



Software-as-a-Service Terms and Conditions

(FORM RAD 10487 US)

These Software-as-a-Service Terms and Conditions (“**SaaS Terms**”) govern the Services provided by Varian Medical Systems, Inc. or its Affiliate as identified in the Quotation (“**Varian**”) to Subscriber pursuant to such Quotation (as each such term is defined in Section 1 below). These SaaS Terms may be supplemented by addenda, exhibits, schedules (including Product Schedules and Country-Specific Terms), and other attachments referenced in or attached to these SaaS Terms or the applicable Quotation (collectively, the “**Agreement**”). In the event of any inconsistency between these SaaS Terms and the terms of the Quotation, the terms of the Quotation shall prevail.

1. Definitions

- 1.1 “**Affiliate**” means in relation to an entity, any entity Controlled by, Controlling, or under common Control with, such entity. “**Control**” or “**Controlling**” or “**Controlled**” means, in respect of an entity, direct or indirect beneficial ownership of more than fifty (50) percent of the voting or income interest in such entity or otherwise having the power to govern the financial and the operating policies or to appoint the management of such entity.
- 1.2 “**Authorized User**” means any Subscriber-appointed representative (including physicians, physicists, nurses, therapists, other employees of Subscriber, and Patients to the extent a Quotation expressly describes the Subscription Service as directly accessible by Patients) that has been assigned (either by Subscriber, by a Subscriber-appointed representative, or by Varian at Subscriber’s direction) a username and password (or any other applicable access or authentication mechanism) which permits such representative to access and use the Subscription Service; provided, that such access and use of the Subscription Service shall always be on Subscriber’s behalf, or, in the case of Patients having access and use of the Subscription Service, for the benefit of such Patients.
- 1.3 “**Business Day**” means a day which is not Saturday, Sunday or a declared public holiday in the place where a thing is to be done or occur under the Agreement.
- 1.4 “**Claim**” means any allegation, legal action, investigation, proceeding, suit, demand or other claim.
- 1.5 “**Clinical Data**” means all clinical data and/or information relating to a Patient, including Personal Information, Protected Health Information, Patient history, diagnosis, diagnostic indicators (cancer specific), encounters, treatment, assessments, supportive care, laboratory tests, operations, and/or physician (including any such data received by Varian during the course of the Agreement).
- 1.6 “**Country-Specific Terms**” means any additional terms and conditions which are attached to or referenced in the Quotation and which amend or supplement these SaaS Terms or a Product Schedule in a certain geographical region.
- 1.7 “**Data Subject**” means a person who is the subject of Personal Information stored, transmitted or processed by a Subscription Service.
- 1.8 “**De-identified Data**” means data, including Subscriber Data, that has been de-identified and/or anonymized by Subscriber, Varian, or a third party to remove Identifiers and Personal Information, however provided and designated, marked or labeled. “**Identifiers**” means data that identifies, or for which there is a reasonable basis to believe could be used to identify, a specific Patient, including any ‘identifier’ as such term is defined by (i) the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”) and any regulations promulgated thereunder, including the HIPAA Privacy Rule, and/or (ii) any international, national or state laws similar to the foregoing.
- 1.9 “**Documentation**” means the Implementation Plan, and any technical documentation, user guides and training materials provided from time to time by Varian (or a Third Party Supplier) with respect to the Subscription Services.

