



**From:** [Gregory Bratcher](#)  
**To:** [CONP CONP](#)  
**Subject:** cost overrun request for 6125  
**Date:** Wednesday, May 28, 2025 6:36:16 PM  
**Attachments:** [image001.png](#)

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As discussed in the final Progress Report for 6125, a project moving a linear accelerator between two hospitals in North Kansas City, we have inadvertently incurred a cost overrun. You have helpfully provided an outline of the information required for requesting an overrun; below are answers to those questions:

#### Cost Overrun

1. Written request. This may be in the form of an email.
  - i. Please consider this email our request for an overrun.
2. Reason(s) for request;
  - i. There is a cost overrun due to the complexity and timing of the project. Two legal teams started undoing a joint venture between Saint Luke's and Liberty hospitals while Saint Luke's was an independent system. Later, a third legal team entered the picture when Saint Luke's joined BJC HealthCare. These three teams worked to establish the terms and details that would allow for moving the linear accelerator, the core of the CON project. However, for that team, the machine was just one component of their overall assignment of disentangling a business relationship.

In a parallel track, as Saint Luke's was becoming part of BJC, their team was getting acquainted with BJC's clinical engineering team. One of the reasons Saint Luke's joined with BJC was to access this team's exceptional ability to negotiate discounts and deals. As the legal negotiations wound down and after the CON approval, the clinical engineering team, when preparing to facilitate the move of the linear accelerator, made known that a significant software update was available. The Saint Luke's clinical team jumped at the chance. No discussions were had comparing the cost of the upgrade and the total project cost—it was “just a good deal and the exact right time to do it.” As with consumer software, minor software updates are relatively simple in comparison to major upgrades. This linear accelerator software upgrade was major, and has been characterized as the equivalent of when Microsoft Windows moved from version 10 to the current version 11—complicated, delicate, and time-consuming. An ideal time to perform such an upgrade is when the machine is down already, such as when it is being moved.

At no time did anyone seek to deceive or subvert the CON or the committee. From the team's perspective, nothing changed: the exact same machine that was at Liberty was delivered and installed at Saint Luke's. And indeed, it is the same, only with different operating software.

Unfortunately, while not impossible, the software cannot easily be rolled back. We hope the committee can see its way to approving this unpremeditated overrun.

3. Statement as to whether or not there were any changes to the project as originally presented to the committee (construction/renovation plans, site plan, etc.), and a description of the changes, if any;
  - i. The physical machine did not change; it is the same make and model. Indeed, it is the same exact machine as described in the CON application. Only the operating software has changed.

4. Revised project budget and budget detail;

Project Component	Value or Cost
Book Value, TrueBeam, 7yrs	\$ 164,564
Software upgrade for TrueBeam	\$ 944,103
Modify Existing Vault & Door	\$ 814,818
Move Linear Accelerator	\$ 295,000
Testing & CommissionEnq	\$ 76,296
	\$
	2,294,781

5. Explanation of why the approved project cost would be exceeded;
  - i. Without the software upgrade, the project would have come in slightly under the original reported cost in the CON application. The software upgrade, at almost a million dollars, is the cause.
6. Alternatives to incurring this overrun that were considered and why the cost overrun request was selected;
  - i. Unfortunately, rolling back the software update, while not technically impossible, would be costly and difficult. It is conceivable that the costs to unwind the update could approach the equivalent of the overrun.

7. Fee (if applicable).
  - i. On its way via Fed Ex

Again, there was no attempt to circumvent the CON. Well-meaning people, in a new organizational relationship and in the middle of a legal process to unwind a previous business relationship, lost track of the CON implications of the software upgrade. We will not make that mistake again.

Greg Bratcher  
BJC HealthCare  
[gbratcher@bjc.org](mailto:gbratcher@bjc.org)  
Cell & office: 314-323-1231

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**From:** CONP CONP <CONP@health.mo.gov>  
**Sent:** Thursday, May 22, 2025 3:53 PM  
**To:** Gregory Bratcher <Gregory.Bratcher@bjc.org>  
**Subject:** RE: final progress report 6125  
**Importance:** High

[EXTERNAL]: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greg,

I will work on reviewing the PPR and additional documentation, however it appears there is a cost overrun. I am attaching the list of items needed by June 9<sup>th</sup> to place it on the July full CON agenda. Once these items are received, I will work on placing this on the meeting agenda and closing the project out.

Cost Overrun

1. Written request. This may be in the form of an email.
2. Reason(s) for request;
3. Statement as to whether or not there were any changes to the project as originally presented to the committee (construction/renovation plans, site plan, etc.), and a description of the changes, if any;
4. Revised project budget and budget detail;
5. Explanation of why the approved project cost would be exceeded;
6. Alternatives to incurring this overrun that were considered and why the cost overrun request was selected;
7. Fee (if applicable).

Thank you!



*Mackinzezy Fick*

Assistant Program Coordinator  
Certificate of Need Agency :  
<http://health.mo.gov/information/boards/certificateofneed/index.php>  
Missouri Department of Health and Senior Services  
920 Wildwood Drive, Jefferson City, MO. 65102  
✉: [mackinzezy.fick@health.mo.gov](mailto:mackinzezy.fick@health.mo.gov) | ☎: 573-751-6403

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**From:** Gregory Bratcher <Gregory.Bratcher@bjc.org>  
**Sent:** Thursday, May 22, 2025 11:16 AM  
**To:** CONP CONP <CONP@health.mo.gov>  
**Subject:** final progress report 6125

Attached please find the final Progress Report for 6125, moving a linear accelerator from two hospitals in North Kansas City. Also attached is supporting documentation. Below is a summary of the costs and documentation:

**From:** [Gregory Bratcher](#)  
**To:** [CONP CONP](#)  
**Subject:** final progress report 6125  
**Date:** Thursday, May 22, 2025 11:20:29 AM  
**Attachments:** [Move LINAC and Commissioning.pdf](#)  
[Software Upgrade PO.pdf](#)  
[Northland Cancer Center.CON Vault Breakout.05.20.2025.pdf](#)  
[Bill of sale with lin acc marked.pdf](#)  
[liberty to barry road overrun text correct Saint PDF.pdf](#)  
[periodic progress report 6125 liberty lin acc. 1st may 2025.pdf](#)

Attached please find the final Progress Report for 6125, moving a linear accelerator from two hospitals in North Kansas City. Also attached is supporting documentation. Below is a summary of the costs and documentation:

#### Move Linear Accelerator from Liberty to Saint Luke's Cost Breakdown

Project Component	Value or Cost
Book Value, TrueBeam, 7yrs	\$ 164,564
Software upgrade for TrueBeam	\$ 944,103
Modify Existing Vault & Door	\$ 814,818
Move Linear Accelerator	\$ 295,000
Testing & CommissionEnq	\$ 76,296
	\$ 2,294,781

One of the attachments is a bill of sale for the machine and other equipment. That bill of sale lists all items being "sold" back to Saint Luke's; as such, it includes items that are not CON reviewable. Below is a summary of only CON reviewable items, which are marked in yellow highlighter in the sale document. (note that many items have zero value):

#### Attachment A--only CON reviewable items (highlighted in yellow in main document)

Asset ID	Asset Description	Quantity	Net Book Val (NBV)
BA-058814 (SunNuclear Daily QA3 PO 1800044)	SunNuclear Daily QA3 PO 1800044	1	\$8,835
BA-059378 (Varian Visual Coaching Device PO 1854898)	Varian Visual Coaching Device PO 1854898	1	\$13,032
BA-059937 (SUN NUCLEAR MACHINE QUALITY MANAGEMENT PACKAGE PO 1916813)	SUN NUCLEAR MACHINE QUALITY MANAGEMENT PACKAGE PO 1916813	1	\$14,174
Accelerator - Linac)			\$128,333
BA-050272 (RadCalc ROI Module) PO 1291920		1	\$190
			\$ 164,564

Also note there is a cost overrun. The document that starts with "liberty to barry road overrun text correct Saint PDF" describes the situation.

Greg Bratcher  
 BJC HealthCare  
[gbratcher@bjc.org](mailto:gbratcher@bjc.org)  
 Cell & office: 314-323-1231

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## Certificate of Need Program

### PROPOSED PROJECT BUDGET

#### Description

#### Dollars

#### **COSTS:\***

(Fill in every line, even if the amount is "\$0".)

1. New Construction Costs \*\*\*

\_\_\_\_\_

2. Renovation Costs \*\*\*

\_\_\_\_\_

**3. Subtotal Construction Costs** (#1 plus #2)

\_\_\_\_\_

4. Architectural/Engineering Fees

\_\_\_\_\_

5. Other Equipment (not in construction contract)

\_\_\_\_\_

6. Major Medical Equipment

\_\_\_\_\_

7. Land Acquisition Costs \*\*\*

\_\_\_\_\_

8. Consultants' Fees/Legal Fees \*\*\*

\_\_\_\_\_

9. Interest During Construction (net of interest earned) \*\*\*

\_\_\_\_\_

10. Other Costs \*\*\*

\_\_\_\_\_

**11. Subtotal Non-Construction Costs** (sum of #4 through #10)

\_\_\_\_\_

**12. Total Project Development Costs** (#3 plus #11)

\_\_\_\_\_ \*\*

#### **FINANCING:**

13. Unrestricted Funds

\_\_\_\_\_

14. Bonds

\_\_\_\_\_

15. Loans

\_\_\_\_\_

16. Other Methods (specify)

\_\_\_\_\_

**17. Total Project Financing** (sum of #13 through #16)

\_\_\_\_\_ \*\*

18. New Construction Total Square Footage

\_\_\_\_\_

19. New Construction Costs Per Square Foot \*\*\*\*\*

\_\_\_\_\_

20. Renovated Space Total Square Footage

\_\_\_\_\_

21. Renovated Space Costs Per Square Foot \*\*\*\*\*

\_\_\_\_\_

\* Attach additional page(s) detailing how each line item was determined, including all methods and assumptions used. Provide documentation of all major costs.

\*\* These amounts should be the same.

\*\*\* Capitalizable items to be recognized as capital expenditures after project completion.

\*\*\*\* Include as Other Costs the following: other costs of financing; the value of existing lands, buildings and equipment not previously used for health care services, such as a renovated house converted to residential care, determined by original cost, fair market value, or appraised value; or the fair market value of any leased equipment or building, or the cost of beds to be purchased.

\*\*\*\*\* Divide new construction costs by total new construction square footage.

\*\*\*\*\* Divide renovation costs by total renovation square footage.

## **Additional information for Periodic Progress Report 6125**

Describe the status and progress of the project to-date or lack of progress. *(Use additional pages as needed.)*

The unit was moved from Liberty to the Saint Luke's North - Barry Road location in March of this year, 2025. The first patient was seen earlier this month, May 2.

There is a cost overrun due to the complexity and timing of the project. Two legal teams started disentangling the original joint venture between Saint Luke's and Liberty hospitals while Saint Luke's was an independent system. Later, a third legal team entered the picture when Saint Luke's joined BJC. These three teams worked to establish the terms and details that would allow for moving the linear accelerator, the core of the CON project. For that team, the machine itself was just one component of their overall assignment.

In a parallel track, as Saint Luke's was becoming part of BJC, they were getting acquainted with BJC's clinical engineering team. One of the reasons Saint Luke's joined with BJC was to access this team's exceptional ability to negotiate discounts and deals. As the legal negotiations wound down and after the CON approval, the clinical engineering team, when preparing to facilitate the move of the linear accelerator, offered that a significant software update was available. The Saint Luke's clinical team jumped at the chance. No discussions were had comparing the cost of the upgrade and the total project cost—it was “just a good deal and the exact right time to do it.” As with consumer software, there are minor software updates versus major upgrades. This linear accelerator software upgrade has been characterized as the equivalent of when Microsoft Windows moved from version 10 to the current version 11. An ideal time to perform such an upgrade is when the machine is down already, such as when it is being moved.

At no time did anyone seek to deceive or subvert the CON or the committee. As they saw it, the exact same machine that was at Liberty was delivered and installed at Saint Luke's. And indeed, it is the exact same machine, only with different operating software.

Unfortunately, while not impossible, the software cannot easily be rolled back. We hope the committee can see its way to approving this unpremeditated overrun.

# Northland Cancer Center

Updated

5/20/2025

BUDGET LINE ITEM DESCRIPTION		LINAC Vault Breakout	
Category:	<b>01 - Hard Costs</b>	<b>1300 SF</b>	
	LINAC Vault (1,000 sf)	599592	
	Physicist testing (additional Sheilding)	118374	
	Vault door	40485	
	<b>Total Hard Costs</b>	\$	758,451
		\$	583.42
Category:	<b>02 - Soft Costs</b>		
	Architectural Design/Engineering	56367	
	<b>Total Soft Costs</b>	\$	56,367
<b>Grand Total</b>		\$	<b>814,818</b>
		\$	627



**BILL OF SALE**

This Bill of Sale is made effective as of April 30, 2025 (the “Effective Date”), by and between Saint Luke’s Radiation Therapy – Liberty, LLC, a Missouri limited liability company (“Seller”), and Saint Luke’s Hospital of Kansas City, a Missouri nonprofit public benefit corporation (“Buyer”). Seller, in consideration of the sum of Three Hundred One Thousand Twenty-Three Dollars and Fifty-Six Cents (\$301,023.56; the “Purchase Price”), the receipt and sufficiency of which is hereby acknowledged, does now hereby grant, sell, transfer and deliver to Buyer ownership and title to the equipment, associated inventory and assets as detailed and quantified detailed Attachment A, attached hereto and incorporated herein by reference (collectively, the “Assets”), subject to the terms and conditions set forth below.

Seller represents and warrants to Buyer that as of the Effective Date, Seller has and does now convey to Buyer full legal, marketable and beneficial title to the Assets, free and clear of any and all security interests, liens, claims, charges or encumbrances of any nature whatsoever.

Buyer acknowledges that Seller makes no representation or warranty with respect to the Assets being conveyed hereby except as specifically set forth in this Bill of Sale.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Missouri.

Seller shall execute, acknowledge and deliver to Buyer any and all other assignments, consents, approvals, conveyances, assurances, documents, certificates and instruments reasonably requested by Buyer at any time and shall take any and all other actions reasonably requested by Buyer at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Buyer the Assets.

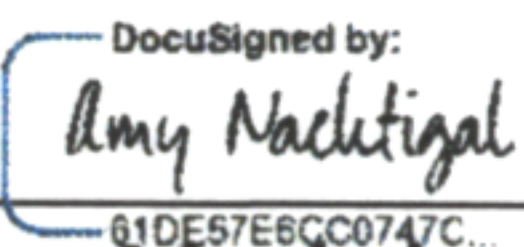
IN WITNESS WHEREOF, Buyer and Seller have executed this Bill of Sale as of the Effective Date.

**BUYER:**

Saint Luke’s Hospital of Kansas City

**SELLER:**

Saint Luke’s Radiation Therapy – Liberty, LLC

By:   
61DE57E6C00747C...  
Amy Nachtigal, Vice President

By:   
2C884FC8BDD41C3...  
Jani Johnson, President



Attachment A

Asset ID	Asset Description	Quantity	NBV at 4/30/25
BA-000598 (109)	New Chiller/ Compressor	1	-
BA-000599 (110)	Dishwasher	1	-
BA-000604 (115)	Liberty Hospital Counter Covers	1	-
BA-049104-01 (Liberty Security Reader Addition)	Liberty Security Reader Addition	1	-
BA-058814 (SunNuclear Daily QA3 PO 1800044)	SunNuclear Daily QA3 PO 1800044	1	8,835
BA-059378 (Varian Visual Coaching Device PO 1854898)	Varian Visual Coaching Device PO 1854898	1	13,032
BA-059937 (SUN NUCLEAR MACHINE QUALITY MANAGEMENT PACKAGE PO 1916813)	SUN NUCLEAR MACHINE QUALITY MANAGEMENT PACKAGE PO 1916813	1	14,174
BA-000600 (111)	LROC - ARCHITECTS	1	-
BA-000601 (112)	Cable Installation	1	-
BA-000602 (113)	Intercom/Video System for Vault	1	-
BA-000603 (114)	Evaluation of Shielding	1	-
BA-000605 (116)	BRAINLAB EXAC TRAC TENANT FINISH	1	-
BA-049690 (Renovations- 2018)		1	12,794
BA-000589 (100)	"ECLIPSE, ARIA, CITRIX MULTISITE EXPANSION AND WORKSTATIONS"	1	-
BA-000590 (101)	SLRTL CISCO PHONE SYSTEM	1	457
BA-000591 (102)	SLRTL DESKTOP AND LAPTOP COMPUTERS	14	-
BA-000592 (103)	CONTROLLER CISCO AIRONET 3702I	1	-
BA-000593 (104)	NETWORK CABLING AT LIBERTY RADIATION	1	-
BA-000594 (105)	INSTALLATION OF NETWORK CABLING	1	-
BA-000595 (106)	PC ELECTROMETER AND CALIBRATION	1	-
BA-000596 (107)	1D SCANNER SCANNING PACKAGE	1	-
BA-000597 (108)	MAPCHECK 2 NEXT GENERATION (1527 CHANNEL)	1	-
BA-000606 (117)	EA KONICA PROCESSOR (Merry X-ray)	1	-
BA-000607 (118)	Desk for dosimetrist	1	29



BA-000608 (119)	Certificate of Need	1	0
BA-000609 (120)	ADAC LABORATORIES - RPT UPGRADE	1	-
BA-000610 (121)	DMPO (SUPERCHARGE FOR ADAC)	1	-
BA-000611 (122)	"HP 4050N Printer, paper tray & envelope feeder"	1	-
BA-000612 (123)	ADAC - DIGITAL JACKET IMAGE TRANSMISSION SOFTWARE	1	-
BA-000613 (124)	CAMERA & PRINTER	1	-
BA-000614 (125)	KODAK 2000RT CR SYSTEM (includes workstation)	1	-
BA-000615 (126)	"Keithley 365LX ELECTROMETER (used as a back-up, not calibrated. Used	1	-
BA-000616 (127)	Barometer	1	-
BA-000617 (128)	Thermometer and small TG-51 Water Tank	1	-
BA-000618 (129)	Cart for physics work	1	-
BA-000619 (130)	CNMC Model 10 Electrometer and Ion Chamber (backup)	1	-
BA-000620 (131)	ASPIRATOR (available for emergency suctioning)	1	-
BA-000621 (132)	BRAINLAB EXAC TRAC (includes console)	1	-
BA-000622 (133)	COPIER - RICOH PRINT/SCAN TY2020	1	-
BA-000623 (134)	"ION CHAMBERS, DIODE DETECTORS (Sun nuclear QA3 daily check)"	1	-
BA-000624 (135)	"ADAC W/S 19"" FLATSCREEN MONITOR"	1	-
BA-000625 (136)	ADAC SERVER ADDITIONAL MEMORY	1	-
BA-000626 (137)	RICOH 4420NF FAX MACHINE	1	-
BA-000627 (138)	LEXMARK PRINTER - DOSIMETRY ROOM	1	-
BA-000628 (139)	RICOH CL7200 PRINTER FOR ADAC	1	-
BA-000629 (140)	Digital High Capacity Platform Scale	1	-
BA-000630 (141)	Early Buy-out Linear Accelerator Lease	1	-
BA-000631 (142)	Pinnacle Workstation	1	-
BA-000632 (143)	"2 Illuminators, Vaginal Cordless"	1	-
BA-000633 (144)	X-RAY TUBE (credited toward new CT purchase)	1	-
BA-000634 (145)	CT SIMULATOR PLATINUM MEDICAL IMAGING w/Lap Laser Computer	1	-
BA-000635 (146)	3 Headlights - McKesson	1	-
BA-000636 (147)	SBRT Board	1	-
BA-000637 (148)	Butterfly Board	1	-
BA-000638 (149)	Portalvision Upgrade/Retrofit and 4-d Integrated Treatment Console Upg	1	-
BA-000639 (150)	Waterbath	1	-



BA-000640 (151)	NAS Storage Device for Pinnacle Back-Up	1	-
BA-000641 (152)	Gammex Laser and Power Supply w/install	1	-
BA-000642 (153)	Gammex Micro Crosshair Diode	1	-
BA-000643 (154)	Epson Photo Scanner - for IMRT & Physics QA (replaced the Vidar Scanne	1	-
BA-000644 (155)	X Ray Tube Replacement w/ 6 month warranty	1	-
BA-000645 (156)	TYPEWRITER	1	-
BA-000646 (157)	2 ACCUFIX TILTING RADIOTRANSLUCENT HEADH	1	-
BA-000647 (158)	Office Chair for Dosimetrist	1	-
BA-000648 (159)	QA Equipment (ION Chamber)	1	-
BA-000649 (160)	IMRT QA Phantom (Polystyrene phantom)	1	-
BA-000650 (161)	Refrigerator	1	-
BA-000651 (162)	Aquarium	1	-
BA-000652 (163)	Dishwasher	1	-
BA-000653 (164)	2 Versaboards with carbon fiber	1	-
BA-000654 (165)	20 Upper Body Cushions	1	-
BA-000655 (166)	Vacuum Pump	1	-
BA-000656 (167)	Heating Pan	1	-
BA-000657 (168)	10 S-Type Frame for head and shoulder (disposable)	1	-
BA-000658 (169)	2 sets Vinyl Covered Treatment Devices	1	-
BA-000659 (170)	Viewboxes	1	-
BA-000660 (171)	3 Exam Tables	1	-
BA-000661 (172)	"FURNITURE, ART"	1	-
BA-000662 (173)	Phone	1	-
BA-000663 (174)	"TRANSFORMERS, wall scopes - McKesson (1 new, 2 moved from Parvin)"	1	-
BA-000664 (175)	LARGE CABINET FOR RICOH COPIER	1	-
BA-000665 (176)	MAX-4000 ELECTROMETER (primary)	1	-
BA-000666 (177)	BOOKSHELF	1	-
BA-000667 (178)	Plastic WATER PHANTOM	1	-
BA-000673 (184)	PTW 0.015CC PINPOINT IONZATION CHAMBER	1	-
BA-044749 (Body Pro-Lok Respiratory Belt)	PO 1188617 INVOICE 609506	1	-
BA-044750 (Carbon Fiber Overlay Type S for Linac and CT)	PO 1188617 INVOICE 609506	1	-
BA-044751 (Variable Axis Baseplate-Type S)	PO 1188617 INVOICE 609506	1	-



BA-046764 (IC Profiler)		1	-
BA-046765 (QA Imaging Phantoms)		1	-
BA-048939 (Type S Head Extension)		1	-
BA-049127 (Discovery RT- EX CT Scanner)		1	-
BA-049128 (Endoscope)		1	-
BA-049689 (Truebeam Linear Accelerator - Linac)		1	128,333
BA-050270 (Breastboard w/ Wingboard)	PO 1335450	1	-
BA-050271 (VovaPlus Warming Cabinet)	PO 1334273	1	2,378
BA-050272 (RadCalc ROI Module)	PO 1291920	1	190
BA-050273 (Computer Towers)	PO 1335519	1	-
BA-050274 (Vitals Machine)	PO 1335506	1	349
BA-053891 (Waiting Room and Exam Room Furniture PO 1409892)	Waiting Room and Exam Room Furniture PO 1409892	1	8,197
BA-056098 (Maxi Move w/ Scale)	PO 1614080	1	4,905
BA-000668 (179)	RADCALC PROGRAM	1	-
BA-000669 (180)	RIT 113 Dosimetry Software for IMRT & Physics QA	1	-
BA-000670 (181)	MMS SYSTEM	1	-
BA-000671 (182)	"ONEDOSE DOSIMETRY SYSTEM - MEDTEC, Inc."	1	-
BA-000672 (183)	Upgrade to Variseed MMS software Asset 73	1	-
BA-055453-01 (ARIA MULTI-SITE LICENSE RADIATION THERAPY (PO 1224266))	ARIA MULTI-SITE LICENSE RADIATION THERAPY (PO 1224266)	1	-

Total \$301,023.56



One-Time Purchase / Non-Catalog

Purchase Requisition  
One-Time Purchase / Non-Catalog

DO NOT USE DOCU-SIGN 'PRIVATE MESSAGE'. CHANGES MUST BE INSIDE REQ

TO BE COMPLETED BY REQUESTOR													
Date Requested	10/17/24		Is the Contract Attached?		YES		Quote #	2023-424543					
Requestor Name	HAMILTON, CRAIG		Email PO?	YES		Email Address	CHAMILTON@SAINT-LUKES.ORG		Requestor Phone Number	913-208-9152			
Copy PO to													
Admin Name													
Department Name					Overnight Delivery (fee billed to department)						Entity	00SLH - Saint Lukes Hospital	
Delivery Address	BARRY ROAD				Goods/Services Received & ready for payment?								

