIAGNOSTIC MEDICAL GROUP OF SO  
CALI  
1129 S SAN GABRIEL BLVD  
SAN GABRIEL, CA 91776

## Bill To

DIAGNOSTIC MEDICAL GROUP OF SO  
CALI  
1129 S SAN GABRIEL BLVD  
SAN GABRIEL, CA 91776

## Payer

DIAGNOSTIC MEDICAL GROUP OF SO  
CALI  
1129 S SAN GABRIEL BLVD  
SAN GABRIEL, CA 91776

Siemens Medical Solutions USA, Inc. is pleased to submit the following proposal for service and maintenance described herein at the stated prices and terms.  
Subject to your acceptance of the terms and conditions on the face and general terms and conditions Document hereof.

Item #	System Name	Functional Location	Service Agreement	Contract Duration	Warranty Period Price	Partial Year Price	Annual Price
1	Magnetom Skyra		Silver contract	Warranty + 3 Years	\$0	\$0	<del>\$126,049</del>
2	ECO Chiller		OEM contract	Warranty + 3 Years	\$0	\$0	\$11,500

### Includes:

Parts and/or Labor to the extent shown in Exhibit A.  
Principal Coverage Period (PCP) as stated in Exhibit A for each system.  
System Updates.  
Access to Siemens Customer Care Center for technical telephone support (remote diagnostics, if available to the site and the equipment).

### Excludes:

Parts defective due to "acts of God", abuse, misuse, neglect, thermal and shock. Specialty components, including, but not limited to: Glassware, Flat Detectors, Consumables, Transducers, MRI coils, SPECT and PET sources (unless purchased as an option). Non-Siemens components and accessories (such as VCR, injector, laser printer, MR surface coils, tables/table tops, chiller, UPS, etc.) unless specifically identified in Exhibit A.

### Notes:

The chilled water supply is an integral part of the MR Equipment covered by this Agreement and is critical for the proper operation of the Equipment and for minimizing the loss of cryogens and preventing damage to the MR and its components. Servicing of the chiller by vendors contracted and certified by Siemens is the recommended path for reducing downtime, potential cryogen losses and damage to the MR and its components. Cryogens lost on the associated MR Equipment and any other damages caused to the MR and any of its components due to issues with chillers not serviced by Siemens under a Siemens service contract or due to other excluded causes (e.g., interruption of power, force majeure occurrences, Customer misuse or negligence, etc.) are not covered under this Agreement and will be replaced and/or repaired at the Customer's sole cost and expense at the current negotiated rate for Siemens "Service By Request" (Time and Materials) customers.

Terms of payment: Net 30 days from invoice date. Past due payment is subject to 1.5% interest charge per month.

Customer's Acceptance

Siemens Medical Solutions USA, Inc.

Cindy Chen  
(By) (Signature)

CINDY CHEN, general manager  
Name and Title

Acceptance Date 6/29/17

\_\_\_\_\_  
(By) (Signature)

Debbie Pryer Service Sales Executive

\_\_\_\_\_  
Name and Title

Customer P.O. # \_\_\_\_\_ (enter P.O. # for contract billing; if not provided, Siemens will invoice without P.O.)

Standing P.O. # \_\_\_\_\_ (Initial if P.O. is required but will be issued prior to warranty expiration)  
(for T&M charges outside of the contract)

*This service agreement proposal is valid for 30 days. Agreement becomes effective upon customer signature and Siemens acceptance.  
Customer's acceptance acknowledges receipt and agreement to Terms and Conditions set forth on all pages of this proposal.*

# Exhibit A

## Item #1:

<b>Equipment:</b>	<b>Magnetom Skyra</b>		
<b>Equipment Location:</b>	DIAGNOSTIC MEDICAL GROUP OF SO CALI		
<b>Address:</b>	1129 S SAN GABRIEL BLVD, SAN GABRIEL, CA 91776		
<b>Functional Location:</b>	<b>Service Quote Nr:</b> 1-KPOV00 Rev 1	<b>Equipment Quote Nr:</b> 1-KAU3A1	<b>Payment Frequency:</b> Monthly
<b>Standard Warranty:</b> Extended Warranty	<b>Warranty Start:</b> Upon Warranty Commencement	<b>Warranty End:</b> 1 Year Duration	<b>Warranty Price:</b> \$0
<b>Service Agreement:</b> Silver contract	<b>Contract Start:</b> Upon Warranty Expiration	<b>Contract End:</b> <del>5 Year Duration</del>	<b>Annual Price:</b> <del>\$120,049</del> <b>\$114,000</b>

7 Year Duration  
CGH 6/29/17

(See Glossary pages for detailed description of items listed below.)

Coverage applies during the Warranty or Contract Period as indicated:	Warranty Period	Contract Period
Principal Coverage Period	08:00am - 05:00pm M-F	08:00am - 05:00pm M-F
Uptime Guarantee	97%	95%
Phone Response	30 min	60 min
On-Site Response	4 hours	8 hours
Parts Order Requirement	noon	6pm
Parts Delivery	Same Day	Next Day
SEP/ IFP Unit Coverage	✓	✓
syngo Remote Assist Hotline Support	✓	✓
ACR Support Package MR	✓	✓
9130 UPS Coverage	✓	✓
Safety Checks	✓	✓
Planned Maintenance	✓	✓
Quality Assurance	✓	✓
Updates	✓	✓
Technical Phone Support	✓	✓
Labor	✓	✓
Siemens Remote Services	✓	✓
Travel	✓	✓
LifeNet Access	✓	✓
Application Hotline Phone Support	✓	✓
General Spare Parts Coverage	✓	✓
No Consumable Coverage	✓	✓
UM Basic Report MR	✓	✓
Coil Coverage	✓	✓
MMA and Helium	✓	✓
Skyra 24 Channel Conf. Discount	✓	✓
Integrated Electronic Cabinet (IEC) sales # SIMR250A	✓	✓
EVOLVE SW Skyra, Skyra fit	N/A	✓
EVOLVE HW Skyra, Skyra fit	N/A	✓
Enhanced Virtual Learning Sub	N/A	Qty 1

The Options or Alternatives listed below will be included in the warranty or contract as indicated, only if initialed:

Opt/ Alt	Option / Alternative	Add to Warranty Price	Add to Contract Annual Price	Initial
Opt	Post-PCP Extension 4 hours (05:00pm - 09:00pm M-F)	\$0	\$7,474	
Opt	Consumable Coverage	\$0	\$1,500	
Opt	Siemens Virus Protection SELECT	\$0	\$600	
Opt	PM's performed outside PCP weekdays	\$0	\$5,475	
Opt	Guardian Select MR	N/A	\$10,840	