- 1.10 “**Export Controls**” means the import and export control laws, regulations, licenses and government or regulatory orders that apply to a Subscriber Service and related technologies, including under the laws and regulations of the United States, the European Union and Switzerland.
- 1.11 “**Loss**” means any loss, cost, expense or damage, including judgments, settlements, awards, fines and reasonable attorney’s fees and expenses or any other liability.
- 1.12 “**Patient(s)**” means a patient whose treatment is being managed, processed or analyzed by or on behalf of Subscriber or by Subscriber’s Varian- approved subsidiaries or Affiliates, employees, contractors or agents using the Services;
- 1.13 “**Personal Information**” or “**PII**” means any information that permits the direct or indirect identification of a specific individual to whom the information applies, including information that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or information which indirectly identifies an individual in conjunction with other data elements (e.g., a combination of gender, race, birth date, geographic indicator, and other descriptors).
- 1.14 “**Processed Data**” means any data set that is created by Varian or a Third Party Supplier and is the result of normalization, analysis, mapping, aggregation and other processing of the Subscriber Data by Varian or the Third Party Supplier. The Processed Data may contain Personal Information.
- 1.15 “**Product Schedule**” means a schedule specific to a type of Subscription Service, which is attached to or referenced in a Quotation and which further describes the nature of, and any additional terms and conditions applicable to, such Subscription Service.
- 1.16 “**Proprietary Materials**” means, collectively the Software, the Documentation, any other code, documentation, technology, works, inventions and know-how relating to Subscription Services (whether or not customized or otherwise developed in connection with the Agreement), and any suggestions and feedback provided by or on behalf of the Subscriber relating to any of the above.
- 1.17 “**Protected Health Information**” or “**PHI**” means any patient or individually identifiable health information that is held, provided, transmitted or made available by a covered entity or business associate, or is otherwise accessible by Varian during Varian’s performance of the Services, as such terms are defined in (i) HIPAA, and any regulations promulgated thereunder, including the HIPAA Privacy Rule, and (ii) any international, national, regional or local laws similar to the foregoing.
- 1.18 “**Quotation**” means the applicable Varian quotation, order form, or other ordering document (including all attachments thereto and other terms referenced therein) for Services that is: (a) executed by the parties, and (b) references these SaaS Terms.
- 1.19 “**Services**” means, collectively, the Subscription Services and related updates, the Implementation and Customization Services (as defined in Section 3), and the Technical Support Services (as defined in Section 3).
- 1.20 “**Software**” means Varian’s or a Third Party Supplier’s source code, applications and other technology (excluding the Access Technology (as defined in Section 5.1)) used by Varian to provide the Subscription Service to Subscriber, including all associated user interfaces and knowledge bases, all as may be further described in the Quotation.
- 1.21 “**Subscriber**” means the legal entity described in the Quotation as the “**Customer**” or “**Subscriber**”.
- 1.22 “**Subscriber Data**” means Clinical Data or other information of any type which is provided or made available by or on behalf of Subscriber or a Patient to Varian, or is otherwise accessible by Varian, in connection with the Services, including information or data which Subscriber or a Patient inputs, provides, makes available or is otherwise accessible to Varian through the Services.
- 1.23 “**Subscription Renewal Period**” means any renewal period for a Subscription Service as set out in the Quotation for that Subscription Service.
- 1.24 “**Subscription Service**” means the certain Software specified in the Quotation which Varian makes available to Subscriber over the Internet (or some other mutually-agreed data transmission network) on a subscription basis.

- 1.25 “**Subscription Service Go-Live Date**” means the date on which Varian has first made the relevant Subscription Service accessible to Subscriber for use under the terms of the Agreement in accordance with the relevant Implementation Plan.
- 1.26 “**Subscription Term**” means the term of the Subscription Service as set out in the Quotation for a certain Subscription Service.
- 1.27 “**Technical Support Policy**” means the Technical Support Policy for a Subscription Service set out in a Quotation.
- 1.28 “**Third Party**” means a person other than Varian, Varian’s Affiliates, Subscriber and Subscriber’s Affiliates.
- 1.29 “**Third Party Supplier**” means any Third Party who supplies a software application or other service that is included as part of the Subscription Services.

2. Construction

To the extent authorized by Varian in writing, all rights granted to the Subscriber pursuant to the Agreement may be exercised by the Subscriber or any of its Varian-approved Affiliates; provided, that the Subscriber shall always remain primarily liable to Varian for Subscriber’s Affiliate(s)’ compliance with the Agreement. Certain terms of the Agreement shall apply for the benefit of Varian and Third Party Suppliers as indicated in the relevant Quotation. Varian holds the benefit of each such term for its own benefit and on trust for the relevant Third Party Supplier.

3. Services

For each Subscription Service expressly specified in the relevant Quotation, Varian shall: (a) grant the Subscriber a personal, limited, non- transferrable, non-exclusive right to permit Authorized Users to access and use such Subscription Services during the Subscription Term solely to support the Subscriber’s normal course of business in accordance with the relevant Quotation; (b) provide implementation and customization services for the purposes of accessing such Subscription Services in accordance with an implementation plan (the “**Implementation Plan**”) described in the Product Schedule (the “**Implementation and Customization Services**”); and (c) from the Subscription Service Go-Live Date, provide technical support for such Subscription Services in accordance with the terms set out in the relevant Quotation (the “**Technical Support Services**”).