Vendor Information													
New Vendor?			W-9 Attached?				Bill-Only				Submit PO	Representative Email Address	
Vendor	VARIAN				Representative's Name		KRISTI CARPENTER		to Vendor?		kristi.carpenter@varian.com		
Physical Address	3290 NORTHSIDE PARKWAY NW, ATLANTA, GA				Company Phone Number		720-724-3935		YES		Company Email Address		
City			State			Zip							
							Company Fax Number						

Description	Mfg / Mfg Catalog Number	Order Qty	Unit of Measure	Unit Cost	Extended Cost	Accounts	
LIBERTY LINEAR ACCELERATOR RELOCATION		1	EA - EACH	\$ 371,296.00	\$ 371,296.00	Entity	00SLH - Saint Lukes Hospital
						Cost Center	973950 - Medical Oncology - North
						Expense Account	
Total Cost					\$ 371,296.00		

Note to Vendor		
Note to Procurement		

Approvals										
Department	DocuSigned by:		Foundation		Date		HTM - Biomed		Date	
Director	Mark Brooks									
Corp Administration	DocuSigned by:		Accounting		Date		HTM - IT		Date	
	62862A0994AC54A2...									
CEO	DocuSigned by:		IT		Date		Facilities		Date	
	31CE956396EF4E4...									
CFO										
COO										

TO BE COMPLETED BY MATERIALS MANAGEMENT
---





A Siemens Healthineers Company

## CONFIDENTIAL RELOCATION FOR H193652 & HGS2013

Quotation Number - 2023-424543

This quote include the Relay Junction Box, Pre-Installation Kit, and Main Circuit Breaker Panel

Net 30 Payment Terms will occur upon customer signature of acceptance for completion of products installed and services completed and stated in this quotation

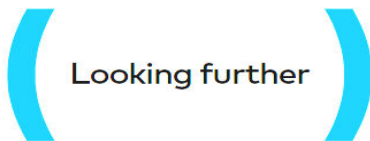
Functional Location, Address, Name Change License Transfer

From:

St Luke's Liberty  
H-LIBERTY -MO-US-001  
2529 Glenn Hendren Dr, Ste #G-40  
Liberty, MO 64068

To:

St Luke's North  
5844 NW Barry Road  
Kansas City, MO 64152



**ST LUKES RAD THERAPY LIBERTY LLC ("Customer")**

 2529 GLENN HENDREN DR  
 LIBERTY Missouri 64068-9606 United States  
 Email : sccozaad@tridocs.com

**Varian Medical Systems, Inc.**

 Kristi Carpenter  
 US Sales Account Mgr - Services  
 Work from home  
 Atlanta , GA 30327 US  
 Tel : +1 720 724 3935  
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\*\*\* Confidential - Proposal is intended for Recipient and Recipient's Site Representatives Only \*\*\*

**Quote Information**

Quotation Number : 2023-424543

Quotation Valid Until : December 12, 2024

Customer Requested Delivery Date : TBD

Customer Procurement Contact Name : Needed

**Billing Plan**

See Quote billing plan Summary on the following pages which is incorporated by reference

**Sales**

Incoterms : DPU Site Insured

Payment Terms : 30 days net

Sales PO Required : No

**Services**

Payment Frequency : Annual

Invoicing : Start of Billing Cycle

Payment Terms : 30 days net

Service PO Required : No

**Quotation Total**

Quotation Total : US \$371,296

**Terms and Conditions**

**Products and Services:** Customer's access to and use of the Products, Support Services and Services (except Software-as-a-Service or Subscription Services) as indicated in this Quotation are subject to and governed by: (a) the Varian Terms and Conditions of Sale (Form RAD 1652) at: [https://varian.com/RAD1652V\\_APR\\_2023.pdf](https://varian.com/RAD1652V_APR_2023.pdf) and (b) any Schedules, Exhibits and/or additional terms (including third party terms) contained, attached, referenced or otherwise indicated in this Quotation. All terms and conditions provided in the website link listed in item (a) above are incorporated by reference and form part of the contract between Varian and Customer.

If there is a separate written agreement (e.g. master agreement) in effect between the parties that expressly provides for and governs the purchase and sale of the specific Products, Support Services, Services, Software-as-a-Service and/or SubscriptionService set forth in this Quotation, such written agreement shall govern. Hard copies of the referenced terms and conditions and any additional terms indicated will be provided to Customer upon request.

**For and on behalf of Customer**

Authorized Representative :

Title :

Date :

**Varian Medical Systems, Inc.**

Authorized Representative :

Title :

Date :



Billing Summary



Sales Summary	
Value	Billing
30.00%	On Down Payment
60.00%	On Shipment
10.00%	On Acceptance
For orders equal or less than \$100k, 100% upon shipment, net 30.	

Service Summary	
Period	Amount(excl. VAT)
Year 1 :	US \$295,000

Quotation Summary



Offered Products (Sales)	Offer Price
--------------------------	-------------

ST LUKES RAD THERAPY LIBERTY LLC	
Physics Services - Linac Commissioning	US \$76,296

Offered Products (Services)	Offer Price
-----------------------------	-------------

ST LUKES RAD THERAPY LIBERTY LLC	
ST LUKES RAD THERAPY LIBERTY LLC	
Relocation H193652 & HGS2013	VAS
	US \$295,000



Item	Description
------	-------------

Site:	ST LUKES RAD THERAPY LIBERTY LLC
1	Physics Services - Linac Commissioning
	Offer Price : US\$ 76,296.0

1.1	AOS1a Comm Preconf 5X no SRS cones	1
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Comprehensive Eclipse® Data Set Collection for validation of Pre-Configured Models up to five (5) photon energies. AOS will commission up to three (3) standard and two (2) FFF X-ray energies and up to six (6) electron energies. The service will take an estimated three (3) calendar days.

**Features:**

- All Eclipse required photon percent depth dose, profile, and output factor measurements for comparison with Varian Representative Beam data
- All Eclipse required electron percent depth dose, air profile and applicator factor measurements for comparison with Varian Representative Beam data
- Small field measurements down to 1x1 for validation
- Eclipse modeling using preconfigured models with Varian Representative Beam data or customer equivalent machine models
- Enhanced Dynamic Wedges verification for various angles
- MLC measurements of MLC transmission and dosimetric leaf gap (DLG)
- Gamma analysis of measured vs Varian Representative Beam data
- Gamma analysis of measured vs Eclipse calculated data
- Absolute dose measurement for comparison to TPS calculation
- RapidArc® commissioning
- TG51 reference calibration
- If applicable: Portal Dosimetry commissioning with preconfigured models
- IMRT and VMAT optimization
- Eclipse beam model configuration
  - Verify console configuration for the linac is setup properly in Eclipse. Import the console configuration if necessary
  - Utilizing Representative or preconfigured beam data, configure beam models for each energy. This will include AAA, AcurosXB® and optimizer models for x-rays and eMC for electrons
  - Creation and calculation of test plans for model validation
  - Complete sample EDW and RapidArc plans
  - Backup machine configuration and Eclipse beam data
- Absolute dose calibration check
  - Absolute dose calibration check of linac using the AAPM TG51 protocol for reference only as customer's physicist must do the final absolute dose calibration of the linac.
  - Customer physicist will specify the calibration geometry including SSD, depth at which 1MU=1cGy, and reference field size/applicator
- Data book and Commissioning report

**Customer Responsibilities:**

- Acceptance of accelerator and Eclipse machines must occur before commissioning can begin
- Full access 24/7 to the accelerator, accessories, and the control room
- Secured internet access
- Access to network computers, as well as ARIA®/Eclipse with administrator privileges
- Customer site physicist must be present for deliverables and approvals

**Notes:**

- This service does not include commissioning for Hard Wedge
- This service does not include commissioning for SRS cones
- This service does not include clinical implementation
- This service does not include general configuration of ARIA/Eclipse, connectivity, image or data transfer, tolerance tables, user rights, and CT calibration



Sales Price Table

Sales Total		US \$76,296
Quotation Total		US \$371,296





# Services Summary

Covered Equipment and Services

Relocation H193652 & HGS2013 - License Transfer Functional Location Change

Services Attachment

Attachment 1	Description of Services Provided
Attachment 2	Detailed Service Specifications
Attachment 3	Terms and Conditions

Attachment 1



Description
1.0 Service Contract - ST LUKES RAD THERAPY LIBERTY LLC
Value Added Service - VAS - Relocation H193652 & HGS2013
Contract Price: US \$295,000

This Value Added Service contract includes the following coverage

Installation Services	Included
Lic Transfer Functional Location Change	Included
New Clinac Baseframe	Included
New Interconnect Cables	Included
New Site Coordination	Included
Relocation & Installation - TrueBeam	Included
Relocation Services	Included
Standard Equipment Rig-in/Supervision	Included
Standard Equipment Rig-out/Supervision	Included

Attachment 1



Service Price Table

Service Total US \$295,000

Quotation Total US \$371,296

Annually	Year 1
Relocation H193652 & HGS2013	US\$ 295,000.00
Total	US\$ 295,000.00



# Attachment 1

## Glossary of Service Entitlements

### Lic Transfer Functional Location Change

Service Level : Value Added Services

When the Customer is acquired by or merged with another entity, Varian will update the name in the machine's firmware and in the Varian database.

### Relocation Services

Service Level : Value Added Services

This service includes relocation of the Low Energy Clinac (LE Clinac), High Energy Clinac (HE Clinac) or the TrueBeam system. The relocation service includes the different components that are shown in this section of the quotation. The relocation service is provided to the customer under the standard Terms and Conditions of Sale included with this quotation. The following additional terms and conditions apply. TITLE TO THE USED EQUIPMENT CUSTOMER warrants and represents that CUSTOMER is the lawful owner of the Used Equipment and there are no restrictions preventing the removal of the Used Equipment such as security interests, liens, claims, UCC-1 financing statements, or encumbrances of any kind. Title shall remain with CUSTOMER at all times. TRANSPORTATION AND RISK OF LOSS All shipments are FOB CUSTOMER's site of origin (or Storage site in case of shipment from Storage) with all transportation and insurance at the expense of CUSTOMER. Risk of loss or damage to the Used Equipment shall remain with CUSTOMER. REMOVAL AND STORAGE Removal ("Removal") shall mean rigging the Used Equipment out of CUSTOMER's current site and transportation of the Used Equipment to CUSTOMER's new site or to Storage at a location mutually agreeable to both parties. VMS will be responsible for supervising the Removal and properly packaging the Used Equipment. Rigging amount listed on the VMS Quotation does not include special shoring of the floor to support the weight, room demolition for removal or if a crane is required to remove the Used Equipment. If the Used Equipment is transported to Storage, VMS is responsible for an inventory audit, using the list created in (1.) above. VMS shall provide CUSTOMER with a copy of the inventory list. CUSTOMER shall be responsible for all cost and expense of removal, freight and insurance for shipment, rigging and for any Storage fees as defined on VMS's Quotation. NO VARIAN WARRANTIES Notwithstanding VMS's possible Removal of the Used Equipment to Storage, if required, VMS disclaims (1) all warranties of title or warranties of right to transfer the Used Equipment; (2) all warranties that the Used Equipment will be free of any security interests, liens, claims, UCC-1 financing statements, or encumbrances of any kind, and (3) any warranty that possession of the Used Equipment will not be disturbed. These VMS disclaimers apply whether a warranty arises from Uniform Commercial Code section 2312 (1), from expressions of VMS, by implication, or from the common law.

## Labor Rates and Working Hours

### Effective April 1, 2023

Labor Rates	Standard Hours	Non-Standard Hours
Customer Support Representative* (2-hour minimum)	\$595/hour	\$825/hour
Product Support Engineer/Product Specialist* (2-hour minimum)	\$750/hour	\$1,225/hour
Applications & Clinical Help Desk Support* (30 minute minimum)	\$595/hour	\$825/hour
On-site Applications Support (2 day minimum, includes travel)	\$5,000/day	\$10,000/day

\*on-site, remote (off-site) support or travel

Any involvement of a Product Support Engineer or Product Specialist requires the presence of the local Customer Support Representative and will be invoiced accordingly, unless previous arrangements are made between the local District Customer Support Manager and Customer Representative.

Contract Customers may request that service be performed during Non-Standard hours and authorization to approve Customer's request lies solely with the respective District Service Manager. Where such requests are approved, Customer will be invoiced at the Standard Hours rate with a 20% discount. The billing rates for Non-Standard Hours service for customers with a Service Contract or a Service Level Agreement (SLA) are \$475/hour for a Customer Support Representative and \$600 per hour for a Product Support Engineer/Product Specialist, unless Customer has Non-Standard Hours or Extended Hours Coverage.

"Standard Hours" are from 8 a.m. to 5 p.m. Monday – Friday.

"Non-Standard Hours" are Saturdays, Sundays, Varian Holidays (U.S.) and weekdays from 5 p.m. to 8 a.m. (following day).

"Extended Hours" are from 5 p.m to 9 p.m Monday - Friday, not including Varian Holidays (U.S.)

All rates are subject to change without prior notification. All rates are quoted in US Dollars.

### Varian Holidays (U.S.)

New Year's Day	Independence Day	Christmas Holiday 1
Presidents' Day	Labor Day	Christmas Holiday 2
Good Friday	Thanksgiving Day	
Memorial Day	Day after Thanksgiving	

## TERMS AND CONDITIONS OF SALE

Form RAD 1652V  
Revised 4-04-2023

These Terms and Conditions of Sale ("**Terms of Sale**") govern the sale of Products and Services and license of Software by Varian Medical Systems, Inc. or its subsidiary (collectively, "**Varian**") referenced in the Varian Quotation (as defined in Section 1 below). These Terms of Sale may be supplemented by addenda, exhibits, schedules, and other attachments referenced in or attached to these Terms of Sale or the applicable Quotation and shall collectively constitute the entire agreement ("**Agreement**") between the parties.

### 1. Definitions

- 1.1. "**Covered Product**" means Products for which the parties have agreed in writing for Varian to provide Support Services under warranty or a Support Agreement as further described in the Service and Support Schedule;
- 1.2. "**Customer**" means the customer referenced in the Quotation;
- 1.3. "**Hardware**" means any hardware products sold by Varian;
- 1.4. "**Managed Services**" means cloud or on-premise services where Varian provides Customer with virtualized managed data center infrastructure and technical operational services, such as monitoring, event management and maintenance of that virtualized infrastructure.
- 1.5. "**Post-Warranty Support**" shall mean Support Services provided after the initial warranty or software support period.
- 1.6. "**Products**" mean Hardware and/or Software;
- 1.7. "**Professional Services**" means installation, implementation and other ancillary services provided pursuant to the Professional Services Schedule, but does not include maintenance, warranty, or support;
- 1.8. "**Quotation**" means the applicable Varian quotation(s) by which Customer is purchasing Products and/or Services from Varian;
- 1.9. "**Relay Services**" means the subscription-based services which allow the transmission of Customer information between Software and a Varian mobile application.
- 1.10. "**Services**" collectively mean Support Services, Professional Services, Managed Services, and Relay Services;
- 1.11. "**Software**" means one or more computer programs in object code format, whether stand-alone or bundled with other products and related documentation, licensed by Varian, and shall exclude Software licensed on a software as a service (SAAS) basis;
- 1.12. "**Support Agreement**" means a contract for Support Services that Customer can purchase under which Varian will provide Post-Warranty Support for the Covered Products; and
- 1.13. "**Support Services**" mean initial warranty or software support and Post-Warranty Support provided pursuant to the Service and Support Schedule.

### 2. Quotations and Prices

**2.1. Quotation Duration.** Prices and license fees for Products and Services are set forth in the applicable Quotation. A Quotation shall expire at the end of the period identified in the Quotation, or if no period is stated in the Quotation, the Quotation shall expire sixty (60) days from the date of issuance or if a Product on the Quotation is no longer available. If the parties choose to execute a Quotation after its expiration date, the expiration date will be treated as having been mutually amended to the date of last signature.



## 2.2. Taxes

**2.2.1.** Varian's prices exclude, and Customer shall be responsible for, all taxes, customs, duties, tariffs, withholding, levies, assessments, or fees of whatever kind or nature arising out of or in connection with this Agreement, including the sale, delivery, ownership, or use of the Products or performance of the Services, but excluding taxes based on Varian's net income and the Medical Device Excise Tax, if applicable. If Customer asserts that any transaction under this Agreement is tax exempt, Customer shall provide to Varian a tax or levy exemption certificate acceptable to the taxing or levying authority. Varian will include on each invoice those taxes which are: (a) the responsibility of Customer (classified on the invoice by type of tax, i.e., sales tax, value-added tax, etc.); and (b) for which Varian has a legal obligation to collect and remit such taxes to the appropriate authority.

**2.2.2.** If Customer is required by law to make any deduction from the gross prices in a Quotation which are due to Varian for withholding tax, then Customer shall: (a) promptly notify Varian of such deduction, (b) pay such tax to the relevant tax authority; (c) pay Varian for the relevant invoice net of the required deduction or withholding by the due date of payment for that invoice; (d) promptly provide Varian with official tax receipts or other documentation issued by the relevant tax authority to evidence payment of the deducted or withheld amount; (e) provide Varian with assistance as is reasonably requested by Varian in recovering the deducted or withheld amount; and (f) if a double-taxation treaty applies which provides for a reduced withholding tax rate, then Customer shall only withhold and pay the reduced tax amount. Varian shall not be liable for any act, omission, or delay by Customer in respect of the Customers' tax compliance duties, including, but not limited to, any Varian liability for withholding tax, penalty, or interest which arises as a result of Customer's failure to withhold any applicable tax.

**2.3. Transportation and Risk of Loss.** All shipments will be made in accordance with the Incoterms (Incoterms 2010), UCC shipping terms, or other shipping terms, each as set forth in the Quotation, with Varian selecting the transportation company. Title shall pass at the same time that risk of loss shifts in accordance with the applicable Incoterms, UCC shipping terms, or other shipping terms. Varian shall insure such shipments for the full value of the Products shipped at Customer's expense or shall declare the full value of the Products to the transportation company at time of shipment. Within three (3) days of delivery, Customer shall fully examine the packaging of the Product delivered for damage and make all applicable complaints and claims arising out of such delivery to the carrier in writing, and Customer shall provide a copy of any such complaints and claims to Varian.

**2.4. Prerequisites and Conditions.** Where Customer is ordering in a Quotation radioactive or radiation-emitting Products or Service for such Products, Customer has requested and authorized Varian to utilize radioactive or radiation-emitting Products to perform as required under the Quotation at Customer's site. Varian's acceptance of any order and subsequent performance are expressly conditioned upon Customer's compliance with all applicable codes, regulations, and recommendations of competent health or radiation-protection authorities affecting Products or installation and use of the Products, including obtaining all required permits, and Varian's approval of Customer's credit. Where applicable, Customer acknowledges that Varian has notified Customer that there are regulatory requirements associated with possession and use of radiation-generating devices. Prior to installation of a radiation-generating device, Customer will apply for and obtain approval for installation of the device from the appropriate local and/or state radiological regulatory agency, and Customer will provide Varian with a copy of the approval form so that Varian can verify that Customer has obtained the required regulatory agency authorization.

**2.5. Government Required Disclosures.** Customer shall disclose the dollar value of any discounts or reductions in price for the Products and Services furnished by Varian in Customer's costs claimed or charges made to Medicare, Medicaid, and any other federal, state, or local programs which are providing reimbursement to Customer.

## 2.6. Customer Changes Prior to Installation

**2.6.1.** The Products, Services, and their related prices listed on the Quotation are based on Customer's software, hardware, and information technology infrastructure (e.g., servers, networks, and workstations) that, to Varian's knowledge as of the time of the Quotation, either: (a) exist at Customer's facility at the time the Quotation is prepared; or (b) will exist on the Product installation date, as communicated by Customer to Varian, at the time the Quotation is prepared ("**Customer IT Environment**").

**2.6.2.** If Customer changes its Customer IT Environment prior to Product installation or delivery of the Services, then Customer acknowledges that the Products, Services, and prices listed on the Quotation may no longer be valid. In such event, Customer agrees that Customer must pay Varian: (a) any price difference between the Product configuration on the Quotation and the newly requested Product(s) configuration at the time of actual installation ("**Current Version**"); (b) the price of any new Hardware or Software prerequisites then necessary for the Current Version of the Product to operate in the changed Customer IT Environment; and (c) any price difference between the Services listed on the Quotation and the Services needed to fully install the Current Version.

**2.7. Hardware Prerequisites for Software Upgrades and Updates.** If Customer has purchased upgrades or updates to Software, or is otherwise entitled to them under a Quotation, then Customer is responsible for purchasing any additional hardware, software or information technology infrastructure products that are necessary in order to successfully operate those upgrades or updates to the Software, unless: (a) Customer has also purchased a Hardware-refresh option for that Software from Varian; or (b) Customer has a valid Support Agreement in place which includes an applicable Hardware-refresh option.

**2.8. New Products.** If Varian commercially releases a new model or version of any Product between the signing of the Agreement and the shipment (or if no shipment, installation) of the Product, the Customer shall have the option of taking the new model or version of the Product. If Customer desires to take the new model or version, Customer must pay for any price difference between the old and new models or versions and the cost of any additional required prerequisites.