**GUARDIAN SELECT PROGRAM:**

Includes: Real time preventive monitoring  
 Fast access to expert decision from Level 2 technical support  
 System performance reports  
 Room down continuous repair effort (extends room down repairs past PCP, up to 1:00am local time)  
 Uplifts standard Silver level Uptime Guarantee to 96%  
 Uplifts on-site response time to 6 hours  
 Customer is required to provide a full time VPN connection

**This pricing is only valid for new service contracts that are signed with the equipment purchase or prior to warranty commencement.**

**No further Options or Alternatives are included in the above listed equipment.**



Item #2:

<b>Equipment:</b>	ECO Chiller		
<b>Equipment Location:</b>	DIAGNOSTIC MEDICAL GROUP OF SO CALI		
<b>Address:</b>	1129 S SAN GABRIEL BLVD, SAN GABRIEL, CA 91776		
<b>Functional Location:</b>	<b>Service Quote Nr:</b> 1-KPOV00 Rev 1	<b>Equipment Quote Nr:</b> 1-KAU3A1	<b>Payment Frequency:</b> Monthly
<b>Standard Warranty:</b> OEM Basic Warranty	<b>Warranty Start:</b> Upon Warranty Commencement	<b>Warranty End:</b> 1 Year Duration	<b>Warranty Price:</b> \$0
<b>Service Agreement:</b> OEM contract	<b>Contract Start:</b> Upon Warranty Expiration	<b>Contract End:</b> 5 Year Duration	<b>Annual Price:</b> \$11,500

(See Glossary pages for detailed description of items listed below.)

Coverage applies during the Warranty or Contract Period as indicated:	Warranty Period	Contract Period
Principal Coverage Period	08:00am - 05:00pm M-F	08:00am - 05:00pm M-F
On-Site Response	4 hours	4 hours
Planned Maintenance	✓	✓
Labor	✓	✓
General Spare Parts Coverage	✓	✓
Updates	✓	✓
Travel	✓	✓
Technical Phone Support	✓	✓
Chiller Life Expectancy	✓	✓
Chiller Coverage Exclusions	✓	✓

This pricing is only valid for new service contracts that are signed with the equipment purchase or prior to warranty commencement.

**No further Options or Alternatives are included in the above listed equipment.**

6/29/17 CGH (cc)

## Glossary

<b>Deliverables</b>	<b>Description</b>
<b>9130 UPS Coverage</b>	If selected, covers the 9130 UPS and extended battery module on all contracts having full parts coverage. For contracts including a parts allowance, the UPS will be applied toward the parts allowance. For contracts without any parts coverage, the replacement UPS will be billed with a 15% discount.
<b>ACR Support Package MR</b>	This ACR accreditation assistance package includes a remotely executed pre-submission system quality check to evaluate the readiness of one applicable Siemens system to acquire images for ACR accreditation. Supporting deliverables include one printed accreditation guidebook (additional copies available electronically) aligned to the applicable Siemens system and Siemens operating system nomenclature, workflow templates and/or phantom acquisition protocols and available web based user training containing imaging acquisition tips relative to the ACR accreditation process. Additionally, unlimited technical and clinical applications phone support pertaining to the system readiness and deliverables described above, performed by the Uptime Service Center during normal hours of operation M-F 8-8PM EST during the term of this engagement agreement. Customer is responsible for applying for accreditation, and all tasks and costs related to the application and acquiring the ACR phantom, collecting images, working with and communicating with the ACR. Numerous factors determine whether a site receives ACR accreditation. Therefore, Siemens does not guarantee a site will receive ACR accreditation.
<b>Application Hotline Phone Support</b>	Siemens Customer Care Center Clinical Applications Phone Support is provided with this contract during modality specified hours, call 1-800-888-7436 with your questions and to receive direct access to a Clinical Education Specialist
<b>Chiller Coverage Exclusions</b>	Glycol is a consumable and the customer's responsibility to maintain glycol onsite after installation. If the service vendor is not able to identify the specific supplier of glycol in the system, it may become necessary to flush and refill the system to specifications. Flush and refills under these circumstances are considered an exclusion to the service agreement.
<b>Chiller Life Expectancy</b>	Note: Chiller systems. The OEM suppliers have implemented a 10 year life expectancy on chiller systems. Siemens Healthineers will provide you an End of Service (EOS) notification no less than twelve (12) months prior to the EOS date. Full-service contracts cannot be approved beyond the 10th year; however, there is an annual, renewable Preventative Maintenance PM option. Replacement of chiller is recommended subsequent to EOS notification.
<b>Coil Coverage</b>	Covers the repair and replacement of Siemens coils (Third Party coils are not covered, i.e. Invivo 4 Channel wrist array, lower extremity, knee array, 7-channel Breast, 4 ch. Small Extremity coil, 8-channel Shoulder, ...) Labor coverage is contract dependent.
<b>Consumable Coverage (Optional)</b>	Siemens will supply at its own expense, consumables; such as but not limited to, batteries, leads, padding, storage media, cassettes, etc. Full list of consumables covered can be found on Lifenet customer portal: <a href="http://www.usa.siemens.com/lifenet">www.usa.siemens.com/lifenet</a> . Excludes parts defective due to "acts of God", abuse, misuse, neglect, thermal and shock. Excludes specialty components, including, but not limited to: Glassware, Flat Detectors, Transducers, MRI coils, SPECT and PET sources (unless purchased as an option). Excludes non-Siemens components and accessories (such as VCR, injector, laser printer, MR surface coils, tables/table tops, chiller, UPS, etc.) unless specifically identified in Exhibit A.
<b>Enhanced Virtual Learning Sub</b>	This (12) month multi-modality subscription will provide access for imaging professionals at the customer site to e.learnings, tuition for one-hour virtual monthly webinars, step-by-step videos, and up to (24 CEUs). Imaging professionals must be logged into PEPconnect (Siemens online learning platform) to be eligible to receive CEUs. PEPconnect provides access to all online and virtual training documentation with a wide variety of product-specific, clinical and job-relevant courses, as well as performance support activities for customers with Siemens medical equipment. This educational offering must be completed (12) months from purchase date. If training is not completed within the applicable time period, Siemens obligation to provide the training will expire without refund.
<b>EVOLVE HW Skyra, Skyra fit</b>	Customer receives at least one hardware upgrade to the main system as they become available providing a service contract is in place covering Evolve. Syngo MultiModality Workplace excluded in all cases.
<b>EVOLVE SW Skyra, Skyra fit</b>	Customer Receives all software upgrades and updates to the main system as they become available providing a service contract is in place covering Evolve. Syngo MultiModality Workplace excluded in all cases.
<b>General Spare Parts Coverage</b>	Replacement of standard spare parts. Excludes high-vacuum components, consumables, Shock wave components, Transducers, TEE's and Specialty Probes, Flat Panel Detectors, MMLC, and Waveguides. Excludes non-Siemens parts unless specifically identified in Exhibit A.
<b>Guardian Select MR (Optional)</b>	The Siemens Guardian Program™ offers you proactive online monitoring of your system's performance on an ongoing real-time basis. By continuously monitoring your system for possible deviations from current norms, the Guardian Program provides for a high level of system availability, making it possible to detect and resolve system errors before malfunctions occur. In the event of a system error message, one of our certified support engineers will immediately evaluate and initiate appropriate actions.. An expert opinion on the exact status of your system is also offered within the first 15 minutes.
<b>Integrated Electronic Cabinet (IEC) sales # SIMR250A</b>	Covers the parts and labor associated with repair of the IEC.