4. Subscription Service Terms of Use; Subscriber Data

- 4.1 The Subscriber shall, and shall ensure that all Authorized Users shall, comply with the terms of use of the Subscription Service set out in the Agreement together with any terms of use, policies and/or privacy statements established by Varian and its Third Party Suppliers that govern Subscriber’s access and use of the Subscription Service. The Subscriber undertakes that: (a) it shall not allow any individual account for the Subscription Services to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Subscription Services and/or Documentation; (b) each Authorized User shall keep a secure password or other applicable access or authentication mechanism for his or her use of the Subscription Services and the Documentation and each Authorized User shall keep his or her password or other applicable access or authentication mechanism confidential; (c) it shall not cache passwords or other applicable access or authentication mechanisms in proxy servers; and (d) it shall ensure that the Authorized Users use the Subscription Services and the Documentation in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorized User’s breach of the Agreement. The Subscriber shall use best efforts to prevent any unauthorized access to, or use of, the Subscription Services and/or Documentation and, in the event of any such unauthorized access or use, promptly notify Varian in writing.
- 4.2 The Subscriber shall not: (a) except to the extent expressly permitted under the Agreement: (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Subscription Service, Software and/or Documentation (as applicable) in any form or media or by any means; or (ii) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Subscription Service or Software; (b) access all or any part of the Subscription Services and Documentation in order to

build a product or service which competes with the Subscription Services; (c) use the Subscription Services and/or Documentation to provide services to Third Parties other than Authorized Users; (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or Documentation available to any Third Party except the Authorized Users; (e) attempt to obtain, or assist Third Parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under the Agreement; (f) access, nor permit its Affiliates or Authorized Users' to access, the Subscription Services from any country other than the country in which Subscriber's address in the Quotation is located; (g) use the Subscription Services in violation of applicable laws; or (h) use the Subscription Services and/or Documentation in a manner other than as contemplated by the Agreement.

- 4.3 The Subscriber represents and warrants that it has the right and authority, and it has obtained all consents of Data Subjects that may be required, to store, transmit or process Subscriber Data using the Subscription Service and to provide Subscriber Data to Varian and/or the Third Party Suppliers for use as contemplated by the Agreement without geographic restriction. The Subscriber shall (i) provide Varian and/or the Third Party Supplier(s) only such Subscriber Data as the Subscriber is authorized to do so and (ii) comply with all applicable laws and regulations with respect to its activities under the Agreement, including data privacy laws and regulations.

5. Subscriber's Obligations

- 5.1 The Subscriber shall provide Varian with: (i) all necessary co-operation in relation to the Agreement; and (ii) all necessary access to such information as may be required by Varian to provide the Services, including Subscriber Data and security access information. It is the Customer's obligation to: (i) obtain and maintain any software, hardware, internet connectivity, and other technology necessary to access the Subscription Service ("**Access Technology**") and ensure that the Access Technology meets each of Varian's and each Third Party Supplier's technical requirements as notified to the Subscriber in writing from time to time; and (ii) to procure and maintain its network connections and telecommunications links from its systems to Varian's and the Third Party Suppliers' data centers. Varian will not be liable for any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Subscriber's network connections or telecommunications links or caused by the internet.
- 5.2 Varian shall have the right to audit the Subscriber's use of the Subscription Services, including to verify Patient numbers and Authorized Users, at any time in accordance with this Section 5.2. To the extent such an audit requires Varian to seek the cooperation of Subscriber (whether remotely or on Subscriber's premises), Varian (or its representative) shall: (a) conduct such audit no more than once per quarter, at Varian's expense; and (b) to the extent such an audit requires Varian (or its representative) to visit Subscriber's premises, Varian shall provide Subscriber with reasonable prior notice and use reasonable efforts not to substantially interfere with the Subscriber's normal conduct of business while performing any such audit. If any of the audits referred to in this Section 5.2 reveal that the Subscriber has underpaid Fees to Varian, then without prejudice to Varian's other rights, the Subscriber shall pay to Varian an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Quotation plus the service charge for late payments described in Section 6.1 below within ten (10) Business Days of Subscriber's receiving notice of the conclusion of the relevant audit.