**2.9. GPO Terms and Fees.** Customer and Varian expressly agree that this Agreement is not governed by the terms and conditions of any existing Group Purchasing Organization ("GPO"), and Varian is not obligated to pay any administration fees to any designated GPO for the Products or Services provided under this Agreement.

### 3. Payment

**3.1. Payment Due Dates and Late Payments.** Except as otherwise set forth in the Quotation or agreed by the parties in writing, all reasonably undisputed amounts invoiced shall be due and payable within thirty (30) days of the date of invoice. Varian may charge interest on past due balances at a rate equal to the lesser of one percent (1%) per month or the maximum amount permitted by applicable law. Varian may cancel or delay delivery of Products or Services when Customer's payments are late under any orders with Varian.

**3.2. Products.** Amounts payable for Products will be invoiced as set forth in the payment schedule in the Quotation. If no payment schedule is in the Quotation, Varian may invoice upon signing of the Quotation. If a Product is not installed within six (6) months after delivery is made available to Customer pursuant to the delivery date specified in the Quotation, and such delay is not due to the fault of Varian, then all remaining unpaid balances shall become immediately due regardless of the payment schedule in the Quotation, and Varian shall not be required to provide installation services six (6) months after such delivery of the Product is made available to Customer. For partial shipments, Products will be invoiced when shipped (for example, if Customer orders two linear accelerators on one Quotation to be installed on different dates, then Varian may invoice for the first linear accelerator and related accessories when the first accelerator and accessories are installed, and then again when the second linear accelerator and related accessories are installed).

Customer represents and warrants to Varian, that after title to the Products passes from Varian to Customer and until Customer fully pays for the Products, Customer will (1) hold good and marketable title to the Products free and clear of all liens except those in favor of Varian and (2) not execute, file, or record any security agreement, financing statement, equivalent security or lien instrument, or continuation statement covering all or any part of the Products, except such as may have been filed by Customer or Varian in favor of Varian. Customer further agrees to take any other action, at the expense of Customer, reasonably requested by Varian to ensure the attachment, perfection, and first priority of, and the ability of Varian to enforce, Varian's security interest in any and all of the Products including, without limitation, delivering and, where appropriate, filing financing statements and amendments relating to them under the UCC in any relevant jurisdiction. Customer hereby appoints Varian as its attorney-in-fact and authorizes Varian, from time to time, to execute and file one or more financing statements, amendments, and/or other similar instruments and provide any other information necessary to perfect or to enforce Varian's security interest in the Products and proceeds with respect to the Products which are subject to Varian's security interests. Until the obligations to Varian have been repaid in full Customer shall not, unless Varian consents in writing: (a) convey, sell, lease, license, transfer, or otherwise dispose of all or any part of the Products; (b) move or relocate the Products, which shall remain personal property at all times, without informing Varian in writing; or (c) assign or otherwise convey any right to receive income from the Products or the proceeds of any authorized sale of the Products.

**3.3. Services.** Varian may invoice Customer up to thirty (30) days prior to the start of rendering Services. If a Support Agreement states that the Services will be billed in increments (such as annual or quarterly), then Varian may invoice Customer up to thirty (30) days prior to the start of each applicable incremental period. If Customer is paying for Services on a time and materials basis, then labor charges and related expenses, including travel expenses, will be invoiced at the labor rates specified in or attached to the Quotation as the Services are rendered or as the expenses are incurred.

#### 4. Cancellations, Modifications, and Termination

**4.1. Products.** No Product order accepted by Varian may be terminated, canceled, or modified by Customer, provided, however, that either party may terminate any Product order prior to delivery of the Product for material breach of the Agreement upon thirty (30) days written notice to the other party if such material breach has not been cured upon the expiration of such period. Where Customer breaches the Agreement by wrongfully cancelling a Product order, in addition to the other remedies that Varian may have available to it, Customer shall: (a) forfeit its deposits or down payments; or (b) if no deposits or down payments were made, pay to Varian all damages reasonably incurred by Varian. This Section shall not limit, and Varian shall be entitled to pursue, any other remedies that it may have under the law or in equity in the event of Customer's material breach of the Agreement.

#### 4.2. Support Service

##### 4.2.1. Term and Termination of Support Agreements

If Customer is ordering Post-Warranty Support under a Support Agreement before the expiration of the initial Hardware warranty and Software support period or a prior Support Agreement, then the initial term for the new Support Agreement shall begin immediately upon the expiration or termination of the applicable warranty or support period or prior Support Agreement. If Customer is ordering Post-Warranty Support for Products that are no longer covered under the initial Hardware warranty or Software support period, and are not currently covered under a Support Agreement, then the initial term of the Support Agreement shall begin when Customer signs the Quotation for those Services or issues a purchase order referencing it or any other date mutually agreed upon by the parties.

Support Agreements shall automatically renew for a single one-year extension, unless either party provides the other party with a written notice of its intention not to renew at least sixty (60) days prior to the expiration of the then-current term of the applicable Support Agreement. After the initial term, Support Agreements are subject to a minimum annual service fee increase based on the increase, if any, of the annual rate in the Consumer Price Index table published by the U.S. Bureau of Labor Statistics for all Urban Consumers (Index 1982-1984=100) ("CPI"). The applicable annual service fee increase for the one-year extension shall be calculated by the cumulative compounded CPI increase for each year of the original term of the support agreement.

Except in the case of automatic renewals, Customer may terminate any Support Agreement for convenience by: (a) notifying Varian of its intention to terminate in writing at least one hundred twenty (120) days prior to expiration of the then-current term of the Support Agreement; and (b) paying Varian: (i) the full amount of the remainder of the Support Agreement fees for the current contract year of the Support Agreement; plus (ii) an early termination fee equal to fifty percent (50%) of the remaining Support Agreement fees after the current contract year that would have been due to Varian if the Support Agreement had not been terminated early. Customer must pay Varian's invoice for the foregoing fees within thirty (30) days of invoice date.

**4.2.2. Termination Where Product Costs Are Included and Amortized.** If Customer prematurely terminates a Support Agreement which includes the amortized cost of any additional Products (such as delivery system upgrades, software licenses, or any other purchasable options) into the cost of the Support Agreement, then Customer will be liable, and will be invoiced by Varian, for the unpaid portion of these additional Products at the Product's then-current list price, and Customer will pay such invoices within thirty (30) days.

**4.2.3. Termination for Failure to Maintain Products.** There may be instances where Customer requests Varian to issue a Quotation for Post-Warranty Support for an existing Varian Product that has been previously purchased and has not been under continuous support by Varian prior to examining the Covered Products (e.g., Customer may need to spend an allocated budget before a fiscal year-end). If Varian has not had an opportunity to inspect a Covered Product prior to the issuance or signing of a Quotation for Post-Warranty Support, then Varian shall have the right to inspect the Product to determine whether it meets a level of operation acceptable to Varian and, solely at Varian's option, to revoke the applicable Quotation before its signing, or to terminate the Support Agreement after the applicable Quotation is signed. Varian's agreement to provide Post-Warranty Support for Covered Products shall, at Varian's sole discretion, be further contingent upon the completion of repairs or maintenance indicated by Varian as required as a result of an inspection. Varian reserves the right to void the warranty or terminate that portion of Post-Warranty Support for a Covered Product where Customer purchases from a third party not affiliated with Varian labor or parts to maintain, verify, or validate the Covered Product.

**4.2.4. End of Sale and End of Support.** Varian may issue an end of sale notice for a Varian Product or Service by providing the Customer with eighteen (18) months written notice for Hardware and twelve (12) months for Software. Varian may terminate a Support Agreement for a Covered Product where Varian has determined to end support, subject to additional terms in the

Quotation, or Varian work instructions and documentation, by giving Customer eighteen (18) months advance written notice for Hardware and twelve (12) months for Software ("**End of Support Termination**"). Varian may also terminate a Support Agreement for any Software that is two or more Versions older than Varian's then-current Version of such Software (e.g., if the then-current Version of the Software is version 7.0, then Varian may terminate a Support Agreement for any Software versions earlier than Version 6.0). However, Varian may shorten the periods described in this Section 4.2.4 if, in Varian's sole discretion, an End of Support Termination is required due to key component obsolescence issues or material product quality concerns.

**4.2.5. Survival of Terms.** All provisions of this Agreement which by their nature should survive termination of this Agreement shall remain in effect after termination of this Agreement.

## 5. Use Restrictions

**5.1.** Customer shall not decompile, disassemble, or reverse engineer any part of a Product except to the extent such prohibition is void under applicable law. Customer must ensure that anyone with authorized access to the Products will comply with the provisions of this Agreement.

**5.2.** The following shall apply to all Products sold or licensed to Customer under this Agreement. Nothing in this Section shall prohibit Customer from allowing hospitals and healthcare workers affiliated with Customer from using the Products if they have the requisite training or experience to do so. Without the written consent of Varian, Customer may not: (a) sublicense, sell, lease, rent, timeshare, distribute, or otherwise attempt to transfer its license to such Software and/or documentation to any other person or entity; (b) use the Software in a facility management or Service Bureau (as such term is defined below) manner or permit third parties to access the Software over the internet or through an application service provider model; or (c) allow access or use the Software other than for its intended purpose, in a manner not contemplated by Varian, nor beyond the scope of its license. For purposes of this Agreement, "**Service Bureau**" means an arrangement where third parties are permitted to access and use such Software, directly or indirectly, by any means to process their own data; or Customer uses such Software to process the data of any third party.

**5.3.** Except to the extent that the restrictions in Section 5.2 are void under applicable law, Customer shall not: (a) copy (except as expressly set forth in Section 2 of the Software Schedule and except for transitory copies created as part of the normal use of the Product), print, alter, or translate such Software; (b) circumvent any usage or other restrictions imposed by any license manager; (c) create any derivative work based on such Software; or (d) use such Software for application development purposes. Customer agrees that these provisions shall also apply to any copies of such Software that Customer acquires from third parties. Customer agrees that it shall not use any part of the Software apart from the Hardware or Software with which it was intended to operate.

## 6. Firmware and Operating Systems

Products sold by Varian may contain internal system code that is stored in non-volatile memory that executes functions of the Product ("**Firmware**"), as well as software that is included with the Product such as operating system software for operating computer systems, performing diagnostics, displaying information, and interfacing with other devices or software and further including any displays of copyrightable material stored in or otherwise embodied by such software or Firmware (collectively "**Operating System**"). Varian, or its licensors, own all Firmware and Operating Systems. Except where such Firmware or Operating System is owned by a third party and licensed directly by such third party to Customer, Varian hereby grants Customer, only for so long as Customer shall own or license the Product, a limited, personal, non-transferable, non-exclusive license to use the applicable Firmware and Operating System as part of the normal operation and maintenance of the Product. Support Services for the Firmware and Operating System shall be governed by those terms applicable to the underlying Product.

## 7. Proprietary Notices, Trademarks, Logos, and Trade Names

Varian or Varian's suppliers or licensors own all right, title, and interest (including, without limitation, all intellectual property rights) in and to the intellectual property in all Products, including their documentation and other materials provided with the Products. Customer shall not remove, alter, or obscure any copyright, trademark, trade secret, government restricted rights, or other proprietary or confidentiality notices or legends that are (a) placed or embedded by Varian or its suppliers or licensors in any software, (b) are displayed when any software is run, or (c) are applied to the Products, their packaging, labels, or any other materials provided under this Agreement. All trademarks, logos, and trade names displayed on the Products and any related documentation are the property of Varian or third parties, and Customer shall not use them without the prior written consent of Varian or the third party that owns them.



## 8. Confidential Information

**8.1.** Each party ("**Recipient**") may be exposed to certain information of the other party ("**Discloser**") which is confidential and valuable to Discloser and not generally known to the public ("**Confidential Information**"). Information shall be Confidential Information: (i) if disclosed in writing, it is conspicuously marked "Confidential" or bears some similar marking, or by its nature it is or should be understood to be confidential and or, (ii) if disclosed orally or by observation, its confidential nature is stated in writing by the Discloser at the time of disclosure or within fifteen (15) days. The following are also deemed to be Varian's Confidential Information whether or not they are marked or disclosed as confidential to Customer: Varian's Quotation, pricing information, code, Product documentation, roadmaps, and technical specifications or data, this Agreement and/or other terms contained in or attached to the Quotation, service order, and invoice. The term Confidential Information and this Section 8.1 expressly exclude protected or patient health information ("**PHI**") and personally identifiable information ("**PII**") since they are generally covered under a separate agreement such as a business associate agreement or addendum ("**BAA**") or by applicable law.

Recipient will hold Discloser's Confidential Information in confidence and will treat Discloser's Confidential Information with the same degree of care taken to protect its own similar confidential information, but in no event with less than reasonable care. Recipient further agrees to limit disclosure of such information to those of its directors, employees, contractors, and agents who have a need for such information to affect the use permitted under this Agreement and who are bound under a written agreement or legal obligation to keep such information confidential. Recipient will not be required to protect or hold in confidence any information which: (a) becomes publicly known through no wrongful act or omission of Recipient; (b) was previously disclosed by Discloser to Recipient without indication of confidentiality; (c) becomes known to Recipient, without confidential restriction from a third party unless Recipient had or should have had knowledge of its confidentiality; (d) is approved by Discloser for disclosure without restriction in a written document which is signed by a duly authorized officer of the Discloser; or (e) is independently developed by Recipient without use of Discloser's Confidential Information.

**8.2.** Disclosure of Confidential Information will not be precluded by this Section 8 if the disclosure is: (a) necessary to establish rights under this Agreement (subject to Recipient's obligation at its expense to make a good faith attempt to obtain a protective order prior to such disclosure); or (b) required by law or regulation or in response to a valid order of a court or request of other governmental body of a country or political subdivision, provided that Recipient notifies Discloser of such order on a timely basis and if possible prior to the disclosure. All Confidential Information, including copies made by Recipient, will remain the property of Discloser. The obligations of confidentiality imposed by this Agreement shall survive any termination of this Agreement.

## 9. Limited Warranty

### 9.1. Warranty for Hardware

**9.1.1. Warranty for Varian Hardware.** Unless otherwise provided in this Agreement or the Quotation, Varian warrants that Varian Hardware and any Firmware and Operating System loaded on Varian Hardware will be free from defects in material and workmanship and in substantial compliance with operational features of Varian's published specifications for the applicable Product at the time of sale ("**Specifications**"). This warranty shall begin upon completion of installation in accordance with the Hardware Schedule and continue for a period of one year from such date, but not to exceed two (2) years from date of shipment from Varian to Customer. This warranty shall not apply (a) where the Firmware or Operating System is owned by a third party which licenses it directly to Customer, or (b) to certain third-party products provided or licensed directly by their manufacturer to Customer (e.g., Dell workstations are provided on terms from Dell instead of Varian). Clerical and typographical errors in Specifications are subject to correction. In providing warranty Service, Varian shall have the right to substitute remanufactured parts and components that meet the same quality standards as new materials and are covered by the same warranty or service obligations. Parts for which Varian has provided replacements shall, at Varian's option, become the property of Varian.

**9.1.2. Parts Warranty.** Varian warrants separately-sold parts to be free from defects in material and workmanship for a period of ninety (90) days from the date of shipment to Customer. All warranty repair or replacement of parts shall be limited to product malfunctions which are, as determined by Varian, due and traceable to defects in original material and workmanship, and replacement parts are warranted for the unexpired portion of the part's original warranty period. Components that carry separate warranties based upon use are not covered by this warranty. Parts that are expendable in normal use and service are not covered by this warranty. Parts for third party products, such as computer Hardware provided with Software, are not covered by this warranty, except when an applicable third-party product warranty option has been purchased. Unused parts returned to Varian are subject to a restocking fee of fifteen percent (15%), and, if applicable, an additional retesting fee.

**9.1.3. Disclaimer for Parts Not Supplied by Varian.** If Customer requests Varian to install parts not purchased from Varian, then: (a) Varian reserves the right to refuse to install any or all such parts; (b) if Varian agrees to install those part(s), then

Varian provides no warranty, whether expressed or implied, for the part(s) or Varian's installation Services, nor does installation by Varian imply that Varian certifies the part(s) or the vendor from whom the part(s) have been obtained by Customer; (c) labor to install the part(s) will be provided by Varian on an hourly basis, at Varian's then current labor rates; and (d) if additional damage is caused by those part(s), then Varian assumes no responsibility for any damage. If the Varian Product is under any Support Agreement and additional damage is caused by installation of parts not purchased from Varian, then Varian is not obligated to repair damage under such Support Agreement, and such repairs will be performed at Varian's then current labor rates.

**9.1.4. Warranty Remedies.** Customer's sole and exclusive remedy, and Varian's sole obligation, for any defect in or failure of Varian Hardware or Firmware or Operating System to perform properly shall be for Varian to repair or, at Varian's option, replace the defective Products in whole or in part. If, in Varian's sole opinion, repair or replacement is not commercially reasonable or feasible, Varian shall refund or credit a portion of any sums paid by Customer for the defective Product less reasonable depreciation.

**9.2. Warranty for Software and Services.** Varian's sole warranty for Software and Services are described in the Software Schedule, the Professional Services Schedule, and the Service and Support Schedule.

**9.3 Exclusions from Coverage.** Except where the claim or liability is caused by Varian, any warranty claim, support claim, or liability is excluded where the claim or liability arises out of: (a) accident, theft, misuse, or neglect; (b) use of the Products outside of normal operating conditions, specifications, or environment or in a manner not authorized by Varian as set forth in the applicable Product documentation or written instructions from Varian; (c) user modification of any Product not authorized by Varian in the applicable Product documentation or other writing; (d) computer viruses and other changes to the operating system or environment which adversely affect the Product; (e) defects, problems, or failures created by third party products (except those comprising parts or components of Varian Products) or their interface with Varian Products; (f) acts of God, electrical power surges, or other causes external to the Products; or (g) any version of the Software for which Support Services have been discontinued.

#### **9.4 Third Party Product Terms and Warranties**

**9.4.1. Third Party Products Integrated into Varian Products.** Except as otherwise set forth in this Agreement, a third party product that is integrated into a Varian Product shall be covered by the warranty or support obligations applicable to the Varian Product into which it is integrated; provided, however, that Varian's warranty shall not apply to certain third party products provided or licensed directly by their manufacturers to Customer (e.g., Dell workstations are subject to sales terms provided by Dell, and Microsoft SQL platforms are subject to additional Microsoft license terms) where such additional terms are provided by Varian to Customer in either in writing or via a link to a website containing them.

**9.4.2. Third Party Products Sold by Varian as Authorized Reseller.** Third party products sold by Varian as an authorized reseller shall be subject to the terms of this Agreement, which may be supplemented by prerequisites and additional terms in the Quotation or additional terms that are attached to the Quotation.

**9.4.3. Third Party Products Added to the Quotation at Customer's Request.** All other third-party products than those described in Sections 9.4.1 and 9.4.2 ("**Separate Third-Party Products**"), including those where Varian serves as a Pay Agent (defined below), shall be governed by that third party's terms and conditions, including, but not limited to, usage guidelines and restrictions, software licenses, warranties, and any other terms. Customer must agree to (or negotiate directly with the third-party manufacturer or licensor) the third-party terms and conditions applicable to the Separate Third-Party Products. Varian may from time to time offer third party products for which Varian does not have a reseller agreement and where it acts solely as a pay agent for such third party to process payments for Separate Third-Party Products ("**Pay Agent**"). Varian makes no representation or warranty with respect to the compatibility of Separate Third-Party Products with Varian Products, nor that the Separate Third-Party Products are designed or offered to interoperate with Varian Products as a single system that has received regulatory clearance or approval. Varian remains the manufacturer of record of its own Products, and the Separate Third-Party Product manufacturer remains the manufacturer of record of its products. Varian may, from time to time, resell the Separate Third-Party Products on its Quotation for the Customer's convenience only. In no event shall Varian have any liability or responsibility with respect to Separate Third-Party Products, nor shall Varian have any liability for failure of the third parties to perform on their warranties. Customer agrees to seek any remedies with respect to the Separate Third-Party Products solely against, as applicable, the third-party manufacturer or its authorized distributor.

**9.4.4. Third Party Products Not Approved by Varian.** The combination or use of Products or Services with Non-Varian products, support or services that Customer has developed or purchased from third parties ("**Unapproved Third Party Products**") may: (a) cause adulteration of those Products which are medical devices; (b) degrade the performance of Varian

Products or Services; (c) create information security risks for Customer's infrastructure, applications, or facility; or (d) otherwise impair the safe, effective, and efficient use of Varian Products or Services. Each party shall be responsible for implementing commercially reasonable safeguards to protect data stored on, accessed by, or processed by the Varian Products and Services. Varian shall be responsible for employing commercially reasonable efforts to provide adequate security measures on its Products and in its Services in performance of this Agreement, and Customer shall be responsible for employing commercially reasonable efforts to implement adequate security measures to protect its data, internal infrastructure, and systems while using the Products and Services provided under this Agreement. Varian shall have no responsibility for any service or warranty work required due to Unapproved Third-Party Products, and Customer shall remain wholly responsible for any negative consequences to it or to others that result from those Unapproved Third-Party Products.

**9.5. EXCLUSIONS OF IMPLIED WARRANTIES.** THESE LIMITED WARRANTIES ARE EXPRESSLY GIVEN IN LIEU OF, AND EXCLUDE, ALL OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT.

## **10. Intellectual Property Infringement**

**10.1.** Varian shall defend, at its expense, indemnify, and hold Customer harmless from any third party claim brought against Customer that the design or manufacture of any Varian Hardware or Varian Software furnished by Varian to Customer under this Agreement infringes a patent, trademark, copyright registered in the United States, Canada, and the United Kingdom (the "**Claim**"), and Varian shall pay any settlement and any damages, costs, and reasonable attorney's fees finally awarded against Customer arising out of a Claim. If the Product's use is enjoined as a result of any Claim, or in Varian's opinion, the Product is likely to become subject to a Claim, Varian may, at its expense and sole option, modify the Product so that it becomes non-infringing, procure for Customer the right to continue to use the Product, substitute for the infringing Product another product having a functionality substantially equivalent to the Product, or accept return of the Product and refund the purchase price (less reasonable depreciation).

**10.2.** Varian's obligation under Section 10.1 is conditioned upon Customer (a) notifying Varian promptly in writing of the Claim; (b) giving Varian sole control of the defense, management, and settlement of the Claim, provided that Customer may participate in such defense at its own cost with counsel of its choice; and (c) upon request, at Varian's cost, reasonably cooperating with Varian in such defense.

**10.3.** Subject to applicable law, Varian will not have any obligation to indemnify Customer for any Claim arising from: (a) settlements and their related costs and expenses where Customer settles a Claim without Varian's prior written consent; (b) use of the Product in a manner not authorized by Varian, as set forth in the applicable documentation for the Product or written instructions by Varian; (c) modification of the Product, except for modifications performed by Varian or pursuant to Varian's instructions; (d) combination of the Product with any other equipment, apparatus, software, processes, or materials not furnished by Varian, except as requested or performed by Varian; (e) compliance by Varian with Customer's designs, specifications, or instructions; or (f) methods of use of a Product, unless the Product has no substantial non-infringing use; where such infringement would not have occurred but for such use, modification, combination, or compliance. The obligations of Varian in Section 10.1 do not extend to any claim arising directly or indirectly from Customer's breach of Section 7.