<b>Deliverables</b>	<b>Description</b>
<b>Labor</b>	Unlimited coverage of on-site labor during the Principal Coverage Period indicated. Preferred labor rates for billable service outside of Principal Coverage Period (at current prevailing tiered rates).
<b>LifeNet Access</b>	The LifeNet portal provides access to customer service information related to diagnostic imaging equipment. Access includes service and PM management tools, equipment performance reports, service documentation, asset management and service contract management tools and much more.
<b>MMA and Helium</b>	<p>Maintenance of magnet ancillary components and magnet performance. Covers parts and labor associated with maintaining the magnet and refrigeration components (CryoCare). Covers burst disc, vent kit, valves, MSUP, ERDU, helium compressor, high pressure gas lines and cold head.</p> <p>Supply of liquid helium and labor to fill magnet.</p> <ul style="list-style-type: none"> <li>- If the magnet refrigeration system shut down due to facility services failure, then cryogen usage will increase and additional charges may apply</li> <li>- Helium fills to recover from a customer caused quench will be chargeable.</li> </ul>
<b>No Consumable Coverage</b>	Upon selection to not have consumable coverage, customer agrees to supply at his/her own expense consumables, such as but not limited to, batteries, leads, padding, storage media, cassettes, etc. Full list of consumables covered can be found on Lifenet customer portal: <a href="http://www.usa.siemens.com/lifenet">www.usa.siemens.com/lifenet</a> .
<b>On-Site Response</b>	Siemens guarantees on-site CSE arrival within a specific time period (see Exhibit A) after a call for service has been placed with the Siemens Customer Care Center. This on-site response applies in system/room down situations only. (See Response Time Guarantee in General Terms and Conditions for additional information)
<b>Parts Delivery</b>	Spare parts arrival for on-site repair of room-down/system-down is typically the Same Day following the time the parts order is submitted.
<b>Parts Order Requirement</b>	Parts order must be placed with Siemens by noon (Customer's local time) in order to receive Parts Delivery commitment as specified.
<b>Phone Response</b>	The response time indicated on Exhibit A provides preferred call-handling of a service event. This call-back response is the telephone response to the customer by the Siemens Customer Care Center personnel or the CSE to provide the status of the service call.
<b>Planned Maintenance</b>	Preventive services carried out in accordance with the equipment's specific maintenance plan. This includes: tracking and scheduling of required maintenance tasks; exchange of wear and tear parts according to maintenance plan; care measures; adjustments to factory specifications; verification of specified performance and functionality; documentation and detailed protocol of system condition.
<b>PM's performed outside PCP weekdays (Optional)</b>	Planned maintenance optimizes system reliability through standardized measures and procedures. Siemens will coordinate planned maintenance in accordance with the manufacturer's recommendations outside the PCP hours designated on Exhibit A on Weekdays only.
<b>Post-PCP Extension 4 hours (Optional)</b>	One or more blocks of 4-hours, starting at the end of the Principal Coverage Period, as noted in Exhibit A. If Post-PCP is selected, the PCP is considered to include the Post-PCP hours.
<b>Principal Coverage Period</b>	Hours defined in Exhibit A during which agreed-upon services are provided.
<b>Quality Assurance</b>	Regular quality assurance tasks and image quality inspections to achieve consistent, high-quality images, are performed to keep the system within the quality specifications as issued by the factory.
<b>Safety Checks</b>	<p>Safety Checks are performed to insure compliance with all local and federal guidelines and regulations. This service consists of</p> <ul style="list-style-type: none"> <li>Tracking and scheduling of required tests</li> <li>Mechanical Safety Checks (e.g. mechanical movements etc.)</li> <li>Electrical Safety Checks (e.g. leakage currents, insulation etc.)</li> <li>Reporting of findings and results</li> </ul>
<b>SEP/ IFP Unit Coverage</b>	The SEP/Chiller Interface Filter Panel for cold water supply to the MRI system .
<b>Siemens Remote Services</b>	<p>Siemens Remote Services – the efficient and comprehensive infrastructure for medical equipment-related remote services – combines high-tech medical engineering with state-of-the-art information technology. Services, which formerly required on-site visits, are now available via data transfer. SRS enables both Core Services (which are included as part of our standard service agreements), as well as optional services (called Enhanced Productivity Services - EPS) which customers can purchase as an enhancement to their agreement.</p> <p><b>Core Services include:</b> remote diagnosis and repair via dial-in modem, event monitoring (performance screening of customer system where CSE evaluates status messages at periodic intervals and initiates appropriate service action within the scope of customers service agreement), software updates, LifeNet web site access.</p> <p><b>Enhanced Productivity Services (EPS) include:</b> Guardian Program, Virus Protection Program, Utilization Management, Application training and on-site support.</p>