6. Fees, Payment Terms and Taxes

- 6.1 Subject to receipt of an invoice, the Subscriber shall pay Varian the fees for the Services as set out in the Quotation ("Fees"). If Varian has not received payment within thirty (30) days of the due date for payment, and without prejudice to any other rights and remedies of Varian, Varian may, without liability of Varian to the Subscriber: (a) suspend the provision of any Services; and/or (b) disable the Authorized Users' passwords, accounts and access to all or part of the Subscription Services; and/or (c) apply a service charge equal to 1.5% per month of the unpaid amount, or if lower, the maximum amount allowed by law. For the avoidance of doubt, Varian shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain(s) unpaid.
- 6.2 All amounts and fees stated or referred to in the Agreement shall be: (a) payable in US Dollars, unless the Fees are stated in another currency in the relevant Quotation; (b) non-cancellable and non-refundable (unless expressly stated otherwise in the Agreement); and (c) exclusive of value

added tax or any similar tax, which shall be added to Varian's invoices at the appropriate rate, unless the Subscriber is tax-exempt and provides Varian proof of such status.

- 6.3 If any law requires the Subscriber to withhold any tax on payments to be made under the Agreement ("**withholding tax**"), the Subscriber shall make the withholding, remit the amount to the appropriate taxing authority and within ninety (90) days provide Varian with tax receipts evidencing the payments of that amount. If Varian is eligible to take advantage of any reduced withholding tax provided in an applicable income tax treaty, Varian shall provide to the Subscriber all appropriate forms and documentation required under the treaty to obtain the reduced withholding tax. Otherwise, the Subscriber shall apply the non-treaty withholding tax rate on applicable payments. If withholding tax is payable, the amount payable to Varian shall be increased such that, after making the withholding, Varian is entitled to receive (at the time the payment is due) the amount it would have received had no withholding been required.

7. Term and Termination

- 7.1 The Agreement shall come into force on the Effective Date and shall continue until the expiration or termination of the last surviving Quotation ("**Term**"). The Subscription Term will automatically renew for successive renewal terms for one (1) year intervals, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the then-current Subscription Term ("**Notice Period**"). Varian may increase the Fees for Services at the start of any Subscription Renewal Period upon reasonable advance notice to Subscriber.
- 7.2 Without affecting any other right or remedy available to it, either party may terminate the affected Quotation(s) with immediate effect by giving written notice to the other party if: (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than fifteen (15) days after being notified in writing to make such payment; (b) the other party commits a material breach of any other term of the Agreement or one or more Quotations and fails to remedy that breach within a period of thirty (30) days after being notified in writing of such breach; or (c) the other party: (i) becomes insolvent; (ii) files a petition for bankruptcy or if a proceeding or other action is filed against such party under bankruptcy or similar laws (unless such petition or proceeding is dismissed within sixty (60) days); (iii) makes an assignment for the benefit of creditors; or (iv) any events analogous to (i) through (iii) in any jurisdiction outside of the United States. Where a right of termination arises for Varian under this Section 7.2 in relation to one or more Quotations, Varian may (in its sole discretion) elect to terminate some or all affected Quotations or all Quotations and the Agreement.
- 7.3 Without penalty to either party and subject to Section 7.6, if Varian loses the rights to any component of a Subscription Service for any reason (including rights to any Software), Varian may, at its own discretion: (i) substitute a substantially comparable component for such affected Subscription Service; (ii) terminate the Quotation in part as it relates to the affected Subscription Service (which termination shall not affect any other Subscription Service to which the Quotation applies) or terminate any Quotation in whole relating to such Subscription Service.
- 7.4 Varian may at any time, at its own discretion, cease making a Subscription Service available to all subscribers generally. In such circumstances and without penalty to either party and subject to Section 7.6, Varian may terminate any Quotation for such Subscription Service (or terminate any part of a Quotation which relates to that Subscription Service) by giving the Subscriber at least six (6) months' prior written notice.
- 7.5 On termination of a Quotation or expiry of a Subscription Term ("**Termination**"): (a) all licenses granted for, and the Subscriber's right to access and use, the related Subscription Services shall immediately terminate; (b) the Subscriber shall return to Varian any Proprietary Materials in its possession; (c) the Subscriber shall pay Varian all sums then due and owing under the applicable Quotation; and (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of Termination, including the right to claim damages in respect of any breach of a Quotation which existed at or before the date of Termination shall not be affected or prejudiced. Upon Termination, Varian may destroy or otherwise dispose of any of the Subscriber Data in its possession unless Varian receives, no later than ten (10) Business Days after the effective date of the Termination, a written request for the delivery to the Subscriber of the then most recent back-up of the Subscriber Data. Varian shall use commercially reasonable efforts to deliver such back-up to

the Subscriber; provided, that the Subscriber has at that time paid all fees and charges outstanding at and resulting from Termination and the Subscriber shall pay all reasonable expenses incurred by Varian in returning or disposing of Subscriber Data. Varian may destroy or otherwise dispose any of Subscriber Data upon such delivery.