**10.4.** This Section 10 states each party's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

## **11. Bodily Injury**

With respect to liability to third parties for bodily injury or death, 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 any Product. Varian shall have no responsibility whatsoever for, and, subject to applicable law, Customer shall indemnify, defend, and hold Varian harmless from, any and all damage, injury, or death which arises from or relates to: (a) any use, operation, or service of any Product by anyone other than Varian personnel prior to completion of applicable acceptance tests by Varian and the radiation survey by Customer; (b) any use, operation, or service of any Product contrary to any written warning or instruction given by Varian with respect to such Product, including, but not limited to, unauthorized use and/or modification of any equipment, components, software, or accessories by any user, or their use on or with any explosive or incendiary materials; or (c) claims or damages associated with any non-Varian design, manufacture, or installation of any product or any custom design, manufacture, or installation by Varian that is performed pursuant to Customer's specifications, designs, or plans. This Section states each party's entire liability for bodily injury and death.

## 12. Limitations of Liability

**12.1. Consequential Damages.** SUBJECT TO APPLICABLE LAW, IN NO EVENT SHALL VARIAN, ITS SUPPLIERS AND LICENSORS, AND CUSTOMER BE LIABLE UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS, LOST PROFITS, LOSS OF USE, OR DISCLOSURE, BREACH, OR LOSS OF, ACCESS OR DAMAGE TO CUSTOMER DATA, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12.2. Direct Damages.** SUBJECT TO APPLICABLE LAW, AND EXCEPT FOR INDEMNITY OBLIGATIONS UNDER SECTION 10 (INTELLECTUAL PROPERTY INFRINGEMENT), THE TOTAL AGGREGATE LIABILITY OF VARIAN, ITS SUPPLIERS AND LICENSORS, AND CUSTOMER FOR DAMAGES OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED IN PROPORTION TO EACH PARTY'S RELATIVE FAULT AND NOT EXCEED THE AMOUNTS PAID AS INDICATED IN A QUOTATION FOR THE SPECIFIC PRODUCT OR SERVICE FROM WHICH THE CLAIM AROSE; PROVIDED, HOWEVER, THAT FOR ANY PRODUCT OR SERVICE THAT VARIAN PROVIDES FOR A TERM (E.G., SUPPORT AGREEMENTS), EACH PARTY'S LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNTS PAID DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE PARTIES ACKNOWLEDGE THAT EXCLUSIONS AND LIMITATIONS IN SECTIONS 12.1 AND 12.2 ARE MATERIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES AND THAT PRICES FOR THE PRODUCTS WOULD BE HIGHER WITHOUT THEM. THE EXISTENCE OF ONE OR MORE CLAIMS OR PARTIES WILL NOT ENLARGE THE LIMIT.

**12.3. Exception to Limitations.** The exclusions and limitations of liability set forth in Sections 12.1 and 12.2 will not apply to: (a) bodily injury and death under Section 11 (Bodily Injury) to human beings, (b) breaches of Section 5 (Use Restrictions), (c) breaches of Section 8 (Confidential Information), and (d) Customer's obligation to pay Varian for the Products and Services. Notwithstanding anything to the contrary, the limitations and exclusions set forth in Sections 12.1 and 12.2 shall apply to any schedules, addendums or other written agreements between the parties that are attached to, reference, or relate to the Products or Services ordered under the Quotation unless they contain a separate limitation or exclusion.

## 13. Compliance with Laws

**13.1. Export Compliance.** Customer acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, European Union, United Kingdom, Switzerland, and any other jurisdiction to which the Products and related technology are later transferred. Customer agrees to comply with such laws and regulations. Customer agrees that it shall use its best efforts to ensure that the Products and related technology are not: (a) sold, transferred, or diverted to any U.S., U.K., or E.U. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan and Syria), unless authorized by the applicable jurisdictions; (b) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury's Specially Designated Nationals List, the U.S. Department of State's Debarred Parties listing, or any E.U. or local country listing of sanctioned persons; (c) sold, transferred, or diverted to any nuclear weapons, nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-use; or (d) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders. Customer shall promptly advise Varian in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing. Customer understands that Varian's performance under this Agreement is subject to Varian's receipt of all necessary licenses, permits, or approval from all relevant governments or their agencies for the import or export of the Products, and Customer agrees that Varian shall be free from all obligations and liabilities for Customer's deficient performance under this Agreement if such deficiency is caused by Varian's non-receipt or late receipt of such licenses, permits, or approval. The obligations of this Section as to these laws shall survive any termination of this Agreement.

**13.2. Debarment.** Varian represents that neither it nor any of its employees or agents providing Services under this 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 Products or Services pursuant to this transaction. For orders in the United States: Varian further represents that neither it nor any of its employees or agents providing Services under this Agreement has been convicted of a criminal offense as set forth in 42 U.S.C. §1320a-7, including but not limited to an offense related to the provision of healthcare items or services. Varian will promptly notify Customer of any change in the status of the representations set forth in this Section. Any breach of this Section shall give Customer the right to terminate this Agreement immediately upon providing written notice to Varian.



**13.3. Governmental Audit.** For orders in the United States and only to the extent required by applicable law, Varian shall, until four (4) years after the termination of this Agreement, make available, upon written request by the Secretary of the Department of Health and Human Services ("**Secretary of HHS**"), or upon request by the Comptroller General of the United States General Accounting Office ("**Comptroller General**"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the Products and Services. Varian further agrees that, if it carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12)-month period, then such subcontract shall contain a provision requiring the related organization to make available, until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, upon written request by the Secretary of HHS or upon request by the Comptroller General, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

**13.4 Customer Data.** "**Customer Data**" means any type of information, including PII or PHI, which is provided or made available by or on behalf of Customer to Varian, or is otherwise accessible by Varian, in connection with Varian Products and Services, including without limitation information or data which Customer inputs, provides, makes available or is otherwise accessible to Varian through Varian Products and Services. As between the parties, Customer shall retain all right, title, and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Varian. Customer agrees, however, that Varian may use Customer Data received by Varian for processing, distributing, displaying, managing, administering, modifying, performing, supporting and enhancing Products and Services or to carry out legal responsibilities of Varian. Customer warrants and represents and assumes sole responsibility for ensuring that due notice is given to, and that sufficient consent obtained from, all relevant persons or entities, including without limitation patients, regarding the use and disclosure of Customer Data under this Agreement. Customer represents and warrants to Varian: (a) that Customer has and shall retain during the term of this Agreement sufficient rights and patient consent with respect to the Customer Data to authorize Varian to grant the licenses and other rights contemplated by this Agreement and for Varian to provide and support the Products and Services in the manner contemplated under this Agreement; and (b) Customer shall comply with applicable privacy and similar laws.

**13.5 Performance Data.** "**Performance Data**" means diagnostic, environmental, operational, usage, serviceability, other performance data, and feedback related to Customer's use of Varian Products and Services, exclusive of PII and PHI. Notwithstanding anything to the contrary, Customer acknowledges that Varian will retain all right, title, and interest to Performance Data and is permitted to use Performance Data for its business purposes.

#### **14. Force Majeure**

Neither party shall be liable for any delay in performance which is due to an act of God or causes beyond its reasonable control. Performance by a party shall be deemed suspended during the event causing such delay plus a reasonable period of time after such event, and the other party shall accept such delayed performance. Either party may terminate any Quotations not yet completed if such performance is delayed more than thirty (30) days under this Section.

#### **15. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The parties consent to venue in and agrees to submit to the exclusive jurisdiction of the courts of the State of Delaware for any action, claim, dispute, and/or litigation arising from or relating to this Agreement. Each of the parties expressly waives all rights to a jury trial.

#### **16. Limitation of Claims**

Subject to applicable law, no claims, regardless of form, arising out of, or in any way connected with this Agreement or the Products or Services may be brought by Customer more than one year after the cause of action has accrued or performance under this Agreement has been completed or terminated, whichever is earlier.

#### **17. Notices**

Any notices required or permitted to be given pursuant to this Agreement shall be in writing and 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 numbers set forth in the Quotation or to such other address as may be specified from time to time by notice in writing to the other party. Notice shall be deemed to have been given when received.

#### **18. Headings**

Headings used in this Agreement are for ease of reference only and will not be used to interpret any part of this Agreement.

**19. Entire Agreement, Amendments, Illegality, and Priority of Documents**

This Agreement contains the complete and exclusive statement of the terms of agreement of the parties with respect to this subject matter, and supersedes all prior and contemporaneous understandings, representations, and warranties, written and oral. This Agreement may be amended or modified only in a writing signed by both parties, provided, however, that in recognition that some product configurations have to be set at or near the time of installation, if an earlier revision of a Quotation is signed, subsequent unsigned corrections of the Quotation shall apply upon agreement of the parties. Customer's terms and conditions in any purchase order or specific order documentation, whether preprinted or otherwise, are expressly rejected by Varian and shall not apply. Unless otherwise indicated, these Terms of Sale do not govern any Products or Services sold or licensed under a separate written agreement between the parties. If a court or arbitrator holds any part of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity or enforceability of the remaining provisions, or portions of them, will not be affected, and such provisions will be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or court decisions. In the event of a conflict, the documents shall be interpreted to give priority in the following order: (a) amendments or addenda to this Agreement, if any, with highest priority given to the most recent amendment or addendum, (b) any applicable schedule or supplemental terms attached to or referenced in the Quotation, (c) Terms of Sale, and (d) Quotation, except that the Quotation will have higher priority than the Terms of Sale as to the length of warranty or support.

**20. Waiver**

No term or provision of this Agreement shall be deemed waived by either party, and no breach excused by either party, unless the waiver or consent shall be in writing signed by an authorized representative of the party granting such waiver or consent.

**21. Assignment**

Neither party may assign its rights nor delegate its duties under this Agreement without the written consent of the other party and any attempted assignment without such consent will be void, provided, however, Varian may subcontract various shipping, installation, and related activities, and its support of products manufactured by third parties back to the manufacturer, so long as Varian remains primarily responsible for those subcontracted obligations. However, either party may assign or otherwise transfer its rights or delegate its duties under this Agreement, in whole or in part and subject to the terms of this Agreement, to a subsidiary or affiliate, or a purchaser or transferee of substantially all of the assets used by such party in its business to which this Agreement relates or in the event of a merger, acquisition, corporate restructuring, or change in control upon written notice to the other party.

**22. Relationship of the Parties**

This Agreement does not create a relationship such as a partnership, franchise, joint venture, agency, master/servant, or employment relationship. Neither party may act in a manner, which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

**23. Counterparts**

This Agreement may be executed in two counterparts, each of which will be an original and which together will constitute one and the same instrument.

**24. Sales to United States Government Agencies**

Varian Products that are sold or distributed by Varian to an agency of the United States government (the "**Government**") shall be subject to the Government's rights in commercial items and commercial software.

**25. Electronic Signatures**

For purposes of signing acceptance and completion-of-installation documents, and for any other documents or agreements mutually agreed upon by the parties, the parties are authorized to use DocuSign or other similar mutually agreed upon electronic signature solution to sign the document or agreement. Any documents signed through this electronic signature process shall be legally binding for their intended purpose. Either party retains the right to insist upon signing paper copies of the documents instead of using an electronic signature solution.

**26. Insurance**

During the term of this Agreement, Varian agrees to maintain at least the following insurance coverage and to provide Customer with certificates of insurance evidencing such coverage upon written request:

**26.1. General Liability.** Varian agrees to maintain insurance for products/completed operations, property damage, bodily injury, contractual liability, advertising injury, and personal injury liability with minimum limits of US\$1,000,000 per occurrence and

US\$2,000,000 general aggregate. Coverage may be provided through a primary or excess/umbrella liability program or through any combination of them.

**26.2. Business Auto Liability.** Varian agrees to maintain coverage for all owned, non-owned, and hired vehicles with minimum limits of US\$500,000 combined single limit per accident for bodily injury and property damage.

**26.3. Worker's Compensation Insurance and Employer's Liability Insurance.** Varian agrees to keep in force statutory coverage for occupational injuries with minimum statutory limits and US\$500,000 employer's liability applicable in jurisdictions of contract performance.

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## HARDWARE SCHEDULE

(Form RAD 9905B)

This Hardware Schedule supplements and is made a part of the Terms of Sale and applies to and governs the Hardware that Varian is selling to the Customer as indicated in a Varian Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Bill and Hold

Customer understands and agrees that it may not delay shipment or receipt of any Products and will be obligated to take possession of and title to the Products on the delivery date, unless Varian determines that a later delivery date is necessary ("**Delivery Date**"). If the Customer site designated in the Quotation ("**Delivery Site**") is not available to receive delivery of the Products on the Delivery Date, Customer may, in writing, request and authorize Varian to hold the Products in storage upon completion of manufacturing, subject to the following: (a) Varian will select a suitable storage facility for the Products; (b) Customer will be responsible for paying all storage and insurance costs; (c) Title will pass to Customer when the Products are placed into storage; and (d) Varian will invoice Customer for, and Customer shall timely pay, one hundred percent (100%) of the purchase price for the Products. Once the Delivery Site becomes available, Customer shall request Varian to ship the Products from the storage facility to the Delivery Site, at Customer's expense, and Varian will provide installation services for the Products, provided that, Varian shall not be required to provide installation services more than six (6) months after the Delivery Date.

### 2. Architecture

Except as mutually agreed in writing, Varian will have no approval or other responsibility for any matter affecting or related to the adequacy of Customer's operating permit, architectural design, the radiation protection walls and barriers, patient viewing devices, compliance with all facility personnel safety devices and related inspections, utility service design and location, and other details pertaining to Customer's site under this Agreement. Customer may purchase Varian's architectural and construction services, if available, under a separate agreement with Varian's Site Solutions group.

### 3. Installation

A linear accelerator is typically delivered in separate sections which Varian will assemble in Customer's vault. Varian also will provide standard installation of the pieces and final positioning for the linear accelerator and setting. Customer will be responsible for the grouting of the subbase frame and the connection of such Products to the utilities and for any non-standard installation services (such as requiring cranes, the shoring of floors, the widening of doorways, and second floor delivery), and Varian will notify Customer approximately ninety (90) days prior to the scheduled Product shipment to allow Customer to provide for and coordinate such services. Except as otherwise agreed by the parties, Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, and access to the room completed on the estimated delivery date or other mutually agreed upon date and ready for installation of the Products. Where Varian is installing a Product for Customer, Customer will reimburse Varian at Varian's standard service rates for any extra time and/or travel by Varian made necessary by any delays not caused by Varian. Varian shall have no obligation to operate Products to complete installation or testing unless Customer has provided adequate radiation shielding protection and other site preparations for the safety and protection of Customer's and Varian's personnel and Products. Upon completion of installation, Varian's representatives will demonstrate proper Product operation by performing the applicable Varian acceptance procedures. When no representative is present or assistance from Customer is not available when required by Varian, Varian may discontinue installation and shall charge Customer for any additional costs incurred at Varian's standard service rates. If union action or influence requires union labor to complete any installation of Products, then such installation shall be completed at Customer's expense under the engineering supervision of Varian.

### 4. Acceptance of Hardware

For Hardware that Customer installs, Varian shall invoice Customer when such Product is shipped. For Varian Hardware that Varian installs, acceptance shall occur upon the earlier of (a) completion of the applicable Varian acceptance procedure, (b) Customer's execution of Varian's acceptance form, which is the final step in the Varian acceptance procedure for each Product, (c) use of any such Product by Customer, its agents, employees, or licensees for any purpose other than testing after its receipt, or (d) six (6) months after delivery of the Product. Prior to acceptance, Varian's sole and exclusive liability will be, at Varian's option, to repair or replace defective or nonconforming parts or Product after receipt of notice of defect or nonconformity. After acceptance, Customer's remedies shall be solely as provided in the warranty. Varian shall not be required to provide installation services six (6) months after delivery of the Product unless mutually agreed by the parties in writing.

### 5. Calibration and Radiation Surveys

For linear accelerator and simulator Products and treatment planning Software, Customer shall be responsible for all Product calibration unless it has signed an agreement ordering physics or commissioning services through Varian. For non-

BrachyTherapy Products, the dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Product for patient treatment. For BrachyTherapy Products, the radioactive source must be calibrated by a qualified radiological physicist prior to use of the Product for patient treatment. Customer shall be responsible for testing and calibrating the Product on a regular basis. Customer also shall be responsible for conducting any radiation surveys required by applicable law or regulation or necessary to establish that radiation does not exceed safe levels. For simulator and BrachyTherapy Products, unless Customer has signed an agreement ordering physics or commissioning services through Varian, Varian's obligation to calibrate these Products shall be limited to that required by local law. In the United States, Varian's calibration shall be limited to those certified components that are required under 21 C.F.R. 1020.30(d) (U.S. Code of Federal Regulations) to be calibrated by the installer where Varian is the installer. Customer shall be responsible for all other calibrations of simulator Products.

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## SOFTWARE SCHEDULE

(Form RAD 2750D)

This Software Schedule supplements and is made a part of the Terms of Sale and applies to and governs Software that Varian licenses to the Customer as indicated in a Varian Quotation, except for those software products that: (a) are otherwise licensed to Customer under a separate written software license or subscription agreement between the parties; (b) are third party software products subject to separate license terms, and/or (c) fall within the meanings of either Firmware or Operating Systems (as defined in the Terms of Sale) for Hardware. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Additional Definitions

- 1.1 **"Access"** means use of Software installed on a workstation or used at a workstation through remote connection to a server via a single Local Area Network ("**LAN**") or a single Wide Area Network ("**WAN**"), but not from outside the designated LAN or WAN, except that remote administrative viewing of certain designated Software installed on a server will not be outside the scope of the permitted use; and
- 1.2 **"Documentation"** means the user manual for Software which describes the Software and provides information specific to that Software.

### 2. License Grant

Subject to and for so long as Customer is in compliance with the terms and conditions of the Agreement, Varian grants to Customer a limited, personal, non-exclusive, non-transferable license to use the Software for:

- 2.1 Server versions:
  - 2.1.1 to install and use a single copy on a single server (or single database server and single imaging server for imaging applications) and to Access the Software from a workstation; and
  - 2.1.2 for workstation components of a server versions, if any, to install and use copies of such workstation components on such workstations as necessary;
- 2.2 Workstation versions (which shall apply to all Varian Software not designated in the Quotation as a server module):
  - 2.2.1 for Software pre-installed by Varian on a workstation (such as a console) prior to its delivery to Customer, to use such workstation version on the workstation on which such application is installed;
  - 2.2.2 for which a license key manager is used, to install and use such workstation version on the number of workstations permitted by the license key manager;
  - 2.2.3 for which no license key manager is used and which is intended for a floating license, to install such workstation version on any number of workstations and to permit concurrent users up to the number of licenses purchased; and
  - 2.2.4 for an enterprise or site license, to install and use such workstation versions on the number of workstations and Varian linear accelerators at the Customer site(s) identified in the Quotation as to such Software; and
- 2.3 Application Program Interfaces ("**APIs**"): where the Varian Software contains APIs, to use the APIs solely for Customer's internal use to develop Customer's own software scripts, provided that Customer shall be fully responsible for any applicable verification, validation, compatibility with the underlying Software, installation, usage, removal, support, safety issue reporting, and other requirements or issues arising out of Customer's development and usage of such scripts and the scripts' usage of the APIs; if Customer wishes to commercialize its APIs, it must sign a separate agreement with Varian for such commercial activities; Varian shall not be responsible for providing support for any Varian or third party products that it is caused by a Customer script; Varian does not guarantee that the APIs will be provided or supported in future versions of its Software, nor does it guarantee forward or backward compatibility of any Varian APIs to any other version of its APIs or Customer's scripts; and
- 2.4 to copy the Software for back-up and archival purposes only, except to the extent that such restriction on copying is void under applicable law; and

- 2.5 to use (but not make copies of) the Documentation to assist in Customer's use of the Software pursuant to the terms of this Agreement, except that Customer may make an electronic copy on each workstation of the Documentation applicable to the Software installed or used on such workstation.

Each such license shall be valid until termination or expiration. Unless otherwise indicated, Mandatory Safety Releases, Updates, Upgrades, and Versions (as defined in the Service and Support Schedule) are hereby licensed in the same way that their underlying Products are licensed under this Software Schedule. Customer shall not be entitled to receive or use any source code of the Software, except as otherwise expressly stated herein. Varian shall have the right to conduct, and/or direct an independent third-party firm to conduct, during normal business hours, an audit of the appropriate records of Customer to verify Customer's compliance with the licenses granted under this Section.

### **3. Title**

Title to all copies of the Software and Documentation are proprietary to Varian or its licensors. No license, right, title, or interest in the Software or Documentation, or any intellectual property of Varian or any Varian third party licensor, is granted to Customer except as expressly stated in this Software Schedule.

### **4. Integration**

Customer acknowledges that the import of data into, and the export of data out of, certain Software requires an interface between the Software and external programs or information systems, whether such programs or information systems are supplied by Varian or a third party.

### **5. Acceptance**

For Software that Customer installs, Varian shall invoice Customer when such Product is shipped. Where Varian will be installing the Software, Customer will make its site available to Varian personnel to install the Software no later than thirty (30) days after delivery of the applicable Software to Customer. Customer shall provide a representative who shall be present at all times during installation (including installation of interfaces), and such representative shall be capable of either assisting Varian where necessary or waiving installation of interfaces to the extent that Customer has decided not to install Products requiring such interfaces. When no representative is present or assistance from Customer is not available when required by Varian, Varian may discontinue installation and shall charge Customer for any additional costs incurred at Varian's standard service rates. Customer will have the following periods to review the Software: (a) if Varian performs the installation, thirty (30) days after the date of installation, unless Customer accepts the Software earlier, or (b) if Customer shall perform the installation of third-party software, thirty (30) days after delivery of the Software. Customer may reject Software only if it does not substantially conform to the Documentation. Customer's rejection must be in writing, describe the nonconformity in detail, and be provided to Varian within the applicable thirty (30) day period. Varian will have a reasonable period of time in which to correct, or to provide a workaround, for any such nonconformity. Customer will be deemed to have accepted the Software after the applicable thirty (30) day period if Varian has not received written notice of rejection within such period. Notwithstanding the foregoing, Customer's first productive use of the Software in Customer's business will be deemed to be acceptance of the Software.