<b>Deliverables</b>	<b>Description</b>
<b>Siemens Virus Protection SELECT</b> (Optional)	<p>Siemens Virus Protection SELECT consists of the following service features:</p> <p><u>Virus scanner installation:</u> Expert installation of the certified and tested virus scanner Trend Micro OfficeScan</p> <p><u>Ongoing remote virus scanner updates:</u> Constant automatic remote updates of the latest validated virus pattern and scan engine</p> <p><u>Security Hotline:</u> The local Uptime Service Center is our customer's contact for up-to-date virus information and rapid response support.</p> <p>Siemens Virus Protection is available for all <i>syngo</i>-based systems which are</p> <ul style="list-style-type: none"> <li>- connected to our SRS infrastructure by a VPN broadband connection</li> <li>- covered by one of our service agreements</li> <li>- equipped with the required software version, which includes the Virus Scanner as well as the necessary CA-based Managed Node Package (MNP).</li> </ul> <p>Siemens will not be liable for system failures and loss of patient data, caused by a virus.</p>
<b>Skyra 24 Channel Conf. Discount</b>	Applicable to the Skyra 24 configuration. Future upgrades to a higher channel configuration will require adjustment of the service pricing.
<b>syngo Remote Assist Hotline Support</b>	Allows Siemens to connect to your Siemens Imaging Console and provides you with direct real time support. Available for Tim Class MRI Systems with software version VB17 or VC13, AND Definition Class CT Systems. Requires a Siemens remote service connection.
<b>Technical Phone Support</b>	Direct access to specialists at the Siemens Customer Care Center for fast diagnosis and technical support. Technical Phone Support is available to Siemens customers over the telephone, 24 hours a day, 7 days a week.
<b>Travel</b>	Includes travel time for Customer Service Engineer to and from Customer's site. Subject to change to reflect currently prevailing rates, if occurring outside of the Principal Coverage Period indicated.
<b>UM Basic Report MR</b>	Utilization Management Basic provides periodic evaluation updates of your system's capacity performance, including, for example, information on patient examinations per day, or the number of studies conducted on individual body parts. UM Basic provides an overview about the system usage and therefore serve as initial indicators of how system utilization can be optimized. It contains general information such as: total number of patients, average/total number of patient exams per hour, total number of protocols, total number of patient exams, mean time between patient exams, average duration per patient exam. In addition, the report shows system-specific information such as: average number of scan seconds per patient exam, average duration per study, total number of reconstructed images, total number of selected body regions, total number of archiving operations, or percentage number of studies per coil.
<b>Updates</b>	Modifications or reliability enhancements to equipment. Includes two types: Mandatory (safety and performance-related update instructions) and Non-mandatory (reliability-related service instructions). Does not include enhancements to the operating system or additional functionality.
<b>Uptime Guarantee</b>	Guarantee that the Equipment will function at the minimum Uptime Performance level set forth in Exhibit A of this Agreement. A SRS connection via VPN broadband is mandatory.

## **Siemens Medical Solutions USA, Inc. General Terms and Conditions**

### **1. Scope**

For the term set forth on the first page hereof under the heading "Contract Duration", Siemens will provide (i) remedial maintenance service on the equipment described on the preceding pages hereof (the "Equipment") when requested by the Customer, as well as planned maintenance inspections, when scheduled, as further described in the Glossary section attached hereto, in order to keep the Equipment operating in accordance with the manufacturer's specifications, and (ii) any training courses and/or other educational offerings described in Exhibit A and the Glossary. Siemens will make every effort to respond to service calls at a mutually agreed upon arrival time consistent with the provisions cited in Section 2. In connection with the provision of Equipment maintenance services, Siemens may take photographs or other images of the Equipment or components thereof in order to expedite the completion of repairs, provided that any such photographs shall not include any patients, employees or agents of the Customer and further provided that such photographs and images will only be used in order for Siemens to carry out its duties and responsibilities hereunder.

In the event that (i) the term of this Agreement does not include the Equipment warranty period (as indicated on the first page hereof under the heading "Contract Duration"), or (ii) the term of this Agreement does not commence immediately upon the expiration of the Siemens warranty, or (iii) the Equipment was serviced prior to commencement of the term by anyone other than Siemens or an authorized Siemens dealer or service provider, or (iv) the Equipment was moved from its original location or is not connected to its original power supply (other than portable or mobile Equipment), then the Equipment is subject to inspection by Siemens to determine if it is in good operating condition prior to the commencement of services under this Agreement. Any inspection as well as any repairs or adjustments deemed necessary by Siemens during such inspection shall be made at Siemens' per-call rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the commencement of service under this Agreement.

If this Agreement includes any training courses or other educational offerings, such training courses or other offerings may consist of on-site training or consultation at the Customer site, a Siemens training facility or via conference call or net meeting, self-study or computer based training, or other arrangements, as further described in Exhibit A and the Glossary. In some cases, tuition charges will cover travel and lodging for off-site training, and in other cases Customer will be responsible for all travel and lodging costs. Details of the training are provided on Exhibit A and the Glossary.

### **2. Principal Coverage Period (PCP)**

Service and maintenance will be provided during the principal coverage period ("PCP") as defined on Exhibit A, excluding the following holidays: New Years Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day. If one of the foregoing holidays falls on a Saturday, then the holiday will be observed on the previous Friday, and if the holiday falls on a Sunday, the holiday will be observed on the following Monday. Unless an extended hours coverage option has been selected, labor and travel required outside the PCP will be charged at Siemens' per-call rates and terms then in effect.

### **3. Replacement Parts**

Siemens will supply at its own expense, necessary parts, except as indicated in the Glossary section, provided replacement of the parts is required because of normal wear and tear or otherwise deemed necessary by Siemens and further provided that the Siemens-manufactured parts are available from the factory. All Parts will be new, standard parts, or used, reworked or refurbished parts that comply with applicable performance and reliability specifications. Exchange parts removed from the Equipment shall become the property of Siemens unless such exchange parts constitute "hazardous wastes", "hazardous substances", "special wastes" or other similar materials, as such terms are defined by any federal, state or local laws, rules or regulations, in which case, at the option of Siemens, the exchange parts shall remain the property of the Customer and shall be disposed of by the Customer in strict compliance with all applicable laws, rules and regulations.

### **4. Planned Maintenance (PM)**

Planned maintenance will be carried out according to the manufacturer's recommended schedule. Planned maintenance generally includes checking mechanical and electrical safety, lubrication, functional testing and adjusting for optimum performance as specified in the detailed planned maintenance work plan.

### **5. Software Maintenance**

Whenever the Equipment covered by this Agreement utilizes Siemens' operating system software, Siemens will provide all maintenance and commercially available updates for such operating system software as part of this Agreement. Such updates will solely enhance previously purchased capacities of the Equipment. Operating system software upgrades that provide new features or capabilities or that require hardware changes will be offered to Customer when commercially available and at purchase prices established by Siemens. In addition, some upgrades may require applications training performed by Siemens' personnel that will be offered at Siemens' rates and terms then in effect. Siemens retains the sole right to determine whether an upgrade requires such training.

Nothing in this Agreement shall in any way grant to Customer any right to or license in any diagnostic service software utilized by Siemens in servicing the Equipment. Such service software is and remains the property of Siemens and is available to Customer pursuant to the terms and conditions of a separate diagnostic materials license agreement, which may require payment of a license fee. This service software shall be disabled by Siemens upon cancellation or termination of this Agreement.