- 7.6 If a Quotation is terminated (in whole or in part) in accordance with Section 7.3 or 7.4, Varian shall provide a pro-rata refund to the Subscriber of any Fees paid in advance for the affected Subscription Services, provided, however, the loss of rights triggering such termination pursuant to Section 7.3 must have not resulted from the Subscriber's acts or omissions.
- 7.7 The following provisions shall survive any expiration or termination of the Agreement: Section 1 (Definitions), Section 2 (Construction), Section 4 (Subscription Service Terms of Use; Subscriber Data), Section 6 (Fees, Payment Terms and Taxes), Section 7 (Term and Termination), Section 9 (Limitation of Liability), Section 10 (Indemnities), Section 11 (Intellectual Property), Section 12 (Confidential Information), Section 14 (Governing Law and Disputes), Section 15 (Export Controls), Section 17 (Notices), Section 20 (Miscellaneous) and any other provisions which are intended to survive termination or expiry of the Agreement and any Quotation.

8. Warranties and Disclaimers

- 8.1 The Subscription Services shall be performed (i) with reasonable care and skill and, where a Product Schedule specifies service levels for a particular Service, in accordance with such service levels and (ii) substantially in accordance with the Implementation Plan, as applicable; provided, however, that this warranty shall not apply to the extent of any non-conformance which is caused by use of the Subscription Services contrary to Varian's instructions, or modification or alteration of the Subscription Services by any party other than Varian, Varian's duly authorized contractors or agents or any Third Party Supplier. If the Subscription Services do not conform with the warranty in this Section 8.1, Varian shall, at its own expense, use commercially reasonable efforts to correct any such non-conformance promptly, or provide the Subscriber with an alternative means of accomplishing the desired performance. Such re-performance, correction or substitution constitutes the Subscriber's sole and exclusive remedy for any breach of the warranties set out in this Section 8.1.
- 8.2 To the extent permitted by law, Varian does not make any warranty about the results that may be obtained using the Subscription Services or the Software. In particular, the Subscription Services and the Software are not intended to be a substitute for the Subscriber's medical judgment and the Subscriber remains solely responsible for ensuring proper medical treatment and patient care, for verifying the accuracy of all Subscriber Data obtained from a Subscription Service and for obtaining any information needed to supplement such Subscriber Data. Varian accepts no liability for Loss relating to clinical decisions involving the use of a Subscription Service. Varian shall not be liable for any loss or corruption of data, including Subscriber Data.
- 8.3 EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS SECTION 8, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND VARIAN DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT AND NON-INFRINGEMENT.
- 8.4 Notwithstanding anything to the contrary set forth herein, any Third Party product identified as such in a Product Schedule ("**Third Party Product**") shall be supplied on that Third Party's terms and conditions of use. The Subscriber shall comply with such terms unless it negotiates otherwise with the supplier of the Third Party Product. Varian makes no representation or warranty, and Varian has no liability, with respect to a Third Party Product or for failure of a Third Party to perform on its warranties. The Subscriber shall seek any remedy with respect to a Third Party Product solely from the Third Party.

9. Limitation of Liability

- 9.1 TO THE EXTENT PERMITTED BY LAW, (A) VARIAN SHALL NOT BE LIABLE (IN CONTRACT, TORT OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF PROFITS OR BUSINESS, OR LOSS OR CORRUPTION OF DATA AND (B) THE AGGREGATE LIABILITY OF VARIAN IN

RELATION TO ALL CLAIMS UNDER, IN CONNECTION WITH OR ARISING OUT OF, THE AGREEMENT OR THE SERVICES (IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES FOR SERVICES PAID BY THE SUBSCRIBER UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

- 9.2 With respect to bodily injury liability to Third Parties, each party shall be responsible in such proportion as reflects its relative fault for damages arising from or in any way related to the use or operation of the Subscription Service or products. Nothing in the Agreement excludes the liability of either party for: (a) death or bodily injury caused by Varian's negligence; (b) fraud or fraudulent misrepresentation; or (c) any liability that cannot be excluded under applicable laws.