### **6. Support and Warranties**

#### **6.1. Support in Lieu of Warranty & Limited Warranty**

Varian represents that the Varian Software (except Firmware and Operating Systems for Varian Hardware) shall be in substantial compliance with operational features of Documentation or the applicable Product at the time of sale for the time periods set forth below:

- 6.1.1 for Software licensed to Customer for the first time or as a separate new configuration, as opposed to expansions of pre-existing configurations no warranty is provided. Varian will provide Customer with Support Services for a period of one year from the date of installation of the Software by Varian (or the date of delivery if the Software will be installed by, or is electronically delivered to, Customer), or such other period set forth in the Quotation, under the terms of the Service and Support Schedule, at no additional charge to Customer;
- 6.1.2 for Software licensed to Customer that adds one or more modules to, upgrades, or increases the number of licenses purchased under a pre-existing configuration, Varian warrants, for a period of thirty (30) days from the date of installation of the Software by Varian (or the date of delivery where the Software will be installed by Customer), that the Software, will, when used in accordance with the Documentation, substantially conform to the Documentation. Where Customer reports a non-conformity to Varian during the warranty period, Varian will provide workarounds, patches, bug fixes, or other corrections or will replace the affected Software, at Varian's option, and such remedy will be Customer's sole and exclusive remedy for breach of this warranty. If in Varian's sole and exclusive opinion any such workaround,

patch, bug fix, correction, or replacement is not commercially reasonable, or if any such remedy fails of its essential purpose, Varian shall negotiate with Customer with respect to a refund of any equitable portion of any sums paid by Customer for the affected Software. Given that this is an expansion of a pre-existing configuration and that it is often difficult to determine whether a Software issue arises out of the original configuration or the expansion, the total support period for expansion will be synchronized to expire at the same time as the original Software, and Varian shall issue an invoice for the amount that the expansion increases the current Support Agreement.

Varian's provision of Mandatory Safety Releases, Updates, and, if applicable, Upgrades (as defined in the Service and Support Schedule) under the warranty or support in lieu of warranty in this Section and pursuant to the Service and Support Schedule shall not extend the original period for such warranty or support.

**6.2. Disclaimer.** EXCEPT AS PROVIDED IN THIS AGREEMENT, VARIAN DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, AND CONDITIONS (EITHER IN FACT OR BY OPERATION OF LAW) INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. VARIAN MAKES NO WARRANTY THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE EXCLUSIVE REMEDY FOR INFRINGEMENT OF THIRD PARTY RIGHTS IS SET FORTH IN SECTION 10 (INTELLECTUAL PROPERTY INFRINGEMENT) OF THE TERMS OF SALE.

**6.3. Limitations.** Except as specifically stated in the Documentation, Varian does not make any representations or warranty regarding the compatibility of the Software with software or hardware not supplied by Varian. Varian will in its sole and exclusive discretion, use reasonable efforts to assist Customer with the use of Software with third party products. Such assistance is limited to telephone and service support regarding compatibility or interface questions. Varian does not make any representation or warranty regarding the clinical use of the Software and/or Varian beam data by Customer for the treatment of patients in performing any medical procedure. Customer acknowledges that the Software and Varian beam data are tools to assist Customer to determine the proper course of treatment that may be needed by a particular patient, and Customer assumes all risks associated with such treatment. Import, export, or distribution of any data or information Customer may develop or use in cooperation with the Software ("**Data Related Activities**") is Customer's sole responsibility, and, subject to applicable law, Customer agrees to defend, indemnify, and hold Varian harmless from any and all claims by Customer and/or third parties, regardless of the nature of such claims, arising either directly or indirectly out of Data Related Activities. The foregoing sentence shall not be construed to limit Varian's obligation to provide warranty work or support under Section 6.1.

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## PROFESSIONAL SERVICES SCHEDULE

(Form RAD 10080A)

This Professional Services Schedule supplements and is made a part of the Terms of Sale and applies to and governs those Professional Services provided by Varian to Customer related to the development of interfaces for Varian medical oncology Software installation and certain other Professional Services, all as indicated in a Quotation and set forth under an SOW (as such term is defined below). All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Additional Definitions

- 1.1. **"Change Order"** means any proposed change to the SOW (as defined in Section 1.4 below) mutually agreed to in writing by the parties;
- 1.2. **"Professional Services"** mean the Services identified in each individual SOW (if applicable), including, but not limited to, analysis and performance of integration of Varian's standard Software with Customer's information systems and business practices, development of interfaces between Varian's standard Software and Customer's computer systems and other services available from Varian; Professional Services shall not include training, which shall be governed by the Training Schedule.
- 1.3. **"Schedule"** shall mean any timetable or milestones for the Professional Services that are set forth in the SOW; and
- 1.4. **"SOW"** shall mean a statement of work, description of the work, or work order agreement, either in the Quotation or as separately agreed upon in writing by the parties describing the Professional Services to be performed by Varian for Customer.

### 2. Term

The term for the Professional Services portion of this Agreement shall be from the signing of this Agreement until completion or termination of the Professional Services.

### 3. Professional Services

**3.1. Generally.** In consideration of Customer's timely payment, Varian shall perform the Professional Services set forth in each SOW attached to or referencing this Agreement.

**3.2. Software.** Where Varian provides Customer with other software under an SOW to this Professional Services Schedule, including but not limited to interface engines and interfaces, then such software shall be governed by the Software Schedule. The interface engine, interface, or other software will be licensed under the Software Schedule in the same manner as the underlying application software which requires such interface engine, interface, or other software.

**3.3. Actual and Potential Delays.** Varian shall use commercially reasonable efforts to perform the Professional Services according to the Schedule. Whenever any event delays or threatens the timely performance of the Professional Services that is not due to Customer's fault, then, Varian will make commercially reasonable efforts to notify Customer of such event and furnish all relevant details. If Varian is unable to meet the Schedule for any Professional Services, Varian and Customer shall meet in good faith to discuss possible solutions, including revising the Schedule at no additional cost to Customer, provided that such revision does not add new Professional Services to the SOW.

**3.4. Office Space, Services, and Equipment.** Customer shall provide, at no cost to Varian and subject to Customer's reasonable usage and access requirements, use of office space, services, and equipment (such as copiers, fax machines, modems, and Internet access) as Varian reasonably requires to perform the Professional Services at Customer's site.

**3.5. Exclusions from Professional Services.** Except to the extent expressly set forth in an SOW, Professional Services shall not include, and Varian will have no approval or other responsibility for, any matter affecting or related to the adequacy of Customer's operating permit, architectural design, the radiation protection walls and barriers, patient viewing devices, compliance with all facility personnel safety devices and related inspections, utility service design and location, Customer's obligations to comply with applicable laws, and other details pertaining to Customer's site.

#### **4. Rates, Expenses, Invoices, and Payment**

**4.1. Firm Fixed Price Rates.** Varian may from time to time provide Customer with some pre-packaged Professional Services or other specially negotiated Professional Services on a firm fixed price basis, provided that such Professional Services will be clearly identified as being offered on a fixed price basis. Where the parties agree upon a firm fixed price, the Professional Services included within such price shall be limited to those specifically identified as being covered by such price, and Customer agrees to make payments according to the Schedule, including any applicable milestones.

**4.2. Expenses.** Varian shall submit a monthly time and expense summary to Customer by letter, fax, e-mail, or in person for the Professional Services performed during the prior month. Varian may bill Customer for its reasonable expenses, including, but not limited to, travel, lodging, and meals, required to perform the Professional Services for Customer.

**4.3. Invoices.** Varian shall submit invoices to Customer pursuant to the Schedule set forth in the Quotation or SOW. Upon request by Customer, Varian shall provide receipts or other documentation supporting reimbursable expenses to Customer.

#### **5. Change Orders**

If Customer desires a material change to any SOW, then, upon mutual agreement of the parties, the parties shall execute a Change Order in the form of a revised Quotation or revised SOW. If any Change Order causes a change to the cost of, the time required for, performance, or Schedule of the Professional Services, the appropriate modifications to the SOW shall be reflected in the Change Order.

#### **6. Warranty**

Varian warrants the Professional Services will be performed in a professional and workman-like manner and substantially conform to the SOW. This warranty shall begin upon completion of the Professional Services and expire ninety (90) days after such date. In the event that Varian's performance of the Professional Services fails to conform to the SOW, Varian's sole obligation with respect to the Professional Services will be to promptly bring the Professional Services into conformity with the SOW at no additional cost to Customer. Where this is not possible, Varian shall be entitled to retain, and Customer shall be liable for payment of, a proportionate share of the total payments set forth in the SOW reflecting Varian's percentage of completion of the work in conformity with the SOW, and applicable Varian's expenses.

#### **7. Intellectual Property**

Except as expressly stated in this Agreement or an SOW, neither party is granted any right, title, or interest in the pre-existing intellectual property of the other. With the exception of any data created for Customer, Varian shall own all right, title, and interest in all inventions, feedback and discoveries newly developed in performing the Professional Services.

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**SERVICE AND SUPPORT SCHEDULE**

(Form MGM 1580AF)

This Service and Support Schedule supplements and is made a part of the Terms of Sale and applies to and governs all Support Services for the Varian Products provided by Varian to the Customer as indicated in a Varian Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

**1. Definitions**

- 1.1. **"Mandatory Safety Release"** means updates, error corrections, or modifications to Software issued by Varian for safety reasons that Varian will require licensees of such Product to install and that are made available by Varian at no additional cost to licensees of such Product.
- 1.2. **"Update"** or **"Maintenance Release"** means bug fixes, patches, and other error corrections to a Software Covered Product designed to enable the Software to conform to its documentation and that are made generally available by Varian at no additional cost to the licensees of such Covered Product; Updates may be indicated by the number to the right of the second decimal in a software version number (e.g., version 2.1.1).
- 1.3. **"Upgrade"** or **"Upgrade Release"** means upgrades, enhancements, and improvements to the features or functionality of Software that are released and marketed by Varian as Upgrades; Upgrades may be indicated by the number to the right of the first decimal in a software version number (e.g., version 2.1).
- 1.4. **"Version"** (including purchase options) means Software applications, modules, or releases of the Software that include new features or functionality and that are released and marketed by Varian as Versions or purchase options; Versions may be generally indicated by the number to the left of the first decimal in a software version number (e.g., version 2.0)<sup>1</sup>.

**2. Mandatory Safety Releases**

Varian shall provide Customer with and install Mandatory Safety Releases at no additional cost until the later of (a) the end of support of the Product specified in a notice by Varian given pursuant to Section 4.2.4 of the Terms of Sale, or (b) such later date as required by any regulatory agency.

**3. Updates**

Varian shall provide Customer with and install Updates for Covered Products at no additional cost. Varian may, at its election, install Updates remotely if applicable.

**4. Upgrades and Versions**

Varian shall offer Upgrades and Versions for Covered Products, along with associated installation and training, to Customer at the prices and upon the terms set forth in the Quotation.

**5. Telephone Support**

Varian shall provide telephone Support Services for Covered Products at no additional cost through (a) help desk telephone support and (b) technical telephone support.

**5.1. Help Desk Telephone Support.** Varian shall provide application help desk support for Covered Products at no additional cost during standard hours.

**5.2. Technical Telephone Support.** Varian shall provide technical telephone support for Covered Products at no additional cost during standard hours.

**6. Remote Diagnostic and Remedial Support**

Varian provides diagnostic and remedial Support Services for Covered Products remotely through remote services tools. Customer authorizes and consents to Varian (together with its Support Services personnel located at various locations globally)

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<sup>1</sup> Note that "version" with a lower case "v" is used interchangeably with "release" and is not an indicator of new functionality, but is used as a generic descriptor used to describe all software.

accessing, handling, and viewing Customer Data, including PHI (which may include in the case of certain Products, images via camera or video feed), in the course and for the purpose of providing and performing Support Services via the remote services tools. Customer shall be solely responsible for obtaining patient consent and complying with applicable privacy law in connection with Varian's use of the remote services tools and access to Customer Data as more particularly described in the Terms of Sale.

## 7. On-Site Support

**7.1 Generally.** Where an issue cannot be resolved by telephone or remote Support Services, Varian shall provide on-site Support Services for Covered Products during standard hours at no additional cost. Where Customer requests, and Varian can offer, on-site support outside of Varian's standard hours, Customer agrees to pay for non-standard hours coverage at the hourly rates set forth in its then current labor rates and working hour schedule; provided, however, that such after-hours coverage shall be at no additional cost to Customers who have purchased a non-standard hours coverage option as part of their Support Agreement.

**7.2. Customer Hours, Holidays, and Site Rules.** Varian's employees and agents shall reasonably observe the working hours, holiday schedule, and site rules of the Customer while working on Customer's premises, provided that Customer provides in advance a copy of the hours, schedule, and rules to Varian, and those hours, schedule, and site rules shall not modify the terms of the Agreement unless mutually agreed upon by the parties in writing.

## 8. Periodic Maintenance Inspections

Varian shall provide Periodic Maintenance Inspections ("PMI's") for Hardware Covered Products at mutually agreed upon times with the understanding that unless the parties make other arrangements, Customer shall be expected to give access to Varian to begin performing PMI's before 1:00 p.m. (local time) to enable the PMI's to be completed during standard hours. Where Varian can offer to perform PMI's outside of Varian's standard hours and Customer can give access to Varian to begin performing PMI's before 5:00 p.m. (local time), Customer agrees to pay for non-standard hours PMI coverage at then current labor rates; provided, however, that such after-hours PMIs shall be at no additional cost to Customers who have purchased a non-standard hours coverage option as part of their Service agreement.

## 9. Severity Levels and Response Times

"**Severity Level 1**" means an issue which prevents the performance of any mission critical functions of a Covered Product, and which cannot be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 2**" means an issue which significantly impairs the performance of any mission critical functions of a Covered Product, and which cannot be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 3**" means an issue which does not prevent or significantly impair the performance of any mission critical functions of a Covered Product, or where such prevention or impairment can be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 4**" means a low impact issue or documentation issue.

Varian shall give preference to Customers with Covered Products. Varian shall respond to Severity Level 1 and 2 issues within thirty (30) minutes and Severity Level 3 and 4 issues by the end of the next business day. Varian shall continue working Severity Level 1 and 2 issues until a solution or acceptable workaround is provided. For extended downtime of a Covered Product, Varian's customer support manager shall notify Varian's senior service and sales management, including, when required, product and design engineers. Workarounds do not constitute a resolution of an issue but may result in the issue being reassigned to Severity Level 3. The permanent resolution of Severity Level 3 and Severity Level 4 issues may appear in future Product releases. Varian issue resolution efforts may be suspended by agreement of Customer or during such period Customer assistance is required by Varian to continue effective work and is not available. Varian will provide contact persons to respond to the different severity level issues. Varian will notify Customer promptly if it is unable to resolve any Severity Level 1, 2 or 3 issue.

## 10. Parts

**10.1. Provision of Parts.** Varian shall provide to Customer all parts required in connection with Support Services for Covered Products at no additional cost. Parts provided pursuant to Services shall be included within the definition of "Products" for all purposes within the Terms of Sale except for the length of the warranty period. The Quotation may contain additional terms

regarding parts depending on the support level selected by Customer. This Section shall not cover parts ordered for spare or stock.

**10.2. Spare Parts Kit.** During the support period for a Covered Product, Customer shall maintain a spare-parts kit including all of the spare parts listed in the Varian standard spare parts list for such Covered Product.

**10.3. Parts Inventory.** Spare parts that the Customer has on hand in its spare-parts kit shall be available to the Varian customer Support representative. If the Covered Product is under warranty or under a Support Agreement, a part from Customer's spare-parts kit used by Varian to replace a part in a Covered Product will be replaced by Varian at no additional cost. If the Covered Product is not under warranty or under a Support Agreement, it is the responsibility of the Customer to replenish its spare parts stock as such parts are used for replacement.

## **11. Customer Responsibilities**

**11.1. Authorized Representatives.** Customer shall request Services on a time and materials basis and order parts only through its authorized representatives and will provide a list of such authorized representatives upon request by Varian.

**11.2. Access to Premises.** Customer shall provide Varian with sufficient access to the Covered Products and Customer's premises and personnel to perform Varian's obligations and to install all Mandatory Safety Releases, including access for both remote diagnostics and onsite Services.

**11.3. Qualified Operator and Equipment.** Customer shall arrange for a qualified operator to be present, when, in the opinion of the Varian customer support representative, the situation requires two (2) persons for safety. To fulfill its Service responsibility, Varian will supply normal hand tools, test equipment, and other specialized fixtures. Customer shall provide other assistance and equipment reasonably required for Varian to perform Service responsibilities.

## **12. Service Tools**

Any firmware and operating systems provided by Varian pursuant to Services is provided pursuant to Section 6 of the Terms of Sale (Firmware and Operating Systems), and any Software provided pursuant to Services is provided pursuant to the terms set forth in the Software Schedule; provided, however, that Varian's provision of such Software shall not extend existing warranty periods, if any, nor create any new ones. Subject to any signed security agreement or applicable site rules, during the initial warranty or software support period, and during Post-Warranty Support, Varian reserves the right to install and activate service-related software tools and service-related hardware tools at the customer site which allow Varian to enhance its ability to provide timely, high quality service and preventative maintenance. If the initial warranty or software support period has expired and the customer is not under a Support Agreement, Varian will de-activate service-related tools that are non-essential to performing service activities.

## **13. Exclusions from Services**

The Services provided shall be limited to support of Covered Products. Products which are not Covered Products include, without limitation, Customer's network, any hardware upon which a Software Covered Product is loaded, any interfaces between Covered Products and other products (other than interfaces between Varian Products), and any products which interface with the Covered Products; however, these restrictions shall not apply to the extent that such network, hardware, interfaces, or products are included as Covered Products. In addition, Varian shall not be required to: (a) provide Services for any Products if, in Varian's reasonable opinion, they are required because of Customer's failure to install Mandatory Safety Releases, Updates, or Upgrades made available to Customer or because of causes other than defects or errors in the Covered Products; (b) render Services at locations other than the Customer site(s) listed in the Quotation. Varian shall also have no responsibility or liability for delays caused by Customer.

## **14. Configuration Changes for Support Agreements**

If the Customer changes the configuration of its Products after the signing of a Support Agreement, including the addition of sub-equipment, features, purchase options, modules, upgrades, or increases in the number of licenses acquired during the term of this Agreement, this Agreement's price will be modified to reflect the incremental value of such changes in configuration. The price change will be based on Varian's current pricing in effect at that time at the time of the change. The price change will go into effect at the end of the warranty or support period provided with the added Hardware or licenses and will continue for the remainder of the term of the Agreement.

**15. SmartConnect Remote Access Opt Out.** Where a Customer requests that Varian not use SmartConnect Remote Access as its remote access support tool, this Section 15 shall apply.

**15.1 Entitlements No Longer Supported.** Varian shall not support the following without the SmartConnect Remote Access tool: (a) cPMPs, (b) PMP Tool User Access, (c) First Responder Level 2 and 3, (d) Smart Services Package options, (e) Smart Services Package discount, (f) A-la-Carte Smart Services, (g) SmartConnect Plus, (h) SmartConnect discount, (i) SmartConnect Customer Access, (j) SmartDocs, (k) HASP key, and (l) Uptime Performance Guarantees.

**15.2 Entitlements with Limited Supported.** Varian shall have limited support of the following without the SmartConnect Remote Access tool: (a) mandatory Upgrades coverage and (b) all entitlements that include software Upgrades.

**15.3 Additional Customer Responsibilities for SmartConnect Opt Out.** Customer will be responsible for any additional labor and travel costs related to: (a) the installation of Mandatory Safety Releases, Updates, Upgrades, and Versions, (b) providing diagnostic and remedial Support Services on site, (c) labor required for training on Customer's remote service tool and additional time required to perform Services by using Customer's remote service tools and any associated procedures required for its use, and (d) performance of Periodic Maintenance Inspections.

**15.4 Severity Levels.** Varian shall make commercially reasonable efforts to respond to all severity level issues when the customer chooses not to install the SmartConnect remote access.

**15.5 Service Tools other than SmartConnect.** If Customer chooses not to install the SmartConnect Remote Access tool and requests that the Varian service team use a different unvalidated remote service tool, then (a) Varian shall have the option of whether to agree to use such tool, (b) Customer will be responsible for all costs, licenses, training, and administrative functions related to the use of this tool, and (c) Customer will be responsible for any additional labor required to use this tool. Varian disclaims all liability for, and Customer shall be responsible for, any failures of performance or security issues caused by the tool. Varian shall be entitled to terminate its use of such tool for reasonable cause.

**16. Price Increases.** Except as otherwise stated in an Agreement, Varian shall be entitled to increase the prices or fees payable under part or all of an Agreement once in any 12-month period, but not during the first 12 months of the term of the Agreement or relevant part. Such increase shall take effect no earlier than 1 month after Customer has been notified in writing. Any increase of fees shall be in proportion to the increase, if any, of the United States Department of Labor Consumer Price Index for All Urban Consumers ("CPI") in the 12 months prior to the notification date.

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**TRAINING SCHEDULE**  
(Form RAD 10439)

This Training Schedule supplements and is made a part of the Terms of Sale and applies to and governs educational courses provided by Varian or its subcontractors to Customer, as indicated in a Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

**1. Term**

The term for the training portion of this Agreement shall be from the signing of this Agreement until completion, expiration, or termination of the training.

**2. Office Space, Services, and Equipment**

Customer shall provide, at no cost to Varian and subject to Customer's reasonable usage and access requirements, use of office space, services, and equipment (such as copiers, fax machines, modems, and Internet access) as Varian reasonably requires to perform the Professional Services at Customer's site.

**3. Expenses**

If Varian is required to conduct training at Customer's site, Varian may bill Customer for its reasonable expenses, including, but not limited to, travel, lodging, and meals, required to perform the training for Customer.

**4. Payment**

Except to the extent that a special payment arrangement has been agreed to by the parties in a Quotation or SOW, Customer shall pay each invoice within thirty (30) days from the date of the invoice.

**5. Intellectual Property**

Except as expressly stated in this Agreement or an SOW, neither party is granted any right, title, or interest in the pre-existing intellectual property of the other. With the exception of any data created for Customer, Varian shall own all right, title, and interest in all inventions, feedback and discoveries newly developed in performing the training.

**6. Applicable Training**

Except as otherwise agreed in writing by the parties, this Section applies to all training provided by Varian to Customer, including training that is included in the purchase price of a Product or Service and training that is purchased in the form of professional service and training credits (e.g., Advantage or FlexCredits).

**7. General Rules**

**7.1.** Each day of on-site training or Professional Services is defined as eight (8) hours – between 8 a.m. to 5 p.m. local time, normal working days, excluding holidays. Time over eight (8) hours per day will be deducted from remaining balance of the on-site training entitlement.

**7.2.** Varian employees and agents shall observe the statutory holiday schedules for both Varian and the Customer. Travel and lodging to attend classroom training is not included in the price unless otherwise stated in this Agreement.

**7.3.** All classroom training must be attended at the nearest Varian education center where the class is offered.

**7.4.** On-site training or Professional Services requires that the equipment or software to be used for training is available and in good working order. The Customer staff that is to be trained shall be available during the scheduled time of the training event.