### **6. Equipment; Location; Remote Access**

The Equipment covered under this Agreement is limited to the Siemens furnished Equipment described on the face sheet(s). The Equipment shall not be moved to another location unless Customer obtains the prior written consent of Siemens, subject to the following exceptions (i) portable Equipment (e.g., Ultrasound equipment, but not including any equipment that is housed in a mobile vehicle, van or trailer) may be moved to other locations within the same facility, so long as the Customer informs Siemens of the location of the Equipment when Siemens is scheduled to provide on-site service; (ii) if Equipment is located in a trailer, van or other form of mobile vehicle, the Equipment may be moved from the Equipment Location identified on Exhibit A, provided, however, that Siemens shall not be required to service such Equipment, and the Response Time and Uptime Performance Guarantees (if any) shall not apply, if either (a) the Customer does not notify Siemens at least one (1) month in advance of the Equipment's mobile route, or (b) the Equipment is moved more than 25 miles from the original Equipment Location; and (iii) if fixed Equipment is moved to any other location within the Customer's facility, then either (a) the Customer will engage Siemens to relocate the Equipment, at Siemens' then current rates and charges, or (b) if Siemens does not perform the services necessary to relocate the Equipment, then Siemens may suspend services with respect to such Equipment until Siemens performs an inspection of the Equipment, at the Customer's cost, to determine if any repairs are necessitated as a result of any such relocation (in which case the Customer shall be separately charged for such repairs, including parts and labor, at Siemens' rates and charges then in effect).

Siemens service personnel will be given full and free access to the Equipment to perform inspections and service/maintenance on the Customer's premises, and will make specific appointments for such maintenance. If the Equipment is not made available at the appointed time, waiting time beyond a reasonable allowance will be charged at Siemens' per-call rates and terms then in effect.

Customer shall provide Siemens with both on-site and remote access to the Equipment. The remote access shall be provided through the Customer network as is reasonably necessary for Siemens to provide services under this Agreement. Remote access will be established through a broadband internet based connection to either a Customer owned or Siemens provided secure end-point. The method of connection will be a Peer-to-Peer VPN IPsec tunnel (non-client based) with specific inbound and outbound port requirements.

In the event the Customer fails to provide or maintain the remote access connection for any Proactive Service Agreement (e.g., Pinnacle, Select, Essential, as identified in Exhibit A), then Siemens shall have the option to terminate this Agreement. In addition, in accordance with the terms of Section 22 hereof, any Uptime Performance Guarantee shall be void if the remote access connection is not provided and available 24 hours per day, 7 days a week.

### **7. Agreement Term; Price; Payment Terms**

This Agreement shall be in effect for the period stated on the first page of this Agreement.

For the basic services to be provided by Siemens under the terms of this Agreement, Siemens shall send invoices to the Customer and payments shall be made in advance based on the payment frequency shown in Exhibit A under "Payment Frequency".

Invoices for all amounts due under this Agreement shall be sent to the Customer by regular U.S. mail, postage prepaid, at the address set forth on the first page hereof under "Bill To".

All payments to be made by Customer under this Agreement are due net thirty (30) days from the invoice date. Past due payments shall bear interest at the rate of 1½% per month.

### **8. Causes for Exclusion/Separate Charges**

This Agreement specifically excludes labor, parts and expenses necessary to repair Equipment:

- damaged by fire, accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 17 hereof, or by the Customer's failure to operate the Equipment in accordance with the manufacturer's instructions or to maintain the recommended operating environment and line conditions;

- defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Equipment by the Customer or any third party or due to the attachment

and/or use of non-Siemens supplied parts, equipment or software without Siemens' prior written approval (and if the Customer or a third party modifies the Equipment, then Siemens may remove such Equipment from coverage under this Agreement unless the Customer restores the Equipment to the manufacturer's published specifications);

- defective due to any repair or service of the Equipment by the Customer or any third party prior to the commencement of the term of this Agreement;
- which failed due to causes from within non-Siemens supplied equipment, parts or software including, but not limited to, problems with the Customer's network;
- which is worn out and cannot be reasonably repaired due to the unavailability of spare parts from the original equipment manufacturer; or
- which is a transducer or probe and which is damaged or defective, or which failed, due to any of the foregoing causes or due to improper cleaning, disinfecting or TEE bite marks.

If Siemens is called upon to service or repair Equipment which falls under this Section 8, a separate invoice will be issued for labor, parts and expenses at Siemens' rates and terms then in effect.

This Agreement does not entitle the Customer to services related to information technology, patient and imaging workflow design and analysis, or problem diagnosis. Siemens' responsibility under this Agreement does not extend beyond the outbound or inbound sockets of the Equipment. In addition, changes, adjustments, additions or repairs required to or with respect to the Equipment resulting from issues, matters, items or concerns that are the responsibility of the Customer, such as changes related to Customer's network infrastructure, are not covered by this Agreement. This may include, but is not limited to, network IP address changes. Although the Equipment may have limited short term storage capacity, the storage of images, both patient and QA images, is the responsibility of the Customer.

If Siemens offers a Network Assistance option for the Equipment and the Customer purchases this option as indicated on Exhibit A, then Siemens shall assist the Customer in its efforts to identify the cause of any network or connectivity problems which may affect the operation of the Equipment; provided, however, that the price for this option does not include the cost of any repairs (labor, parts, etc.) to remedy such problems, which shall be the sole responsibility of the Customer. If the Customer does not purchase this option, or if this option is not offered by Siemens, then any assistance provided by Siemens to the Customer with respect to any network or connectivity issues shall require a P.O. from the Customer and shall be separately billed to the Customer at Siemens' then current rates and charges.

#### **9. Default**

Customer shall be in default under this Agreement upon: (i) a failure by Customer to make any payment due Siemens within ten (10) days of receipt of notice from Siemens that the payment was not made within the applicable payment period; (ii) a failure by Customer to perform any other obligation under this Agreement within thirty (30) days of receipt of notice from Siemens; (iii) a failure to grant Siemens access to the Equipment as set forth in Section 6 of this Agreement; (iv) a default by Customer or any affiliate of the Customer under any other obligation to or agreement with Siemens, Siemens Financial Services, Inc. or Siemens Medical Solutions Health Services Corporation, or any assignee of the foregoing (including but not limited to, a promissory note, lease, rental agreement, license agreement or purchase contract); or (v) the commencement of any insolvency, bankruptcy or similar proceedings by or against the Customer (including any assignment by Customer for the benefit of creditors). Upon the occurrence of any event of default hereunder, Siemens may, in addition to any and all other remedies available under law, elect to: (i) immediately cease providing services under this Agreement and any and all other agreements between the parties, or suspend any training courses or educational offerings provided under this Agreement, until the default is cured or corrected, (ii) terminate this Agreement, in which case Customer shall pay to Siemens (a) all amounts due under this Agreement through the effective date of termination, (b) as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under this Agreement from the date of termination through the scheduled expiration of the term of this Agreement, and (c) all costs and expenses of collection, including without limitation reasonable attorneys' fees and court costs incurred by Siemens as a result of the Customer's default, and/or (iii) commence collection actions (including court actions) for all sums due under this Agreement. All rights and remedies available to Siemens hereunder, by law or equity, shall be cumulative and there shall be no obligation for Siemens to exercise a particular remedy.