10. Indemnities

- 10.1 Varian shall defend, indemnify and hold harmless the Subscriber, its Affiliates, and their respective officers, directors, employees, agents, representatives, successors and assigns against Claims brought by a Third Party ("**Third Party Claims**") and related Losses arising out of or in connection with an allegation that the Subscription Service (excluding Third Party Products) infringes intellectual property rights of a Third Party. Such indemnity shall not apply to the extent that a Third Party Claim is based on: (a) use of the Subscription Service and/or Software in a modified state not authorized by Varian; (b) use of the Subscription Service and/or Software in a manner other than as specified in the Documentation; or (c) use of the Subscription Service and/or Software in combination, operation or use with any product other than Varian products or those Third Party Products set out in a Product Schedule.
- 10.2 The Subscriber shall defend, indemnify and hold harmless Varian, its Affiliates, and their respective officers, directors, employees, agents, representatives, suppliers, successors and assigns against any Third Party Claims and related Losses arising out of or in connection with: (a) the Subscriber's or an Authorized User's use of any Subscription Service, including any such use not in accordance with the Agreement; and (b) the Subscriber Data, including Subscriber's breach of Section 4.3 or any assertion that Subscriber Data or other data or content provided to Varian or a Third Party Supplier infringes, misappropriates, or otherwise violates any law, breach of confidentiality, intellectual property rights or privacy rights of a Third Party.
- 10.3 A party seeking indemnity under the Agreement (the "**Indemnitee**") shall give the other party (the "**Indemnitor**") written notice of the Third Party Claim promptly (and in any event within fifteen (15) days after service of the Third Party Claim). Failure to give timely notice shall not affect rights to indemnity, except to the extent that the Indemnitor demonstrates actual damage caused by such failure. The Indemnitor may elect to direct the defense or settlement of any Third Party Claim by giving the Indemnitee written notice. Such an election shall be effective immediately on receipt of the notice by the Indemnitee. The Indemnitor shall have the right to employ counsel to defend the Claim, or to compromise, settle or otherwise dispose of the Claim, if the Indemnitor considers it advisable to do so. Any defense or settlement shall be at the expense of the Indemnitor. The Indemnitor shall not settle, or consent to any entry of judgment in, any Third Party Claim without obtaining either: (i) an unconditional release of the Indemnitee (and all of its other Indemnified Parties or Subscriber Indemnified Parties, as applicable) from all liability with respect to all Claims underlying the Third Party Claim; or (ii) the prior written consent of the Indemnitee, which shall not be unreasonably withheld. The parties shall fully cooperate with each other in any such Third Party Claim and shall make available to each other any books or records useful or necessary for the defense of any such Third Party Claim.
- 10.4 If a Subscription Service (or any part thereof) becomes, or in Varian's reasonable opinion is likely to become, the subject of any infringement claim, then Varian may, at its sole option and expense: (a) obtain the right for the Subscriber to continue using the Subscription Service; (b) replace or modify the Subscription Service so that it is non-infringing; or (c) terminate the relevant Quotation as it relates to the Subscription Service and provide a pro-rata refund to the Subscriber of any Fees paid in advance for such Subscription Service (if any). This Section 10.4 states Varian's entire liability for any Third Party Claim based on or related to any alleged infringement of any patent or other intellectual property rights.

11. Intellectual Property Rights

- 11.1 As between Varian and the Third Party Suppliers, on the one hand, and the Subscriber, on the other hand, the Subscriber owns all right, title and interest (including intellectual property rights) in and to Subscriber Data. Neither Varian nor the Third Party Suppliers have any ownership interest in Subscriber Data, and their rights to Subscriber Data are limited to the license granted in the Agreement.
- 11.2 The Subscriber grants Varian and Third Party Suppliers a non-exclusive, fully-paid up, worldwide, transferable license to access, use and create derivative works of Subscriber Data in connection with (a) processing, providing, distributing, monitoring, displaying, managing, administrating, modifying, performing, supporting and enhancing the Services and Software, (b) creating De-Identified Data, or (c) carrying out legal responsibilities of Varian and Third Party Suppliers. This license includes the right of Varian and Third Party Suppliers to permit their subcontractors to exercise any right granted under the license. Subscriber agrees that Varian will retain all right, title, and interest to transactional and performance data (exclusive of Subscriber Data) related to use of the Services and that Varian is permitted to use such data for its business purposes (including use optimization and product marketing); provided, that such use does not reveal the identity of Subscriber, any Subscriber employee, supplier or patient, or specific use characteristics that may be identified to Subscriber. Subscriber hereby grants to Varian and Third Party Suppliers a nonexclusive, worldwide, irrevocable, sub-licensable, transferable, perpetual, royalty-free right and license to access, copy, store, transmit, modify, make, have made, create derivative works from, display, aggregate with other de-identified and/or anonymized data, share with third parties, and/or otherwise use De-Identified Data to enhance current or future products, software or services of Varian and Third Party Suppliers, or for any other commercial and business purposes.
- 11.3 As between Varian and the Third Party Suppliers and the Subscriber, Varian and/or the Third Party Suppliers own all right, title and interest (including intellectual property rights) in and to Proprietary Materials, as applicable. Except as expressly stated herein, the Agreement does not grant the Subscriber any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Proprietary Materials. To the extent that ownership of any right, title or interest to the Proprietary Materials does not automatically vest in Varian and/or the Third Party Suppliers, the Subscriber irrevocably assigns (and shall cause its personnel and contractors to assign) to Varian and/or the Third Party Suppliers all such right, title and interest, and agrees to execute (and to cause its Personnel and contractors to execute) such further assignments and other documents as Varian and/or the Third Party Suppliers may reasonably request to further evidence such assignment or to facilitate protection of intellectual property rights.