**7.5.** As part of a Service contract the Customer may be entitled, as set forth in the Quotation, to training before or at the time Upgrades are installed. The method of delivery of that training is at the discretion of Varian and may include web-based digital streaming media or instructor-led remote webinar. Training material shall be delivered via electronic media.

**7.6.** Customer acknowledges that, prior to Varian providing training, Varian may provide Customer and/or Customer's representatives with supplemental training terms ("**Supplemental Training Agreements**"), such as training program prerequisites, safety guidelines, and Varian equipment-loan agreements. Customer agrees that Customer is deemed to have accepted and agreed to the terms of the Supplemental Training Agreements, on behalf of itself and its representatives participating in Varian's training, upon the commencement of the training, even if the Supplemental Training Agreements have

not been executed by Customer. Customer further expressly agrees: (a) to comply with the terms of the Supplemental Training Agreements; (b) to ensure that all of its representatives participating in Varian's training are aware of, and have agreed to comply with, the terms of the Supplemental Training Agreements; and (c) to be responsible for Customer's representatives' breach of, or failure to comply with, the Supplemental Training Agreements.

**7.7.** Travel and lodging that is purchased through Varian can only be used for attendance of Varian clinical schools and education courses at a Varian Education Center. The amounts paid to Varian for such travel and lodging shall be applied only to the travel and lodging expenses, including airfare, hotel accommodations, and rental car fees. The Customer is responsible for any expenses outside of such amounts paid to Varian. Travel and lodging charges will be direct billed and are not reimbursable if travel is booked outside of Balboa Travel or the travel agents used by Varian only. The hotel must be Varian preferred. Any remaining balance is non-refundable. Travel and lodging cannot be used to attend tradeshow or any event not related to Varian education and training courses.

## **8. Forfeiture and Expiration**

**8.1 Forfeiture for Inadequate Notice of Cancellation.** A training event that is part of a Support Agreement or purchased separately will be forfeited if it is scheduled and then cancelled by the Customer within two (2) weeks of the training event date. It cannot be reinstated or rescheduled, except where this training is required due to an Upgrade.

**8.2 Expiration.** Training that is included within the purchase price of a Product shall expire eighteen (18) months after the completion of installation of the Product. Purchased Professional Service and training credits (e.g., Advantage or FlexCredits) that are purchased as part of a Support Agreement shall expire at the end of the original term of the Support Agreement regardless of any extensions of that agreement. Purchased Professional Service and training credits that are purchased in standalone training orders shall expire twenty-four (24) months from the purchase date or acceptance of the first Product in that order, whichever is the latter.

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Capital Items

DO NOT USE DOCU-SIGN 'PRIVATE MESSAGE'. CHANGES MUST BE INSIDE REQ

Purchase Requisition  
Capital Items

TO BE COMPLETED BY REQUESTOR											
Date Requested	11/08/24		Is the Contract Attached?		NO		Quote #	2024-469581-1			
Requestor Name	HAMILTON, CRAIG		Email PO?	YES		Email Address	CHAMILTON@SAINT-LUKES.ORG		Requestor Phone Number	913-208-9152	
Copy PO to									Workday Project #	161468	
Admin Name									Foundation Funded?		
Department Name			Overnight Delivery (fee billed to department)						Entity	00SLH - Saint Lukes Hospital	
Delivery Address	BARRY ROAD		Goods/Services Received & ready for payment?								

Vendor Information											
New Vendor?	NO		W-9 Attached?	NO		Bill-Only			Submit PO	Representative Email Address	
Vendor	VARIAN					Representative's Name	Heather Kleen		to Vendor?	heather.kleen@varian.com	
Physical Address						Company Phone Number	614-262-9393		YES	Company Email Address	
City			State			Company Fax Number					

Description	Mfg / Mfg Catalog Number	Order Qty	Unit of Measure	Unit Cost	Extended Cost	Accounts	
H193652 TRUEBEAM UPGRADES		1	EA - EACH	\$ 944,103.00	\$ 944,103.00	Entity	00SLH - Saint Lukes Hospital
						Cost Center	719015 - Radiation Therapy Liberty
						Expense Account	
Total Cost					\$ 944,103.00		

Note to Vendor		
Note to Procurement		

Justification									
Budget \$	\$ 944,103.00	Actual \$	\$ 944,103.00	Difference	\$ -	1)			
Proposal						2)			
						3)			

Approvals										
Department	DocuSigned by:		Date			Foundation	Date		HTM - Biomed	
Director	62862A092AC54A2...		Date			Accounting	Date		HTM - IT	
Corp Administration	31CF956396EF4E4...		Date			IT	Date		Facilities	
CEO			Date					DocuSigned by:		Date
CFO			Date					Craig Hamilton		
COO			Date					6562D0E0BA7FB400...		
				Approved Capital		Contingency Funded		Budget Line#		

TO BE COMPLETED BY MATERIALS MANAGEMENT
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# varian

A Siemens Healthineers Company

## H193652\_TrueBeam Upgrades

Quotation Number - 2024-469581-1

All pricing and configurations contained within quotations supplied to St Luke's Hospital by Varian Medical Systems are confidential and only intended for St Luke's Hospital. Disclosure or release to others outside of the St Luke's Hospital network, either manually or electronically, without the prior written consent of Varian Medical Systems is strictly prohibited.

( Looking further )



**ST LUKES RAD THERAPY LIBERTY LLC ("Customer")**

2529 GLENN HENDREN DR  
LIBERTY Missouri 64068-9606 United States  
Tel : +1 641 430 5870  
Email : smooorehead@saint-lukes.org

**For and on behalf of Varian Medical Systems**

Heather Kleen  
Sales Specialist  
Work from home  
Atlanta , GA 99999 US  
Tel : +1 614 262 9393  
Email : heather.kleen@varian.com

\*\*\* Confidential - Proposal is intended for Recipient and Recipient's Site Representatives Only \*\*\*

**Quote Information**

Quotation Number : 2024-469581-1

Quotation Valid Until : November 22, 2024

Customer Requested Delivery Date : February 21, 2025

Customer Procurement Contact Name : Needed

**Billing Plan**

See Quote billing plan Summary on the following pages which is incorporated by reference

**Sales**

Incoterms : DPU Site Insured

Payment Terms : 30 days net

Sales PO Required : No

**Services**

Payment Frequency : Annual

Invoicing : Start of Billing Cycle

Payment Terms : 30 days net

Service PO Required : No

**Quotation Total**

Quotation Total : US \$944,103.00

**Terms and Conditions**

**Products and Services:** Customer's access to and use of the Products, Support Services and Services (except Software-as-a-Service or Subscription Services) as indicated in this Quotation are subject to and governed by: (a) the Varian Terms and Conditions of Sale (Form RAD 1652) at: [https://varian.com/RAD1652V\\_US\\_EN\\_MAR\\_2024](https://varian.com/RAD1652V_US_EN_MAR_2024) and (b) any Schedules, Exhibits and/or additional terms (including third party terms) contained, attached, referenced or otherwise indicated in this Quotation. All terms and conditions provided in the website link listed in item (a) above are incorporated by reference and form part of the contract between Varian and Customer.

If there is a separate written agreement (e.g. master agreement) in effect between the parties that expressly provides for and governs the purchase and sale of the specific Products, Support Services, Services, Software-as-a-Service and/or SubscriptionService set forth in this Quotation, such written agreement shall govern. Hard copies of the referenced terms and conditions and any additional terms indicated will be provided to Customer upon request.

**For and on behalf of Customer**

Authorized Representative :

Title :

Date :

**For and on behalf of Varian Medical Systems**

Authorized Representative :

Title :

Date :

Billing Summary



Sales Summary	
Value	Billing
0.00%	On Down Payment
80.00%	On Shipment
20.00%	On Acceptance
For orders equal or less than \$100k, 100% upon shipment, net 30.	

Service Summary	
Period	Amount(excl. VAT)
Year 1 :	US \$10,100.00

Quotation Summary



Offered Products (Sales)

Adhoc	Included
ST LUKES RAD THERAPY LIBERTY LLC	
HyperSight Upg H193652 (H193652)	Included
Gated CBCT Upg H193652 (H193652)	Included

Offered Products (Services)

ST LUKES RAD THERAPY LIBERTY LLC	
v3.0 to v4.1 Upgrade - ST LUKES RAD THERAPY LIBERTY LLC	
Value Added Service	VAS

Item	Description	
<b>Site:</b> ST LUKES RAD THERAPY LIBERTY LLC		
<b>1.0</b>	<b>HyperSight Upg H193652 (H193652)</b>	
1.1	<b>HyperSight Imaging Solution Upg.</b> <p>This upgrade provides HyperSight™ to a system on the TrueBeam® Platform</p> <p><b>Features:</b></p> <ul style="list-style-type: none"> <li>• Gantry speed up to 1.5 RPM for Imaging and automated motions between treatment fields.</li> <li>• CBCT Metal Artifact Reduction</li> <li>• HU Accuracy and Uniformity</li> <li>• Extended Field of View reconstruction</li> <li>• Quart phantom for HU calibration</li> <li>• 27" Console Monitors</li> </ul> <p><b>Prerequisites:</b></p> <ul style="list-style-type: none"> <li>• TrueBeam or Edge™ v4.1 or higher</li> <li>• ARIA® oncology information system (OIS) v15.1 - v18.0 or higher, or compatible third-party</li> <li>• Eclipse™ treatment planning system v15.1 or higher, or compatible third-party</li> <li>• If third-party OIS:               <ul style="list-style-type: none"> <li>• Authentication Server for third-party OIS (Hardware and Software) or</li> <li>• Authentication Server for third-party OIS (Software only)</li> </ul> </li> </ul>	1
<b>Site:</b> ST LUKES RAD THERAPY LIBERTY LLC		
<b>2.0</b>	<b>Gated CBCT Upg H193652 (H193652)</b>	
2.1	<b>Gated CBCT Upg</b> <p>Gated Cone-Beam Computed Tomography (CBCT) Upgrade provides the ability to acquire CBCT images synchronized with patient respiration (free-breathing or breath hold).</p> <p><b>Features:</b></p> <ul style="list-style-type: none"> <li>• Gated CBCT Imaging License</li> <li>• Short Arc CBCT Imaging License: CBCT image acquisition using a 120-150 degree arc, image review, and image match to respiratory gated reference image. Short arc CBCT can be used for single breath hold CBCT data acquisition.</li> </ul> <p><b>Prerequisites:</b></p> <ul style="list-style-type: none"> <li>• TrueBeam®, VitalBeam, or Edge v2.7 or higher</li> <li>• One of the following:               <ul style="list-style-type: none"> <li>• Advanced Respiratory Motion Management System</li> <li>• Basic Respiratory Motion Management System</li> <li>• Respiratory Motion Management System</li> <li>• Optical Imager</li> </ul> </li> <li>• kV Imaging System</li> </ul>	1
<b>3.0</b>	<b>Adhoc</b>	
3.1	<b>Technology Anti-Obsolescence</b> <p>Purchase of a Technology Anti-Obsolescence ("TAO") sets aside funds for a future purchase of Varian products.</p> <p><b>Features:</b></p> <p><b>Definitions and Limitations:</b></p> <ol style="list-style-type: none"> <li>1. Varian does not commit to provide any specific product or capability.</li> <li>2. Varian does not guarantee that a future product will be commercially available for which the Customer may wish to apply its TAO.</li> <li>3. If a product(s) for which Customer wishes to apply TAO credits to is not commercially available, Customer may apply the TAO to another product or service that is commercially available.</li> </ol> <p><b>Terms and Conditions:</b></p> <ol style="list-style-type: none"> <li>1. Product(s) that Customer wishes to apply the TAO to shall be sold at the then current price.</li> <li>2. Any unused value of a TAO expires 2 years after the date of customer's acceptance of the purchase of the commercially available product associated with the TAO as indicated in a quotation.</li> <li>3. Offer terms are subject to change without notice.</li> </ol>	1





Sales Price Table

Sales Total	US \$934,003.00
Quotation Total	US \$944,103.00



# Services Summary

Covered Equipment and Services

Value Added services - v3.0 to TrueBeam Platform v4.1

Services Attachment	
Attachment 1	Description of Services Provided
Attachment 2	Detailed Service Specifications
Attachment 3	Terms and Conditions

Attachment 1



Description
1.0 v3.0 to v4.1 Upgrade - ST LUKES RAD THERAPY LIBERTY LLC
Value Added Service - VAS - Value Added Service - Service Contract

This VAS - Value Added Service contract includes the following coverage

VAR009001011	Included
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Attachment 1



Service Price Table

Service Total	US \$10,100.00
Quotation Total	US \$944,103.00

Annually	Year 1
Value Added Service - VAS	US\$ 10,100.00
Total	US\$ 10,100.00

Attachment 1

Glossary of Service Entitlements

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VAR009001011

Service Level : Value Added Services

v3.0 to TrueBeam Platform v4.1\$



# Attachment 1

Quotation Total

Quotation Total	US \$944,103.00
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Labor Rates and Working Hours  
Effective April 1, 2023

Labor Rates	Standard Hours	Non-Standard Hours
Customer Support Representative* (2-hour minimum)	\$595/hour	\$825/hour
Product Support Engineer/Product Specialist* (2-hour minimum)	\$750/hour	\$1,225/hour
Applications & Clinical Help Desk Support* (30 minute minimum)	\$595/hour	\$825/hour
On-site Applications Support (2 day minimum, includes travel)	\$5,000/day	\$10,000/day

\*on-site, remote (off-site) support or travel

Any involvement of a Product Support Engineer or Product Specialist requires the presence of the local Customer Support Representative and will be invoiced accordingly, unless previous arrangements are made between the local District Customer Support Manager and Customer Representative.

Contract Customers may request that service be performed during Non-Standard hours and authorization to approve Customer's request lies solely with the respective District Service Manager. Where such requests are approved, Customer will be invoiced at the Standard Hours rate with a 20% discount. The billing rates for Non-Standard Hours service for customers with a Service Contract or a Service Level Agreement (SLA) are \$475/hour for a Customer Support Representative and \$600 per hour for a Product Support Engineer/Product Specialist, unless Customer has Non-Standard Hours or Extended Hours Coverage.

"Standard Hours" are from 8 a.m. to 5 p.m. Monday – Friday.

"Non-Standard Hours" are Saturdays, Sundays, Varian Holidays (U.S.) and weekdays from 5 p.m. to 8 a.m. (following day).

"Extended Hours" are from 5 p.m to 9 p.m Monday - Friday, not including Varian Holidays (U.S.)

All rates are subject to change without prior notification. All rates are quoted in US Dollars.

Varian Holidays (U.S.)

New Year's Day	Independence Day	Christmas Holiday 1
Presidents' Day	Labor Day	Christmas Holiday 2
Good Friday	Thanksgiving Day	
Memorial Day	Day after Thanksgiving	



# TERMS AND CONDITIONS OF SALE

Form RAD 1652V

These Terms and Conditions of Sale ("**Terms of Sale**") govern the sale of Products and Services and license of Software by Varian Medical Systems, Inc. or its subsidiary (collectively, "**Varian**") referenced in the Varian Quotation (as defined in Section 1 below). These Terms of Sale may be supplemented by addenda, letters of commitment, exhibits, schedules, and other attachments referenced in or attached to these Terms of Sale or the applicable Quotation and shall collectively constitute the entire agreement ("**Agreement**") between the parties.

## 1. Definitions

- 1.1. "**Covered Product**" means Products for which the parties have agreed in writing for Varian to provide Support Services under warranty or a Support Agreement as further described in the Service and Support Schedule;
- 1.2. "**Customer**" means the customer referenced in the Quotation;
- 1.3. "**Hardware**" means any hardware products sold by Varian;
- 1.4. "**Managed Services**" means cloud or on-premise services where Varian provides Customer with virtualized managed data center infrastructure and technical operational services, such as monitoring, event management and maintenance of that virtualized infrastructure.
- 1.5. "**Post-Warranty Support**" shall mean Support Services provided after the initial warranty or software support period.
- 1.6. "**Products**" mean Hardware and/or Software;
- 1.7. "**Professional Services**" means installation, implementation and other ancillary services provided pursuant to the Professional Services Schedule, but does not include maintenance, warranty, or support;
- 1.8. "**Quotation**" means the applicable Varian quotation(s) by which Customer is purchasing Products and/or Services from Varian;
- 1.9. "**Relay Services**" means the subscription-based services which allow the transmission of Customer information between Software and a Varian mobile application.
- 1.10. "**Services**" collectively mean Support Services, Professional Services, Managed Services, and Relay Services;
- 1.11. "**Software**" means one or more computer programs in object code format, whether stand-alone or bundled with other products and related documentation, licensed by Varian, and shall exclude Software licensed on a software as a service (SAAS) basis;
- 1.12. "**Support Agreement**" means a contract for Support Services that Customer can purchase under which Varian will provide Post-Warranty Support for the Covered Products; and
- 1.13. "**Support Services**" mean initial warranty or software support and Post-Warranty Support provided pursuant to the Service and Support Schedule.

## 2. Quotations and Prices

**2.1. Quotation Duration.** Prices and fees ("**Prices**") for Products and Services are set forth in the applicable Quotation. A Quotation shall expire at the end of the period identified in the Quotation, or if no period is stated in the Quotation, the Quotation shall expire sixty (60) days from the date of issuance or if a Product on the Quotation is no longer available. If the parties choose to execute a Quotation after its expiration date, the expiration date will be treated as having been mutually amended to the date of last signature.

**2.1.1 Products.** Except as otherwise stated in the Agreement, Varian reserves the right and is entitled to increase the Prices for Products. Any increase of Prices shall equal the cumulative average percentage increase, if any, in the United States Department of Labor Consumer Price Index, All Urban Consumers ("**CPI**") over each 12-month period from the date of Agreement to the (expected) delivery date of the Products. The Price increase will not apply (i) to any Products delivered to Customer within 36 months from the date of the Agreement, or (ii) to Products delivered to Customer after 36 months from the date of the Agreement due solely to Varian's material delay. Varian shall notify Customer in writing of the then-current Prices at least 30 days prior to shipment.

## 2.1.2 Support Services. Except as otherwise stated in the Agreement:

- (a) Varian shall be entitled to increase fees once in any 12-month period, but not during the first 12 months of the term of a Support Agreement or relevant part. Any increase of Prices for Support Services shall equal the cumulative average percentage increase, if any, in CPI during the 12-months prior to the notification date. After the initial term, the applicable annual Price increase for a one-year extension shall equal the cumulative average percentage increase in CPI for each year of the original term of the Support Agreement. Such increase shall take effect no earlier than 30 days after Customer has been notified in writing.
- (b) If after the Customer executes a Support Agreement, Customer purchases additional Products and/or changes the configuration, including among other things, increasing the number of licenses acquired, and adding purchase options, modules, and/or upgrades, Varian will be entitled to assess, and Customer will be subject to, additional fees for Support Services, including under an existing Support Agreement. Varian will issue an invoice to the Customer for the price change in Support Service-related fees, which will reflect the incremental value of such changes and be based on Varian's then current pricing in effect at the time of the change and continue for the remainder of the term of the Support Agreement.

## 2.2. Taxes

**2.2.1.** Varian's prices exclude, and Customer shall be responsible for, all taxes, customs, duties, tariffs, withholding, levies, assessments, or fees of whatever kind or nature arising out of or in connection with this Agreement, including the sale, delivery, ownership, or use of the Products or performance of the Services, but excluding taxes based on Varian's net income. If Customer asserts that any transaction under this Agreement is tax exempt, Customer shall provide to Varian a tax or levy exemption certificate acceptable to the taxing or levying authority. Varian will include on each invoice those taxes which are: (a) the responsibility of Customer (classified on the invoice by type of tax, i.e., sales tax, value-added tax, etc.); and (b) for which Varian has a legal obligation to collect and remit such taxes to the appropriate authority.

**2.2.2.** If Customer is required by law to make any deduction from the gross prices in a Quotation which are due to Varian for withholding tax, then Customer shall: (a) promptly notify Varian of such deduction, (b) pay such tax to the relevant tax authority; (c) pay Varian for the relevant invoice net of the required deduction or withholding by the due date of payment for that invoice; (d) promptly provide Varian with official tax receipts or other documentation issued by the relevant tax authority to evidence payment of the deducted or withheld amount; (e) provide Varian with assistance as is reasonably requested by Varian in recovering the deducted or withheld amount; and (f) if a double-taxation treaty applies which provides for a reduced withholding tax rate, then Customer shall only withhold and pay the reduced tax amount. Varian shall not be liable for any act, omission, or delay by Customer in respect of the Customers' tax compliance duties, including, but not limited to, any Varian liability for withholding tax, penalty, or interest which arises as a result of Customer's failure to withhold any applicable tax.

**2.3. Transportation and Risk of Loss.** All shipments will be made in accordance with the Incoterms (Incoterms 2020), UCC shipping terms, or other shipping terms, each as set forth in the Quotation, with Varian selecting the transportation company. Title shall pass at the same time that risk of loss shifts in accordance with the applicable Incoterms, UCC shipping terms, or other shipping terms. Varian shall insure such shipments for the full value of the Products shipped at Customer's expense or shall declare the full value of the Products to the transportation company at time of shipment. Within three (3) days of delivery, Customer shall fully examine the packaging of the Product delivered for damage and make all applicable complaints and claims arising out of such delivery to the carrier in writing, and Customer shall provide a copy of any such complaints and claims to Varian.

**2.4. Prerequisites and Conditions.** Where Customer is ordering in a Quotation radioactive or radiation-emitting Products or Service for such Products, Customer has requested and authorized Varian to utilize radioactive or radiation-emitting Products to perform as required under the Quotation at Customer's site. Varian's acceptance of any order and subsequent performance are expressly conditioned upon Customer's compliance with all applicable codes, regulations, and recommendations of competent health or radiation-protection authorities affecting Products or installation and use of the Products, including obtaining all required permits, and Varian's approval of Customer's credit. Where applicable, Customer acknowledges that Varian has notified Customer that there are regulatory requirements associated with possession and use of radiation-generating devices. Prior to installation of a radiation-generating device, Customer will apply for and obtain approval for installation of the device from the appropriate local and/or state radiological regulatory agency, and Customer will provide Varian with a copy of the approval form so that Varian can verify that Customer has obtained the required regulatory agency authorization.

**2.5. Government Required Disclosures.** Customer shall disclose the dollar value of any discounts or reductions in price for the Products and Services furnished by Varian in Customer's costs claimed or charges made to Medicare, Medicaid, and any other federal, state, or local programs which are providing reimbursement to Customer.

## 2.6. Customer Changes Prior to Installation

**2.6.1.** The Products, Services, and their related prices listed on the Quotation are based on Customer's software, hardware, information technology infrastructure, data management, networks, servers and systems (collectively, "**Customer IT**

**Environment**) that, to Varian's knowledge as of the time of the Quotation, either: (a) exist at Customer's facility at the time the Quotation is prepared; or (b) will exist on the Product installation date, as communicated by Customer to Varian, at the time the Quotation is prepared.