In the event that Customer cures all defaults hereunder, then prior to resumption of the Equipment maintenance services under this Agreement, Siemens may inspect the Equipment to determine if it is in good operating condition. Such inspection shall be charged to the Customer at Siemens' per-call rates and terms then in effect. Any repairs or adjustments which Siemens determines are required due to (i) the use of any non-Siemens parts, (ii) the repair or service of the Equipment by the Customer or any third party during the suspension of services by Siemens, or (iii) any of the exclusions from coverage set forth in Section 8 of this Agreement, shall be charged to the Customer at Siemens' rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the resumption of service under this Agreement.

#### **10. Limitation of Liability**

Siemens' entire liability and Customer's exclusive remedy for any direct damages

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incurred by the Customer from any cause whatsoever, and regardless of the form of action, whether liability in contract or in tort, arising under this Agreement or related hereto, shall not exceed, as applicable: (i) an amount equal to the Annual Agreement Price (in effect when the cause of action arose) for the specific item of Equipment under this Agreement that caused the damage or is the subject matter of, or is directly related to, the cause of action, or (ii) the amount paid by Customer to Siemens under this Agreement for the particular training course or educational offering that is the subject matter of the claim. The foregoing limitation of liability shall not apply to claims by Customer or third parties for bodily injury or damage to real property or tangible personal property (including damage to the Equipment covered by this Agreement) caused solely and directly by the gross negligence or willful misconduct of Siemens. In addition, Siemens shall have no liability hereunder to Customer to the extent that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or to the extent that the loss or damage is due to a force majeure occurrence as described in Section 17 hereof or any other cause beyond the reasonable control of Siemens.

THIS IS A SERVICE AGREEMENT. WITHOUT LIMITING THE LIMITATION OF LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH, SIEMENS EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL SIEMENS BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, LOSS OF USE OR DOWNTIME (EXCEPT AS OTHERWISE PROVIDED HEREIN), LOST DATA, OR FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

#### **11. Notices**

Except for the issuance of invoices as set forth in Section 7 hereof, all notices required to be provided hereunder shall be in writing and shall be sent by overnight delivery via a nationally recognized delivery service or by certified or registered mail, postage prepaid, to Siemens at the address set forth on the first page of this Agreement and to the Customer at the address set forth under "Bill To" on the first page of this Agreement. Notice given in compliance with this Section 11 shall be sufficient for all purposes under this Agreement, and such notice shall be effective when sent. Either party may change its notice address only if notification is sent in writing pursuant to this Section 11.

#### **12. Governing Law; Waiver of Jury Trial**

This Agreement shall be governed by the laws of the Commonwealth of PA. TO THE EXTENT NOT PROHIBITED BY LAW, THE PARTIES WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.

#### **13. Government Access Clause**

Until the expiration of four (4) years after the furnishing of any services under this Agreement, Siemens shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, this Agreement and the books, documents and records of Siemens which are necessary to certify the nature and extent of costs incurred under this Agreement. If Siemens carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a 12 month period with a related organization, such subcontract shall include a clause to the effect that until the expiration of four (4) years after the furnishing of any services under the subcontract, the related organization shall make available upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to certify the nature and extent of costs incurred under that subcontract.

This provision shall apply if and solely to the extent that Section 1861 (v) (1) (I) of the Social Security Act applies to this Agreement.

#### **14. Damages, Costs, And Fees**

In the event that any dispute or difference is brought arising from or relating to this Agreement or the breach, termination, or validity thereof, the prevailing party shall not be entitled to recover from the other party punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees and collection agency fees incurred, together with such other expenses, costs and disbursements as may be allowed by law.

#### **15. Severability; Headings**

No provision of this Agreement which may be deemed invalid, illegal or unenforceable will in any way invalidate any other portion or provision of this Agreement. Paragraph headings are for convenience only and will have no substantive effect.

#### **16. Waiver**

No failure, and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

### 17. Force Majeure

Siemens will not be liable to Customer for any failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control and without its fault or negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies. In addition, in the event of any determination pursuant to the provisions of a collective bargaining agreement between the Customer and any labor union representing any employees of the Customer preventing or hindering the performance of any of the obligations of Siemens under this Agreement, or determining that the performance of any such obligations violates provisions of that collective bargaining agreement, or in the event a trade union, or unions, representing any of the employees of the Customer otherwise prevents Siemens from performing any such obligations, then Siemens shall be excused from the performance of such obligations unless the Customer makes all required arrangements with the trade union, or unions, to permit Siemens to perform the work. The Customer shall pay any additional costs incurred by Siemens that are related to any labor dispute(s) that involve the Customer.

### 18. Confidentiality

Siemens and the Customer shall maintain the confidentiality of any information provided or disclosed to the other party, its employees or agents (a "receiving party") relating to the business, customers and/or patients of the disclosing party, including but not limited to know-how, technical data, processes, software, techniques, developments, inventions, research products and plans for future developments, proprietary matters of a business or technical nature, as well as this Agreement and its terms (including the pricing and other financial terms under which the Customer will be obtaining the services hereunder). Confidential Information shall also include all written materials (including correspondence, memoranda, manuals, training materials, notes and notebooks) and all computer software, models, mechanisms, devices, drawings or plans which may be disclosed or made available embodying Confidential Information. All Confidential Information shall be and remain the sole and exclusive property of the disclosing party. 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 and agents having a need to know this information. Confidential Information shall not include any information or data which (i) is or becomes public knowledge (through no fault of the receiving party or any of its employees or agents), (ii) is made available to the receiving party by an independent third party without any obligation of confidentiality, (iii) is already in the receiving party's possession at the time of receipt from the disclosing party (as such prior possession can be properly demonstrated by it), or (iv) is required by law to be disclosed, provided that the receiving party gives the disclosing party advance notice of the requirement for disclosure so that the disclosing party can take whatever action it deems necessary to protect the disclosure of its Confidential Information. In addition, this confidentiality provision shall not apply to any action brought by either party to enforce the terms of this Agreement against the other party.

Any unauthorized use, disclosure or misappropriation of any Confidential Information by the receiving party in violation of the foregoing may result in irreparable and continuing damage to the disclosing party; in the event of such breach, the disclosing party shall be entitled to obtain immediate injunctive relief and any other relief or remedies to which it may be entitled. The receiving party waives any requirement that the disclosing party post a bond or other security in connection with any petition filed by the disclosing party for injunctive relief. In the event that a court of competent jurisdiction determines that the receiving party has breached this provision, then the receiving party shall reimburse the disclosing party for the costs of any court proceedings and all reasonable attorneys' fees.