12. Confidential Information

- 12.1 “**Confidential Information**” means: (a) in the case of Varian and the Third Party Suppliers: the Proprietary Materials, all pricing and Fees relating to the Services, as well as any other non-public information or material regarding Varian’s, the Third Party Suppliers’ and their respective Affiliates and suppliers’ legal or business affairs, finances, customers, properties or data; and (b) in the case of the Subscriber: any non-public information or material regarding the Subscriber’s legal or business affairs, finances, customers or properties. Notwithstanding the foregoing, the meaning of “**Confidential Information**” excludes information which is: (a) or becomes public knowledge without any action by, or involvement of, the party to which the information is disclosed (the “**Receiving Party**”); (b) documented as being known to the Receiving Party before its disclosure by the other Party (the “**Disclosing Party**”); (c) independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party and is so documented; (d) anonymized and/or de-identified; or (e) obtained by the Receiving Party without restrictions on use or disclosure from a third person who, to the Receiving Party’s knowledge, did not receive it, directly or indirectly, from the Disclosing Party.
- 12.2 A Receiving Party shall, with respect to any Confidential Information disclosed by the Disclosing Party: (a) use the Confidential Information only in connection with the Receiving Party’s performance of the Agreement; (b) subject to Section 12.3, restrict disclosure of the Confidential Information within the Receiving Party’s organization to personnel and consultants who need to

know that Confidential Information in connection with the Receiving Party's performance of the Agreement; and (c) not disclose Confidential Information to any Third Party (other than its consultants) unless authorized in writing by the Disclosing Party to do so.

12.3 The Receiving Party shall protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own Confidential Information (but no less than a reasonable degree of care). The Receiving Party shall, before providing any personnel or consultant with access to Confidential Information of the Disclosing Party, inform them of the confidential nature of the Confidential Information and require them to comply with the Receiving Party's obligations under the Agreement in relation to that Confidential Information. If a party is requested to disclose any of another party's Confidential Information pursuant to any judicial or governmental order, that party shall not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given.

13. Force Majeure

Varian shall have no liability to the Subscriber under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Varian or any other party), failure of a utility service or transport or telecommunications network or internet connection, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, cyber security incidents (including denial-of-service attacks and third-party security breaches), fire, flood, storm or default of suppliers or sub-contractors; provided, that the Subscriber is notified of such an event and its expected duration.

14. Governing Law and Disputes

The parties shall endeavor to settle any dispute arising out of the Agreement, except those pertaining to intellectual property issues, by mediation under the Mediation Rules of the American Arbitration Association ("AAA"). The parties will attempt to agree on a mediator. Failing such agreement, the mediator will be appointed by AAA. Any dispute arising out of or relating to the Agreement, including the breach, termination, or validity of it, which has not been resolved by mediation within thirty (30) days after appointment of a mediator or such time period as the parties may otherwise agree, shall be submitted to and finally resolved by binding arbitration in accordance with the AAA Commercial Rules, by an independent and impartial arbitrator appointed by AAA, provided, however, that if one party fails to participate in the mediation as agreed in this Section, the other party can commence arbitration prior to the expiration of the time periods set forth above. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be Palo Alto, California. The governing law of the substance of the Agreement shall be the commercial law of the State of California, and the United Nations Convention for the International Sale of Goods shall not apply. The procedural law for any dispute arising out of the Agreement shall be the law of the place where the action or arbitration is filed. Arbitral proceedings shall be conducted in English unless another language is mutually agreed upon by the parties. The arbitration tribunal shall not award punitive damages. The expenses of the arbitration, including the arbitrator's fees, expert witness fees, and attorney's fees, may be apportioned between the parties in any manner deemed appropriate by the arbitrator; however, in the absence of any formal ruling by the arbitrator each party shall share equally in the payment of the arbitrator's fees and bear its own costs, expert witness fees, and attorney's fees. The arbitration award shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement. Nothing in the Agreement shall prohibit either party from seeking to prevent any unauthorized copying, disclosure, use, retention, or distribution of its Confidential Information or infringement of intellectual property by injunctive relief or otherwise in a court of law. Varian shall have the exclusive right to bring legal action for failure to pay for Services furnished in the courts of Varian's corporate domicile or any other place.