**2.6.2.** If Customer changes its Customer IT Environment prior to Product installation or delivery of the Services, then Customer acknowledges that the Products, Services, and prices listed on the Quotation may no longer be valid. In such event, Customer agrees that Customer must pay Varian: (a) any price difference between the Product configuration on the Quotation and the newly requested Product(s) configuration at the time of actual installation ("**Current Version**"); (b) the price of any new Hardware or Software prerequisites then necessary for the Current Version of the Product to operate in the changed Customer IT Environment; and (c) any price difference between the Services listed on the Quotation and the Services needed to fully install the Current Version.

**2.7. Hardware Prerequisites for Software Upgrades and Updates.** If Customer has purchased upgrades or updates to Software, or is otherwise entitled to them under a Quotation, then Customer is responsible for purchasing any additional hardware, software or information technology infrastructure products that are necessary in order to successfully operate those upgrades or updates to the Software, unless: (a) Customer has also purchased a Hardware-refresh option for that Software from Varian; or (b) Customer has a valid Support Agreement in place which includes an applicable Hardware-refresh option.

**2.8. New Products.** If Varian commercially releases a new model or version of any Product between the signing of the Agreement and the shipment (or if no shipment, installation) of the Product, Varian may elect, after consultation and providing prior written notice to Customer, to ship and Customer will accept for delivery the new model or version with like or comparable configuration in the place and stead of the prior model or version of the Product. Varian will provide an amended quotation indicating additional prerequisites required resulting therefrom and reserves the right to charge Customer for any difference between the original quoted price for the old model or version and the then current price of the new model or version.

**2.9. GPO Terms and Fees.** Customer and Varian expressly agree that this Agreement is not governed by the terms and conditions of any existing Group Purchasing Organization ("**GPO**"), and Varian is not obligated to pay any administration fees to any designated GPO for the Products or Services provided under this Agreement.

### 3. Payment

**3.1. Payment Due Dates and Late Payments.** Except as otherwise set forth in the Quotation or agreed by the parties in writing, all undisputed amounts invoiced shall be due and payable within thirty (30) days of the date of invoice. Varian may charge interest on past due balances at a rate equal to the lesser of one percent (1%) per month or the maximum amount permitted by applicable law. Varian may cancel or delay delivery of Products or Services when Customer's payments are late under any orders with Varian. Customer is ultimately responsible for payment, and shall ensure its payment agent, if any, makes payment under this Section 3.

**3.2. Products.** Amounts payable for Products will be invoiced as set forth in the payment schedule in the Quotation. If no payment schedule is in the Quotation, Varian may invoice upon signing of the Quotation. If a Product is not installed within six (6) months after delivery is made available to Customer pursuant to the delivery date specified in the Quotation or in a subsequent communication provided by Varian, and such delay is not due to the fault of Varian, then all remaining unpaid balances shall become immediately due regardless of the payment schedule in the Quotation, and Varian shall not be required to provide installation services six (6) months after such delivery of the Product is made available to Customer, but may elect to do so on a time and material basis. For partial shipments, Products will be invoiced when shipped (for example, if Customer orders two linear accelerators on one Quotation to be installed on different dates, then Varian may invoice for the first linear accelerator and related accessories when the first accelerator and accessories are installed, and then again when the second linear accelerator and related accessories are installed).

Customer represents and warrants to Varian, that after title to the Products passes from Varian to Customer and until Customer fully pays for the Products, Customer will (1) hold good and marketable title to the Products free and clear of all liens except those in favor of Varian and (2) not execute, file, or record any security agreement, financing statement, equivalent security or lien instrument, or continuation statement covering all or any part of the Products, except such as may have been filed by Customer or Varian in favor of Varian. As collateral security for the payment of all amounts ordered or invoiced for the Products and/or Services that included provision of Products, and performance in full of all the obligations of Customer under these Terms of Sale, Customer hereby grants to Varian, a purchase money security interest in and to all of the right, title and interest of Customer in and to the Products, wherever located, and whether now existing or acquired from time to time, as well as all proceeds (including insurance proceeds) of the foregoing. Customer further agrees to take any other action, at the expense of Customer, reasonably requested by Varian to ensure the attachment, perfection, and first priority of, and the ability of Varian to enforce, Varian's security interest in any and all of the Products including, without limitation, delivering and, where appropriate, filing financing statements and amendments relating to them under the UCC in any relevant jurisdiction. Customer hereby appoints Varian as its attorney-in-fact and authorizes Varian, from time to time, to execute and file one or more financing statements, amendments, and/or other similar instruments and provide any other information necessary to perfect or to enforce Varian's security interest in the Products and proceeds with respect to the Products which are subject to Varian's security interests. Until the obligations to Varian have been repaid in full Customer shall not, unless Varian consents in writing: (a)

convey, sell, lease, license, transfer, or otherwise dispose of all or any part of the Products; (b) move or relocate the Products, which shall remain personal property at all times, without informing Varian in writing; or (c) assign or otherwise convey any right to receive income from the Products or the proceeds of any authorized sale of the Products.

**3.3. Services.** Varian may invoice Customer up to thirty (30) days prior to the start of rendering Services. If a Support Agreement states that the Services will be billed in increments (such as annual or quarterly), then Varian may invoice Customer up to thirty (30) days prior to the start of each applicable incremental period. If Customer is paying for Services on a time and materials basis, then labor charges and related expenses, including travel expenses, will be invoiced at the labor rates specified in or attached to the Quotation as the Services are rendered or as the expenses are incurred.

## **4. Cancellations, Modifications, and Termination**

**4.1. Products.** No Product order accepted by Varian may be terminated, canceled, or modified by Customer, provided, however, that either party may terminate any Product order prior to delivery of the Product for material breach of the Agreement upon thirty (30) days written notice to the other party if such material breach has not been cured upon the expiration of such period. Notwithstanding anything to the contrary, before Varian begins to put into production, manufacture and/or assembly, any Product Order, at Varian's election, Customer will be required to execute a Notice of Manufacture or other Varian provided written confirmation, which shall reconfirm Customer's obligation to accept delivery of and pay in full for such Products. Where Customer breaches the Agreement including by wrongfully cancelling a Product order or failing to execute a Notice of Manufacture in a timely manner, in addition to the other remedies that Varian may have available to it, Customer shall: (a) forfeit its deposits or down payments; and (b) pay to Varian all damages reasonably incurred by Varian.

## **4.2. Support Service**

### **4.2.1. Term and Termination of Support Agreements**

If Customer is ordering Post-Warranty Support under a Support Agreement before the expiration of the initial Hardware warranty and Software support period or a prior Support Agreement, then the initial term for the new Support Agreement shall begin immediately upon the expiration or termination of the applicable warranty or support period or prior Support Agreement. If Customer is ordering Post-Warranty Support for Products that are no longer covered under the initial Hardware warranty or Software support period, and are not currently covered under a Support Agreement, then the initial term of the Support Agreement shall begin when Customer signs the Quotation for those Services or issues a purchase order referencing it or any other date mutually agreed upon by the parties.

Support Agreements shall automatically renew for a single one-year extension, unless either party provides the other party with a written notice of its intention not to renew at least sixty (60) days prior to the expiration of the then-current term of the applicable Support Agreement.

Except in the case of automatic renewals, Customer may terminate any Support Agreement for convenience by: (a) notifying Varian of its intention to terminate in writing at least one hundred twenty (120) days prior to expiration of the then-current term of the Support Agreement; and (b) paying Varian: (i) the full amount of the remainder of the Support Agreement fees for the current contract year of the Support Agreement; plus (ii) an early termination fee equal to fifty percent (50%) of the remaining Support Agreement fees after the current contract year that would have been due to Varian if the Support Agreement had not been terminated early. Customer must pay Varian's invoice for the foregoing fees within thirty (30) days of invoice date.

**4.2.2. Termination Where Product Costs Are Included and Amortized.** If Customer prematurely terminates a Support Agreement which includes the amortized cost of any additional Products (such as delivery system upgrades, software licenses, or any other purchasable options) into the cost of the Support Agreement, then Customer will be liable, and will be invoiced by Varian, for the unpaid portion of these additional Products at the Product's then-current list price, and Customer will pay such invoices within thirty (30) days.

**4.2.3. Termination for Failure to Maintain Products.** There may be instances where Customer requests Varian to issue a Quotation for Post-Warranty Support for an existing Varian Product that has been previously purchased and has not been under continuous support by Varian prior to examining the Covered Products (e.g., Customer may need to spend an allocated budget before a fiscal year-end). If Varian has not had an opportunity to inspect a Covered Product prior to the issuance or signing of a Quotation for Post-Warranty Support, then Varian shall have the right to inspect the Product to determine whether it meets a level of operation acceptable to Varian and, solely at Varian's option, to revoke the applicable Quotation before its signing, or to terminate the Support Agreement after the applicable Quotation is signed. Varian's agreement to provide Post-Warranty Support for Covered Products shall, at Varian's sole discretion, be further contingent upon the completion of repairs or maintenance indicated by Varian as required as a result of an inspection. Varian reserves the right to void the warranty or terminate that portion of Post-Warranty Support for a Covered Product where Customer purchases from a third party not affiliated with Varian labor or parts to maintain, verify, or validate the Covered Product.

**4.2.4. End of Sale and End of Support.** Varian may issue an end of sale notice for a Varian Product or Service by providing the Customer with eighteen (18) months written notice for Hardware and twelve (12) months for Software. Varian may terminate

a Support Agreement for a Covered Product where Varian has determined to end support, subject to additional terms in the Quotation, or Varian work instructions and documentation, by giving Customer eighteen (18) months advance written notice for Hardware and twelve (12) months for Software ("**End of Support Termination**"). Varian may also terminate a Support Agreement for any Software that is two or more Versions older than Varian's then-current Version of such Software (e.g., if the then-current Version of the Software is version 7.0, then Varian may terminate a Support Agreement for any Software versions earlier than Version 6.0). Varian may shorten the periods described in this Section 4.2.4 if End of Sale and/or End of Support Termination is determined by Varian to be reasonably necessary due to component or manufacturing obsolescence, supply chain, operational and/or product quality concerns.

**4.2.5. Survival of Terms.** All provisions of this Agreement which by their nature should survive termination of this Agreement shall remain in effect after termination of this Agreement.

## 5. Use Restrictions

**5.1.** Customer shall not decompile, disassemble, or reverse engineer any part of a Product except to the extent such prohibition is void under applicable law. Customer must ensure that anyone with authorized access to the Products will comply with the provisions of this Agreement.

**5.2.** The following shall apply to all Products sold or licensed to Customer under this Agreement. Nothing in this Section shall prohibit Customer from allowing hospitals and healthcare workers affiliated with Customer from using the Products if they have the requisite training or experience to do so. Without the written consent of Varian, Customer may not: (a) sublicense, sell, lease, rent, timeshare, distribute, or otherwise attempt to transfer its license to such Software and/or documentation to any other person or entity; (b) use the Software in a facility management or Service Bureau (as such term is defined below) manner or permit third parties to access the Software over the internet or through an application service provider model; or (c) allow access or use the Software other than for its intended purpose, in a manner not contemplated by Varian, nor beyond the scope of its license. For purposes of this Agreement, "**Service Bureau**" means an arrangement where third parties are permitted to access and use such Software, directly or indirectly, by any means to process their own data; or Customer uses such Software to process the data of any third party.

**5.3.** Except to the extent that the restrictions in Section 5.2 are void under applicable law, Customer shall not: (a) copy (except as expressly set forth in Section 2 of the Software Schedule and except for transitory copies created as part of the normal use of the Product), print, alter, or translate such Software; (b) circumvent any usage or other restrictions imposed by any license manager; (c) create any derivative work based on such Software; or (d) use such Software for application development purposes. Customer agrees that these provisions shall also apply to any copies of such Software that Customer acquires from third parties. Customer agrees that it shall not use any part of the Software apart from the Hardware or Software with which it was intended to operate.

## 6. Firmware and Operating Systems

Products sold by Varian may contain internal system code that is stored in non-volatile memory that executes functions of the Product ("**Firmware**"), as well as software that is included with the Product such as operating system software for operating computer systems, performing diagnostics, displaying information, and interfacing with other devices or software and further including any displays of copyrightable material stored in or otherwise embodied by such software or Firmware (collectively "**Operating System**"). Varian, or its licensors, own all Firmware and Operating Systems. Except where such Firmware or Operating System is owned by a third party and licensed directly by such third party to Customer, Varian hereby grants Customer, only for so long as Customer shall own or license the Product, a limited, personal, non-transferable, non-exclusive license to use the applicable Firmware and Operating System as part of the normal operation and maintenance of the Product. Support Services for the Firmware and Operating System shall be governed by those terms applicable to the underlying Product.

## 7. Proprietary Notices, Trademarks, Logos, and Trade Names

Varian or Varian's suppliers or licensors own all right, title, and interest (including, without limitation, all intellectual property rights) in and to the intellectual property in all Products, including their documentation and other materials provided with the Products. Customer shall not remove, alter, or obscure any copyright, trademark, trade secret, government restricted rights, or other proprietary or confidentiality notices or legends that are (a) placed or embedded by Varian or its suppliers or licensors in any software, (b) are displayed when any software is run, or (c) are applied to the Products, their packaging, labels, or any other materials provided under this Agreement. All trademarks, logos, and trade names displayed on the Products and any related documentation are the property of Varian or third parties, and Customer shall not use them without the prior written consent of Varian or the third party that owns them.

## 8. Confidential Information

**8.1.** Each party ("**Recipient**") may be exposed to certain information of the other party ("**Discloser**") which is confidential and valuable to Discloser and not generally known to the public ("**Confidential Information**"). Information shall be Confidential Information: (i) if disclosed in writing, it is conspicuously marked "Confidential" or bears some similar marking, or by its nature it is or should be understood to be confidential and or, (ii) if disclosed orally or by observation, its confidential nature is stated in

writing by the Discloser at the time of disclosure or within fifteen (15) days. The following are also deemed to be Varian's Confidential Information whether or not they are marked or disclosed as confidential to Customer: Varian's Quotation, pricing information, code, Product documentation, roadmaps, and technical specifications or data, this Agreement and/or other terms contained in or attached to the Quotation, service order, and invoice. The term Confidential Information and this Section 8.1 expressly exclude protected or patient health information ("PHI") and personally identifiable information ("PII") since they are generally covered under a separate agreement such as a business associate agreement or addendum ("BAA") or by applicable law.

Recipient will hold Discloser's Confidential Information in confidence and will treat Discloser's Confidential Information with the same degree of care taken to protect its own similar confidential information, but in no event with less than reasonable care. Recipient further agrees to limit disclosure of such information to those of its directors, employees, contractors, and agents who have a need for such information to affect the use permitted under this Agreement and who are bound under a written agreement or legal obligation to keep such information confidential. Recipient will not be required to protect or hold in confidence any information which: (a) becomes publicly known through no wrongful act or omission of Recipient; (b) was previously disclosed by Discloser to Recipient without indication of confidentiality; (c) becomes known to Recipient, without confidential restriction from a third party unless Recipient had or should have had knowledge of its confidentiality; (d) is approved by Discloser for disclosure without restriction in a written document which is signed by a duly authorized officer of the Discloser; or (e) is independently developed by Recipient without use of Discloser's Confidential Information.

**8.2.** Disclosure of Confidential Information will not be precluded by this Section 8 if the disclosure is: (a) necessary to establish rights under this Agreement (subject to Recipient's obligation at its expense to make a good faith attempt to obtain a protective order prior to such disclosure); or (b) required by law or regulation or in response to a valid order of a court or request of other governmental body of a country or political subdivision, provided that Recipient notifies Discloser of such order on a timely basis and if possible prior to the disclosure. All Confidential Information, including copies made by Recipient, will remain the property of Discloser. The obligations of confidentiality imposed by this Agreement shall survive any termination of this Agreement.

## 9. Limited Warranty and Responsibilities

### 9.1. Warranty for Hardware

**9.1.1. Warranty for Varian Hardware.** Unless otherwise provided in this Agreement or the Quotation, Varian warrants that Varian Hardware and any Firmware and Operating System loaded on Varian Hardware will be free from defects in material and workmanship and in substantial compliance with operational features of Varian's published specifications for the applicable Product at the time of sale ("**Specifications**"). This warranty shall begin upon completion of installation in accordance with the Hardware Schedule and continue for a period of one year from such date, but not to exceed two (2) years from date of shipment from Varian to Customer. This warranty shall not apply (a) where the Firmware or Operating System is owned by a third party which licenses it directly to Customer, or (b) to certain third-party products provided or licensed directly by their manufacturer to Customer (e.g., Dell workstations are provided on terms from Dell instead of Varian). Clerical and typographical errors in Specifications are subject to correction. In providing warranty Service, Varian shall have the right to substitute remanufactured parts and components that meet the same quality standards as new materials and are covered by the same warranty or service obligations. Parts for which Varian has provided replacements shall, at Varian's option, become the property of Varian.

**9.1.2. Parts Warranty.** Varian warrants separately sold parts to be free from defects in material and workmanship for a period of ninety (90) days from the date of shipment to Customer. All warranty repair or replacement of parts shall be limited to product malfunctions which are, as determined by Varian, due and traceable to defects in original material and workmanship, and replacement parts are warranted for the unexpired portion of the part's original warranty period. Components that carry separate warranties based upon use are not covered by this warranty. Parts that are expendable in normal use and service are not covered by this warranty. Parts for third party products, such as computer Hardware provided with Software, are not covered by this warranty, except when an applicable third-party product warranty option has been purchased. Unused parts returned to Varian are subject to a restocking fee of fifteen percent (15%), and, if applicable, an additional retesting fee.

**9.1.3. Disclaimer for Parts Not Supplied by Varian.** If Customer requests Varian to install parts not purchased from Varian, then: (a) Varian reserves the right to refuse to install any or all such parts; (b) if Varian agrees to install those part(s), then Varian provides no warranty, whether expressed or implied, for the part(s) or Varian's installation Services, nor does installation by Varian imply that Varian certifies the part(s) or the vendor from whom the part(s) have been obtained by Customer; (c) labor to install the part(s) will be provided by Varian on an hourly basis, at Varian's then current labor rates; and (d) if additional damage is caused by those part(s), then Varian assumes no responsibility for any damage. If the Varian Product is under any Support Agreement and additional damage is caused by installation of parts not purchased from Varian, then Varian is not obligated to repair damage under such Support Agreement, and such repairs will be performed at Varian's then current labor rates.

**9.1.4. Warranty Remedies.** Customer's sole and exclusive remedy, and Varian's sole obligation, for any defect in or failure of Varian Hardware or Firmware or Operating System to perform properly shall be for Varian to repair or, at Varian's option, replace the defective Products in whole or in part. If, in Varian's sole opinion, repair or replacement is not commercially



reasonable or feasible, Varian shall refund or credit a portion of any sums paid by Customer for the defective Product less reasonable depreciation.

**9.2. Warranty for Software and Services.** Varian's sole warranty for Software and Services are described in the Software Schedule, the Professional Services Schedule, and the Service and Support Schedule.

**9.3 Exclusions from Coverage.** Except where the claim or liability is caused by Varian, any warranty claim, support claim, or liability is excluded where the claim or liability arises out of: (a) accident, theft, misuse, or neglect; (b) use of the Products outside of normal operating conditions, specifications, or environment or in a manner not authorized by Varian as set forth in the applicable Product documentation or written instructions from Varian; (c) user modification of any Product not authorized by Varian in the applicable Product documentation or other writing; (d) computer viruses and other changes to the operating system or environment which adversely affect the Product; (e) defects, problems, or failures created by third party products (except those comprising parts or components of Varian Products) or their interface with Varian Products; (f) acts of God, electrical power surges, or other causes external to the Products; or (g) any version of the Software for which Support Services have been discontinued.

#### **9.4 Third Party Product Terms and Warranties**

**9.4.1. Third Party Products Integrated into Varian Products.** Except as otherwise set forth in this Agreement, a third party product that is integrated into a Varian Product shall be covered by the warranty or support obligations applicable to the Varian Product into which it is integrated; provided, however, that Varian's warranty shall not apply to certain third party products provided or licensed directly by their manufacturers to Customer (e.g., Dell workstations are subject to sales terms provided by Dell, and Microsoft SQL platforms are subject to additional Microsoft license terms) where such additional terms are provided by Varian to Customer in either in writing or via a link to a website containing them.

**9.4.2. Third Party Products Sold by Varian as Authorized Reseller.** Third party products sold by Varian as an authorized reseller shall be subject to the terms of this Agreement, which may be supplemented by prerequisites and additional terms in the Quotation or additional terms that are attached to the Quotation.

**9.4.3. Third Party Products Added to the Quotation at Customer's Request.** All other third-party products than those described in Sections 9.4.1 and 9.4.2 ("**Separate Third-Party Products**"), including those where Varian serves as a Pay Agent (defined below), shall be governed by that third party's terms and conditions, including, but not limited to, usage guidelines and restrictions, software licenses, warranties, and any other terms. Customer must agree to (or negotiate directly with the third-party manufacturer or licensor) the third-party terms and conditions applicable to the Separate Third-Party Products. Varian may from time to time offer third party products for which Varian does not have a reseller agreement and where it acts solely as a pay agent for such third party to process payments for Separate Third-Party Products ("**Pay Agent**"). Varian makes no representation or warranty with respect to the compatibility of Separate Third-Party Products with Varian Products, nor that the Separate Third-Party Products are designed or offered to interoperate with Varian Products as a single system that has received regulatory clearance or approval. Varian remains the manufacturer of record of its own Products, and the Separate Third-Party Product manufacturer remains the manufacturer of record of its products. Varian may, from time to time, resell the Separate Third-Party Products on its Quotation for the Customer's convenience only. In no event shall Varian have any liability or responsibility with respect to Separate Third-Party Products, nor shall Varian have any liability for failure of the third parties to perform on their warranties. Customer agrees to seek any remedies with respect to the Separate Third-Party Products solely against, as applicable, the third-party manufacturer or its authorized distributor.

**9.4.4. Third Party Products Not Approved by Varian.** The combination or use of Products or Services with Non-Varian products, support or services that Customer has developed or purchased from third parties ("**Unapproved Third Party Products**") may: (a) cause adulteration of those Products which are medical devices; (b) degrade the performance of Varian Products or Services; (c) create information security risks for Customer's infrastructure, applications, or facility; or (d) otherwise impair the safe, effective, and efficient use of Varian Products or Services. Varian shall have no responsibility for any service or warranty work required due to Unapproved Third-Party Products, and Customer shall remain wholly responsible for any negative consequences to it or to others that result from those Unapproved Third-Party Products.

**9.5. Responsibilities of the Parties.** Varian shall be responsible to provide commercially reasonable technical safeguards for its Products and Services. Customer shall be solely responsible to implement and maintain industry standard safeguards to protect its Customer IT Environment while using the Products and Services, including without limitation, industry standard firewalls, password, backup and security management and keeping current on recommended patches made available by Varian.

**9.6. EXCLUSIONS OF IMPLIED WARRANTIES.** THESE LIMITED WARRANTIES ARE EXPRESSLY GIVEN IN LIEU OF, AND EXCLUDE, ALL OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT.