### 19. End of Support Announcement

Notwithstanding anything to the contrary contained herein, in the event that Siemens makes a general announcement that it will no longer offer service agreements for an item of Equipment or components thereof, or provide a particular service agreement option or feature, whether due to the unavailability of spare parts or otherwise (an "EOS Announcement"), then upon no less than twelve (12) months prior written notice to the Customer, Siemens may remove any affected Equipment, components, options or features from coverage under this Agreement, with a corresponding adjustment of the Annual Agreement Price. In addition, at the end of this twelve (12) month period, the Customer may either remove the affected Equipment components, options or features from coverage under this Agreement or request that Siemens provide service or parts on a time and materials basis only, at Siemens' rates and terms then in effect, for any Equipment, components, options or features subject to an EOS Announcement.

### 20. Removal of Equipment from Coverage

The Customer may remove Equipment from coverage under this Agreement at any time upon no less than thirty (30) days prior written notice to Siemens if the use of the Equipment is permanently discontinued and the Equipment is removed from service. There is no fee for this cancellation. Prorated credit will be issued for any advance payments made by the Customer for the period after the effective date of removal (based on the notice requirement). In addition, if the Customer sells or otherwise transfers any of the Equipment to a third party and the Equipment remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under this Agreement or enter into a new service agreement with Siemens with a term at least equal to the unexpired term of this Agreement, then the Customer may terminate this Agreement with respect to such Equipment upon no

less than thirty (30) days prior written notice to Siemens, in which case the Customer shall pay to Siemens (i) all amounts due under this Agreement through the effective date of termination (based on the notice requirement) and (ii) as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under this Agreement for such Equipment from the date of termination through the scheduled expiration of the term of this Agreement.

### 21. HIPAA

To the extent required by the provisions of the Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any regulations promulgated thereunder, Siemens does hereby assure Customer that it will appropriately safeguard Protected Health Information (as defined under HIPAA) made available to or obtained by Siemens pursuant to this Agreement or any Service Schedule ("PHI"). Without limiting the obligations of Siemens otherwise set forth in this Agreement or imposed by applicable law, Siemens agrees to comply with applicable requirements of law relating to PHI and with respect to any task or other activity Siemens performs on behalf of Customer. Specifically, Siemens shall:

(a) not use or disclose PHI other than as permitted or required by this Agreement or as required by law, and limit any use or disclosure of PHI to a limited data set or the minimum necessary to accomplish the intended purpose of such use or disclosure;

(b) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains or transmits on behalf of the Customer, and comply, where applicable, with the HIPAA Security Rule with respect to such electronic PHI, and otherwise use appropriate safeguards to prevent use or disclosure of PHI, other than as provided for by this Agreement;

(c) report to Customer any use or disclosure of PHI not provided for by this Agreement, and report any security incident, of which Siemens becomes aware;

(d) in accordance with applicable HIPAA and HITECH requirements, ensure that any subcontractors or agents to whom Siemens provides PHI received from, or created or received by Siemens on behalf of, Customer agree to essentially the same restrictions and conditions that apply to Siemens with respect to PHI and implement reasonable and appropriate safeguards with respect to PHI;

(e) upon Customer's written request, make PHI available to the Customer as necessary for Customer to respond to individuals' requests for access to PHI about them, provided that the PHI in Siemens' possession constitutes a Designated Record Set and Siemens has been specifically engaged by Customer to so maintain and service such PHI on behalf of Customer;

(f) upon Customer's written request, make PHI available to Customer for amendment and incorporate any amendments to the PHI in accordance with applicable law, provided that the PHI in Siemens' possession constitutes a Designated Record Set and Siemens has been specifically engaged by Customer to so maintain and service such PHI on behalf of Customer;

(g) make available to Customer the information in its possession required to provide an accounting of disclosures of PHI as required by applicable law;

(h) mitigate, to the extent practicable, any harmful effect that is known to Siemens of a use or disclosure of PHI by Siemens in violation of the requirements of this Agreement or of law;

(i) provide notice of a breach of unsecured PHI to Customer without unreasonable delay, and in no case later than thirty (30) days after discovery of a breach. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by Siemens to have been, accessed, acquired, used, or disclosed. Siemens shall provide Customer with any other available information that Customer is required to include in notification to the individual under applicable law;

(j) make Siemens' internal practices, books, and records relating to the use and disclosure of PHI received from Customer available to the Secretary of the United States Health & Human Services for purposes of determining Customer's compliance with applicable law; and

(k) upon expiration or termination of this Agreement, return to Customer or destroy all PHI in its possession as a result of this Agreement and retain no copies of PHI, if it is feasible to do so. If return or destruction is not feasible, Siemens agrees to extend all protections contained in this Agreement to Siemens' use and/or disclosure of any retained PHI, and to limit further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

Siemens may use and disclose PHI as necessary for Siemens to perform its obligations hereunder, and may (i) use the PHI for its proper management and administration and to carry out its legal responsibilities, (ii) disclose the PHI to a third party for Siemens' proper management and administration or to carry out Siemens' legal responsibilities, provided that the disclosures are required by law or Siemens obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under HIPAA and/or HITECH, and the third party agrees to notify Siemens of any instances in which the confidentiality of the information has been breached, (iii) provide data aggregation services related to the healthcare operations of Customer, and (iv) de-identify the PHI, and use such de-identified data, in accordance with the de-identification requirements under HIPAA.

Siemens agrees that it will negotiate in good faith an amendment to this Agreement if, and to the extent required by, the provisions of HIPAA and regulations promulgated thereunder, in order to assure that this Agreement is consistent therewith.

### 22. Uptime Performance Guarantee [DOES NOT APPLY TO EVERY SERVICE AGREEMENT]

For any Equipment that includes an Uptime Guarantee as specified in Exhibit A,

Siemens guarantees that the Equipment will function at the minimum Uptime Performance (defined below) level set forth in Exhibit A (computed as described below).

"Uptime Performance" is defined as the capability of the Equipment to be utilized to treat or diagnose patients. The Equipment will be considered to be operational (i.e., it will not be considered to be "down"): (a) unless it cannot be utilized to treat or diagnose patients (room down); (b) if Siemens is prepared to perform maintenance services to make the Equipment operational but such service is refused by the Customer or is deferred by the Customer until a later time or date; (c) if the Equipment is not otherwise made available to Siemens' service engineers; (d) if the Equipment is down is due to, associated with, or caused by (i) misuse, negligence, or operator error, (ii) inadequate environmental conditions (not conforming with the environmental specifications provided by Siemens), including temperature and humidity, line power exceeding Siemens' requirements of voltage, frequency, impulses or transients, (iii) any of the exclusions set forth in Section 8 hereof, or (iv) acts of God or other force majeure events described in Section 17 hereof; or (e) during periods in which Siemens is performing scheduled or planned maintenance, changing high-vacuum components, and installing updates and/or upgrades. If the Equipment is not operational, then the Customer must immediately notify the Siemens Customer Care Center (24-hour Service Call Dispatch Center). Downtime will not commence until such notification is given to Siemens.