15. Export Controls

The Subscriber shall comply with Export Controls and ensure that the Subscription Service and any related technology are not used, accessed, sold, transferred or diverted: (a) to any United States or European Union sanctioned or embargoed country unless authorized by United States export license regulation; (b) to any person or firm on the United States Department of Commerce denied persons list or entity list, the United States Department of Treasury's Specially Designated Nationals List, the US Department of State's Debarred Parties List or any European Union or local country listing of sanctioned persons; (c) to any nuclear weapons, nuclear power, nuclear research, chemical or biological weapons, or missile or rocket technology end- user or use; or (d) in violation of any other Export Controls. The Subscriber shall promptly notify Varian in writing of any known or suspected contravention of this Section 15.

16. Injunctive Relief

The Subscriber acknowledges that a breach or threatened breach of any of any term relating to Confidential Information, data or intellectual property rights would cause Varian irreparable harm not compensable in monetary damages and, accordingly, Varian is, in addition to all other remedies available under the Agreement, at law or in equity, entitled to immediate injunctive relief in any court of competent jurisdiction without the necessity of posting any form of security and the Subscriber agrees to not object to such an application.

17. Notices

Any notices required or permitted to be given pursuant to the Agreement will be in writing and will be delivered: (a) in person; (b) by overnight delivery with delivery confirmation; or (c) by first class certified mail, return receipt requested, or its international equivalent. All such notices shall be addressed to Varian at Legal Department, Varian Medical Systems, Inc., 3100 Hansen Way, M/S E-250, Palo Alto, CA 94304, fax 650-424-5998, and to Customer at the address and/or fax number set forth in the Quotation, or to any other address specified by a party in writing to the other party from time to time. Notice shall be deemed to have been given when received.

18. Publicity

The Subscriber grants Varian the right to use the Subscriber's name, logo, trademarks or trade names in press releases, product brochures and financial reports indicating that the Subscriber is a customer of Varian with respect to the Subscription Services. All other public statements or releases shall require the mutual consent of the parties.

19. Debarment

Varian represents that neither it nor any of its employees or agents providing Services under the Agreement are or have been excluded, terminated, suspended, or debarred from an applicable federal or state health care program or from participation in any federal or state procurement or non- procurement programs. Varian further represents that no final adverse action by the federal or a state government is pending or has occurred against Varian or its employees or agents employed to provide Services. For orders in the United States: Varian further represents that neither it nor any of its employees or agents providing Services under the Agreement has been convicted of a criminal offense as set forth in 42 U.S.C. § 1320a-7, including an offense related to the provision of healthcare items or services.

20. Miscellaneous

20.1 Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior, written consent of Varian. Notwithstanding the forgoing, Subscriber, on written notice to Varian and without the consent of Varian, may assign or otherwise transfer the Agreement to an Affiliate or in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise) involving the business or division to which the Agreement relates. Any assignment or other transfer in violation of this Section shall be null and void ab initio. Subject to the foregoing, the Agreement shall be binding on and inure to the benefit of the parties and their permitted successors and assigns.

20.2 The Agreement may be amended or modified only in writing signed by both parties. The Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior understandings, arrangements and agreements between the parties. If any provision (or

part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 20.3 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.4 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.5 The Agreement may consist of a number of copies, each signed by a different party to the Agreement. If so, then the signed copies are treated as making up the one document and the date on which the last of the parties executes its counterpart shall be the date of the Agreement.
- 20.6 Headings are included for convenience only and are not to affect the interpretation of the Agreement. References to “including” and words or phrases of similar import shall not be deemed to be terms of limitation but rather be deemed to be followed by the words “without limitation.”