For purposes of calculating the Uptime Performance level percentage, such computation shall be made over the PCP, to include any extended coverage hours as indicated on Exhibit A. The Equipment's Uptime Performance shall be calculated to comply with the above guidelines on an annual basis. If the Equipment's Uptime Performance level is found to be less than the guaranteed percentage, as computed in accordance with the above guidelines, Siemens will extend the term of this Agreement by seven (7) calendar days (30 calendar days for Oncology Care Systems) for every percentage point (rounded to the nearest percent) below the guaranteed percentage. These days will be added at the end of the term of this Agreement. For example, if the guaranteed percentage is 97%, then 96% Uptime Performance would result in an extension of seven (7) calendar days and 95% Uptime Performance would result in an extension of fourteen (14) calendar days. The foregoing states Siemens' entire obligation and liability, and the Customer's sole remedy, for Siemens' failure to meet the Uptime Performance Guarantee.

In order for the Uptime Performance Guarantee to be effective, the Customer must place all calls for service through the Siemens Customer Care Center and must accept all Technical Assistance that is offered by Siemens, including, but not limited to, telephone support and remote diagnostics. For any period of time that the Customer does not seek and accept Technical Assistance from Siemens, then the Equipment shall be considered to be operational.

The Customer agrees to allow connection to Siemens' Remote Service diagnostic equipment, where available, for the Equipment covered by this Agreement. Siemens Remote Service (SRS) is required for SRS-capable systems. The Uptime Performance Guarantee shall be void if the SRS connection is not provided and available 24 hours per day, 7 days a week.

### **23. Response Time Guarantee [DOES NOT APPLY TO EVERY SERVICE AGREEMENT]**

Siemens guarantees that it shall meet any on-site response time as specified in Exhibit A for system "down" situations. Response time is measured from the time that the Customer notifies the Siemens Customer Care Center that a system is down. The response time only applies during the PCP, to include any extended coverage hours (if selected by the Customer), as indicated on Exhibit A. For example, a request for on-site service made at noon on a Monday (where the PCP is 8:00 a.m. through 5:00 p.m., Mondays through Fridays) will have a guaranteed arrival time of 4:00 p.m. on the same day for customers with a four (4) hour response time and a guaranteed arrival time of 11:00 a.m. on the next day for customers with an eight (8) hour response time guarantee. A request for on-site service made at 9:00 a.m. on a Saturday will have a guaranteed arrival time of noon on the next Monday for customers with a four (4) hour response time and 4:00 p.m. on that Monday for customers with an eight (8) hour response time guarantee. If a request for on-site service is made outside the PCP (to include extended coverage hours, if selected by the Customer), Siemens will use its best efforts to have a CSE on-site as soon as possible.

If Siemens responds to a request for on-site service during the PCP but its work to repair or service the Equipment continues after the expiration of the PCP (to include any extended coverage hours, if applicable), then any work outside the PCP will be billed to the Customer, unless any optional Continuous Effort coverage that is

available for the Equipment has been purchased as part of this Agreement. Continuous Effort coverage ensures that in room/system down situations, work will continue past the contracted PCP (including any extended coverage hours, if applicable, and/or core modality specific hours, as defined in the Glossary, if applicable) at no additional charge until the system is repaired or 1:00 a.m., whichever comes first, as long as the CSE has been on-site for one hour or more before the end of the contracted PCP (including any extended coverage hours and/or core modality specific hours, if applicable).

The remedy provided by Siemens for its failure to meet the on-site response time guarantee is as follows: for each one (1) hour or portion thereof that Siemens fails to meet the on-site response time guarantee, the Customer will receive one (1) free hour of overtime after the PCP for that service event. The foregoing states Siemens' entire obligation and liability, and the Customer's sole remedy, for Siemens' failure to meet the Response Time Guarantee.

### **24. Non-Assignment**

Customer may not assign this Agreement unless it obtains the prior written consent of Siemens, which consent shall not be unreasonably withheld or delayed. Siemens may not assign this Agreement unless it obtains the prior written consent of the Customer, which consent shall not be unreasonably withheld or delayed, except that Siemens may assign without Customer approval to any subsidiary or affiliated company or any of its authorized dealers.

### **25. Reimbursement for Training Courses/Education Services Upon Early Termination; Cancellation Policy**

If this Agreement includes any training courses or other educational offerings and this Agreement is terminated or Equipment is removed from coverage as provided hereunder prior to the expiration of the term, then Siemens may bill the Customer for any balance due and owing with respect to those training courses or other educational offerings that have been completed by the Customer, and Customer agrees to pay the same.

Customer shall notify the Siemens training and education coordinator, in advance, of the cancellation, in whole or in part, of any training or other educational offering, or any request to reschedule the same. The cancellation or rescheduling of any training courses and other educational offerings may be subject to the payment of a cancellation fee. A copy of Siemens' cancellation policy is available upon request or can be found at:

[www.usa.siemens.com/clinicaleducation-cancellation-policy](http://www.usa.siemens.com/clinicaleducation-cancellation-policy)

### **26. Execution; Counterparts**

If the Customer is a corporation or partnership, the person signing this Agreement on its behalf certifies that such person is an officer or partner thereof, that his or her action was duly authorized by appropriate corporate or partnership action, that such action does not conflict with the corporate charter or bylaws or the partnership agreement, as the case may be, or any contractual provision binding on such corporation or partnership, and that no consent of any stockholders to his or her action is required.

This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original document but all of which together shall constitute one and the same agreement.

### **27. Entire Agreement**

This Agreement, including all exhibits and addenda attached hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous oral or written representations or communications between the parties. This Agreement may not be modified or amended, except in writing executed by the appropriate designated officers of the parties hereto. Any variation in the terms and conditions contained in this Agreement (including, but not limited to, the inclusion of Customer's own terms and conditions in any purchase order or other document issued by Customer in response to and/or referencing Siemens' quotation for service or this Agreement) shall not be deemed to be a part of this Agreement and shall not be binding upon Siemens unless set forth in writing and executed by the appropriate designated officer of Siemens. Subject to the limitations expressed herein, this Agreement will be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and permitted assigns. Notwithstanding anything to the contrary contained herein, the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 18, 21 and 25 shall survive the expiration or termination of this Agreement.