## 10. Intellectual Property Infringement

**10.1.** Varian shall defend, at its expense, indemnify, and hold Customer harmless from any third party claim brought against Customer that the design or manufacture of any Varian Hardware or Varian Software furnished by Varian to Customer under this Agreement infringes a patent, trademark, copyright registered in the United States, Canada, and the United Kingdom (the "**Claim**"), and Varian shall pay any settlement and any damages, costs, and reasonable attorney's fees finally awarded against Customer arising out of a Claim. If the Product's use is enjoined as a result of any Claim, or in Varian's opinion, the Product is likely to become subject to a Claim, Varian may, at its expense and sole option, modify the Product so that it becomes non-infringing, procure for Customer the right to continue to use the Product, substitute for the infringing Product another product having a functionality substantially equivalent to the Product, or accept return of the Product and refund the purchase price (less reasonable depreciation).

**10.2.** Varian's obligation under Section 10.1 is conditioned upon Customer (a) notifying Varian promptly in writing of the Claim; (b) giving Varian sole control of the defense, management, and settlement of the Claim, provided that Customer may participate in such defense at its own cost with counsel of its choice; and (c) upon request, at Varian's cost, reasonably cooperating with Varian in such defense.

**10.3.** Subject to applicable law, Varian will not have any obligation to indemnify Customer for any Claim arising from: (a) settlements and their related costs and expenses where Customer settles a Claim without Varian's prior written consent; (b) use of the Product in a manner not authorized by Varian, as set forth in the applicable documentation for the Product or written instructions by Varian; (c) modification of the Product, except for modifications performed by Varian or pursuant to Varian's instructions; (d) combination of the Product with any other equipment, apparatus, software, processes, or materials not furnished by Varian, except as requested or performed by Varian; (e) compliance by Varian with Customer's designs, specifications, or instructions; or (f) methods of use of a Product, unless the Product has no substantial non-infringing use; where such infringement would not have occurred but for such use, modification, combination, or compliance. The obligations of Varian in Section 10.1 do not extend to any claim arising directly or indirectly from Customer's breach of Section 7.

**10.4.** This Section 10 states each party's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

## 11. Bodily Injury

With respect to liability to third parties for bodily injury or death, 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 any Product. Varian shall have no responsibility whatsoever for, and, subject to applicable law, Customer shall indemnify, defend, and hold Varian harmless from, any and all damage, injury, or death which arises from or relates to: (a) any use, operation, or service of any Product by anyone other than Varian personnel prior to completion of applicable acceptance tests by Varian and the radiation survey by Customer; (b) any use, operation, or service of any Product contrary to any written warning or instruction given by Varian with respect to such Product, including, but not limited to, unauthorized use and/or modification of any equipment, components, software, or accessories by any user, or their use on or with any explosive or incendiary materials; or (c) claims or damages associated with any non-Varian design, manufacture, or installation of any product or any custom design, manufacture, or installation by Varian that is performed pursuant to Customer's specifications, designs, or plans. This Section states each party's entire liability for bodily injury and death.

## 12. Limitations of Liability

**12.1. Consequential Damages.** SUBJECT TO APPLICABLE LAW, IN NO EVENT SHALL VARIAN, ITS SUPPLIERS AND LICENSORS, AND CUSTOMER BE LIABLE UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS, LOST PROFITS, LOSS OF USE, OR DISCLOSURE, BREACH, OR LOSS OF, ACCESS OR DAMAGE TO CUSTOMER DATA, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12.2. Direct Damages.** SUBJECT TO APPLICABLE LAW, AND EXCEPT FOR INDEMNITY OBLIGATIONS UNDER SECTION 10 (INTELLECTUAL PROPERTY INFRINGEMENT), THE TOTAL AGGREGATE LIABILITY OF VARIAN, ITS SUPPLIERS AND LICENSORS, AND CUSTOMER FOR DAMAGES OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT, SHALL BE LIMITED IN PROPORTION TO EACH PARTY'S RELATIVE FAULT AND NOT EXCEED THE AMOUNTS PAID AS INDICATED IN A QUOTATION FOR THE SPECIFIC PRODUCT OR SERVICE FROM WHICH THE CLAIM AROSE; PROVIDED, HOWEVER, THAT FOR ANY PRODUCT OR SERVICE THAT VARIAN PROVIDES FOR A TERM (E.G., SUPPORT AGREEMENTS), EACH PARTY'S LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNTS PAID DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE PARTIES ACKNOWLEDGE THAT EXCLUSIONS AND LIMITATIONS IN SECTIONS 12.1 AND 12.2 ARE MATERIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES AND THAT PRICES FOR THE PRODUCTS WOULD BE HIGHER WITHOUT THEM. THE EXISTENCE OF ONE OR MORE CLAIMS OR PARTIES WILL NOT ENLARGE THE LIMIT.

**12.3. Exception to Limitations.** The exclusions and limitations of liability set forth in Sections 12.1 and 12.2 will not apply to: (a) bodily injury and death under Section 11 (Bodily Injury) to human beings, (b) breaches of Section 5 (Use Restrictions), (c) breaches of Section 8 (Confidential Information), and (d) Customer's obligation to pay Varian for the Products and Services. Notwithstanding anything to the contrary, the limitations and exclusions set forth in Sections 12.1 and 12.2 shall apply to any schedules, addendums or other written agreements between the parties that are attached to, reference, or relate to the Products or Services ordered under the Quotation unless they contain a separate limitation or exclusion.

### 13. Compliance with Laws

**13.1. Export Compliance.** Customer acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, European Union, United Kingdom, Switzerland, and any other jurisdiction to which the Products and related technology are later transferred. Customer agrees to comply with such laws and regulations. Customer agrees that it shall use its best efforts to ensure that the Products and related technology are not: (a) sold, transferred, exported, re-exported or otherwise diverted to any U.S., U.K., or E.U. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan, Syria, Russia and/or Belarus), unless authorized by the applicable jurisdictions; (b) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury's Specially Designated Nationals List, the U.S. Department of State's Debarred Parties listing, or any E.U. or local country listing of sanctioned persons; (c) sold, transferred, or diverted to any nuclear weapons, nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-use; or (d) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders. Customer shall promptly advise Varian in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing. Customer understands that Varian's performance under this Agreement is subject to Varian's receipt of all necessary licenses, permits, or approval from all relevant governments or their agencies for the import or export of the Products, and Customer agrees that Varian shall be free from all obligations and liabilities for Customer's deficient performance under this Agreement if such deficiency is caused by Varian's non-receipt or late receipt of such licenses, permits, or approval. The obligations of this Section as to these laws shall survive any termination of this Agreement.

**13.2. Debarment.** Varian represents that neither it nor any of its employees or agents providing Services under this 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 Products or Services pursuant to this transaction. For orders in the United States: Varian further represents that neither it nor any of its employees or agents providing Services under this Agreement has been convicted of a criminal offense as set forth in 42 U.S.C. §1320a-7, including but not limited to an offense related to the provision of healthcare items or services. Varian will promptly notify Customer of any change in the status of the representations set forth in this Section. Any breach of this Section shall give Customer the right to terminate this Agreement immediately upon providing written notice to Varian.

**13.3. Governmental Audit.** For orders in the United States and only to the extent required by applicable law, Varian shall, until four (4) years after the termination of this Agreement, make available, upon written request by the Secretary of the Department of Health and Human Services ("Secretary of HHS"), or upon request by the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the Products and Services. Varian further agrees that, if it carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12)-month period, then such subcontract shall contain a provision requiring the related organization to make available, until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, upon written request by the Secretary of HHS or upon request by the Comptroller General, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

**13.4 Customer Data.** "Customer Data" means any type of information, including PII or PHI, which is provided or made available by or on behalf of Customer to Varian, or is otherwise accessible by Varian, in connection with Varian Products and Services, including without limitation information or data which Customer inputs, provides, makes available or is otherwise accessible to Varian through Varian Products and Services. As between the parties, Customer shall retain all right, title, and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Varian. Customer agrees, however, that Varian may use Customer Data received by Varian for processing, distributing, displaying, managing, administering, modifying, performing, supporting and enhancing Products and Services or to carry out legal responsibilities of Varian. Customer warrants and represents and assumes sole responsibility for ensuring that due notice is given to, and that sufficient consent obtained from, all relevant persons or entities, including without limitation patients, regarding the use and disclosure of Customer Data under this Agreement. Customer represents and warrants to Varian: (a) that Customer has and shall retain during the term of this Agreement sufficient rights and patient consent with respect to the Customer Data to authorize Varian to grant the licenses and other rights contemplated by this Agreement and for Varian to provide and support the Products and Services in the manner contemplated under this Agreement; and (b) Customer shall comply with applicable privacy and similar laws.

**13.5 Performance Data.** "Performance Data" means diagnostic, environmental, operational, usage, serviceability, other performance data, and feedback related to Customer's use of Varian Products and Services, exclusive of PII and PHI. Notwithstanding anything to the contrary, Customer acknowledges that Varian will retain all right, title, and interest to Performance Data and is permitted to use Performance Data for its business purposes.

#### **14. Force Majeure**

Neither party shall be liable for any delay in performance which is due to an act of God or causes beyond its reasonable control. Performance by a party shall be deemed suspended during the event causing such delay plus a reasonable period of time after such event, and the other party shall accept such delayed performance. Either party may terminate any Quotations not yet completed if such performance is delayed more than thirty (30) days under this Section.

#### **15. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The parties' consent to venue in and agrees to submit to the exclusive jurisdiction of the courts of the State of Delaware for any action, claim, dispute, and/or litigation arising from or relating to this Agreement. Each of the parties expressly waives all rights to a jury trial.

#### **16. Limitation of Claims**

Subject to applicable law, no claims, regardless of form, arising out of, or in any way connected with this Agreement or the Products or Services may be brought by Customer more than one year after the cause of action has accrued or performance under this Agreement has been completed or terminated, whichever is earlier.

#### **17. Notices**

Any notices required or permitted to be given pursuant to this Agreement shall be in writing and 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 numbers set forth in the Quotation or to such other address as may be specified from time to time by notice in writing to the other party. Notice shall be deemed to have been given when received.

#### **18. Headings**

Headings used in this Agreement are for ease of reference only and will not be used to interpret any part of this Agreement.

#### **19. Entire Agreement, Amendments, Illegality, and Priority of Documents**

This Agreement contains the complete and exclusive statement of the terms of agreement of the parties with respect to this subject matter, and supersedes all prior and contemporaneous understandings, representations, and warranties, written and oral. This Agreement may be amended or modified only in a writing signed by both parties, provided, however, that in recognition that some product configurations have to be set at or near the time of installation, if an earlier revision of a Quotation is signed, subsequent unsigned corrections of the Quotation shall apply upon agreement of the parties. Customer's terms and conditions in any purchase order or specific order documentation, whether preprinted or otherwise, are expressly rejected by Varian and shall not apply. Unless otherwise indicated, these Terms of Sale do not govern any Products or Services sold or licensed under a separate written agreement between the parties. If a court or arbitrator holds any part of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity or enforceability of the remaining provisions, or portions of them, will not be affected, and such provisions will be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or court decisions. In the event of a conflict, the documents shall be interpreted to give priority in the following order: (a) amendments or addenda to this Agreement, if any, with highest priority given to the most recent amendment or addendum, (b) any applicable schedule or supplemental terms attached to or referenced in the Quotation, (c) Terms of Sale, and (d) Quotation, except that the Quotation will have higher priority than the Terms of Sale as to the length of warranty or support.

#### **20. Waiver**

No term or provision of this Agreement shall be deemed waived by either party, and no breach excused by either party, unless the waiver or consent shall be in writing signed by an authorized representative of the party granting such waiver or consent.

#### **21. Assignment**

Neither party may assign its rights nor delegate its duties under this Agreement without the written consent of the other party and any attempted assignment without such consent will be void, provided, however, Varian may subcontract various shipping, installation, and related activities, and its support of products manufactured by third parties back to the manufacturer, so long as Varian remains primarily responsible for those subcontracted obligations. However, either party may assign or otherwise transfer its rights or delegate its duties under this Agreement, in whole or in part and subject to the terms of this Agreement, to a subsidiary or affiliate, or a purchaser or transferee of substantially all of the assets used by such party in its business to which this Agreement relates or in the event of a merger, acquisition, corporate restructuring, or change in control upon written notice to the other party.

**22. Relationship of the Parties**

This Agreement does not create a relationship such as a partnership, franchise, joint venture, agency, master/servant, or employment relationship. Neither party may act in a manner, which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

**23. Counterparts**

This Agreement may be executed in two counterparts, each of which will be an original and which together will constitute one and the same instrument.

**24. Sales to United States Government Agencies**

Varian Products that are sold or distributed by Varian to an agency of the United States government (the "**Government**") shall be subject to the Government's rights in commercial items and commercial software.

**25. Electronic Signatures**

For purposes of signing acceptance and completion-of-installation documents, and for any other documents or agreements mutually agreed upon by the parties, the parties are authorized to use DocuSign or other similar mutually agreed upon electronic signature solution to sign the document or agreement. Any documents signed through this electronic signature process shall be legally binding for their intended purpose. Either party retains the right to insist upon signing paper copies of the documents instead of using an electronic signature solution.

**26. Insurance**

During the term of this Agreement, Varian agrees to maintain at least the following insurance coverage and to provide Customer with certificates of insurance evidencing such coverage upon written request:

**26.1. General Liability.** Varian agrees to maintain insurance for products/completed operations, property damage, bodily injury, contractual liability, advertising injury, and personal injury liability with minimum limits of US\$1,000,000 per occurrence and US\$2,000,000 general aggregate. Coverage may be provided through a primary or excess/umbrella liability program or through any combination of them.

**26.2. Business Auto Liability.** Varian agrees to maintain coverage for all owned, non-owned, and hired vehicles with minimum limits of US\$500,000 combined single limit per accident for bodily injury and property damage.

**26.3. Worker's Compensation Insurance and Employer's Liability Insurance.** Varian agrees to keep in force statutory coverage for occupational injuries with minimum statutory limits and US\$500,000 employer's liability applicable in jurisdictions of contract performance.

## HARDWARE SCHEDULE

(Form RAD 9905B)

This Hardware Schedule supplements and is made a part of the Terms of Sale and applies to and governs the Hardware that Varian is selling to the Customer as indicated in a Varian Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Bill and Hold

Customer understands and agrees that it may not delay shipment or receipt of any Products and will be obligated to take possession of and title to the Products on the delivery date, unless Varian determines that a later delivery date is necessary ("Delivery Date"). If the Customer site designated in the Quotation ("Delivery Site") is not available to receive delivery of the Products on the Delivery Date, Customer may, in writing, request and authorize Varian to hold the Products in storage upon completion of manufacturing, subject to the following: (a) Varian will select a suitable storage facility for the Products; (b) Customer will be responsible for paying all storage and insurance costs; (c) Title will pass to Customer when the Products are placed into storage; and (d) Varian will invoice Customer for, and Customer shall timely pay, one hundred percent (100%) of the purchase price for the Products. Once the Delivery Site becomes available, Customer shall request Varian to ship the Products from the storage facility to the Delivery Site, at Customer's expense, and Varian will provide installation services for the Products, provided that, Varian shall not be required to provide installation services more than six (6) months after the Delivery Date.

### 2. Architecture

Except as mutually agreed in writing, Varian will have no approval or other responsibility for any matter affecting or related to the adequacy of Customer's operating permit, architectural design, the radiation protection walls and barriers, patient viewing devices, compliance with all facility personnel safety devices and related inspections, utility service design and location, and other details pertaining to Customer's site under this Agreement. Customer may purchase Varian's architectural and construction services, if available, under a separate agreement with Varian's Site Solutions group.

### 3. Installation

A linear accelerator is typically delivered in separate sections which Varian will assemble in Customer's vault. Varian also will provide standard installation of the pieces and final positioning for the linear accelerator and setting. Customer will be responsible for the grouting of the subbase frame and the connection of such Products to the utilities and for any non-standard installation services (such as requiring cranes, the shoring of floors, the widening of doorways, and second floor delivery), and Varian will notify Customer approximately ninety (90) days prior to the scheduled Product shipment to allow Customer to provide for and coordinate such services. Except as otherwise agreed by the parties, Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, and access to the room completed on the estimated delivery date or other mutually agreed upon date and ready for installation of the Products. Where Varian is installing a Product for Customer, Customer will reimburse Varian at Varian's standard service rates for any extra time and/or travel by Varian made necessary by any delays not caused by Varian. Varian shall have no obligation to operate Products to complete installation or testing unless Customer has provided adequate radiation shielding protection and other site preparations for the safety and protection of Customer's and Varian's personnel and Products. Upon completion of installation, Varian's representatives will demonstrate proper Product operation by performing the applicable Varian acceptance procedures. When no representative is present or assistance from Customer is not available when required by Varian, Varian may discontinue installation and shall charge Customer for any additional costs incurred at Varian's standard service rates. If union action or influence requires union labor to complete any installation of Products, then such installation shall be completed at Customer's expense under the engineering supervision of Varian.

### 4. Acceptance of Hardware

For Hardware that Customer installs, Varian shall invoice Customer when such Product is shipped. For Varian Hardware that Varian installs, acceptance shall occur upon the earlier of (a) completion of the applicable Varian acceptance procedure, (b) Customer's execution of Varian's acceptance form, which is the final step in the Varian acceptance procedure for each Product, (c) use of any such Product by Customer, its agents, employees, or licensees for any purpose other than testing after its receipt, or (d) six (6) months after delivery of the Product. Prior to acceptance, Varian's sole and exclusive liability will be, at Varian's option, to repair or replace defective or nonconforming parts or Product after receipt of notice of defect or nonconformity. After acceptance, Customer's remedies shall be solely as provided in the warranty. Varian shall not be required to provide installation services six (6) months after delivery of the Product unless mutually agreed by the parties in writing.

### 5. Calibration and Radiation Surveys

For linear accelerator and simulator Products and treatment planning Software, Customer shall be responsible for all Product calibration unless it has signed an agreement ordering physics or commissioning services through Varian. For non-BrachyTherapy Products, the dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Product for patient treatment. For BrachyTherapy Products, the radioactive source must be calibrated by a qualified radiological physicist prior to use of the Product for patient treatment. Customer shall be responsible for testing and calibrating the Product on a regular basis. Customer also shall be responsible for conducting any radiation surveys required by applicable law or regulation or necessary to establish that radiation does not exceed safe levels. For simulator and BrachyTherapy Products, unless Customer has signed



an agreement ordering physics or commissioning services through Varian, Varian's obligation to calibrate these Products shall be limited to that required by local law. In the United States, Varian's calibration shall be limited to those certified components that are required under 21 C.F.R. 1020.30(d) (U.S. Code of Federal Regulations) to be calibrated by the installer where Varian is the installer. Customer shall be responsible for all other calibrations of simulator Products.

## SOFTWARE SCHEDULE

(Form RAD 2750D)

This Software Schedule supplements and is made a part of the Terms of Sale and applies to and governs Software that Varian licenses to the Customer as indicated in a Varian Quotation, except for those software products that: (a) are otherwise licensed to Customer under a separate written software license or subscription agreement between the parties; (b) are third party software products subject to separate license terms, and/or (c) fall within the meanings of either Firmware or Operating Systems (as defined in the Terms of Sale) for Hardware. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Additional Definitions

- 1.1 **"Access"** means use of Software installed on a workstation or used at a workstation through remote connection to a server via a single Local Area Network ("**LAN**") or a single Wide Area Network ("**WAN**"), but not from outside the designated LAN or WAN, except that remote administrative viewing of certain designated Software installed on a server will not be outside the scope of the permitted use; and
- 1.2 **"Documentation"** means the user manual for Software which describes the Software and provides information specific to that Software.

### 2. License Grant

Subject to and for so long as Customer is in compliance with the terms and conditions of the Agreement, Varian grants to Customer a limited, personal, non-exclusive, non-transferable license to use the Software for:

- 2.1 Server versions:
  - 2.1.1 to install and use a single copy on a single server (or single database server and single imaging server for imaging applications) and to Access the Software from a workstation; and
  - 2.1.2 for workstation components of a server versions, if any, to install and use copies of such workstation components on such workstations as necessary;
- 2.2 Workstation versions (which shall apply to all Varian Software not designated in the Quotation as a server module):
  - 2.2.1 for Software pre-installed by Varian on a workstation (such as a console) prior to its delivery to Customer, to use such workstation version on the workstation on which such application is installed;
  - 2.2.2 for which a license key manager is used, to install and use such workstation version on the number of workstations permitted by the license key manager;
  - 2.2.3 for which no license key manager is used and which is intended for a floating license, to install such workstation version on any number of workstations and to permit concurrent users up to the number of licenses purchased; and
  - 2.2.4 for an enterprise or site license, to install and use such workstation versions on the number of workstations and Varian linear accelerators at the Customer site(s) identified in the Quotation as to such Software; and
- 2.3 Application Program Interfaces ("**APIs**"): where the Varian Software contains APIs, to use the APIs solely for Customer's internal use to develop Customer's own software scripts, provided that Customer shall be fully responsible for any applicable verification, validation, compatibility with the underlying Software, installation, usage, removal, support, safety issue reporting, and other requirements or issues arising out of Customer's development and usage of such scripts and the scripts' usage of the APIs; if Customer wishes to commercialize its APIs, it must sign a separate agreement with Varian for such commercial activities; Varian shall not be responsible for providing support for any Varian or third party products that it is caused by a Customer script; Varian does not guarantee that the APIs will be provided or supported in future versions of its Software, nor does it guarantee forward or backward compatibility of any Varian APIs to any other version of its APIs or Customer's scripts; and
- 2.4 to copy the Software for back-up and archival purposes only, except to the extent that such restriction on copying is void under applicable law; and
- 2.5 to use (but not make copies of) the Documentation to assist in Customer's use of the Software pursuant to the terms of this Agreement, except that Customer may make an electronic copy on each workstation of the Documentation applicable to the Software installed or used on such workstation.

Each such license shall be valid until termination or expiration. Unless otherwise indicated, Mandatory Safety Releases, Updates, Upgrades, and Versions (as defined in the Service and Support Schedule) are hereby licensed in the same way that their underlying Products are licensed under this Software Schedule. Customer shall not be entitled to receive or use any source code of the Software, except as otherwise expressly stated herein. Varian shall have the right to conduct, and/or direct an independent third-party firm to conduct, during normal business hours, an audit of the appropriate records of Customer to verify Customer's compliance with the licenses granted under this Section.

### 3. Title

Title to all copies of the Software and Documentation are proprietary to Varian or its licensors. No license, right, title, or interest in the Software or Documentation, or any intellectual property of Varian or any Varian third party licensor, is granted to Customer except as expressly stated in this Software Schedule.

### 4. Integration

Customer acknowledges that the import of data into, and the export of data out of, certain Software requires an interface between the Software and external programs or information systems, whether such programs or information systems are supplied by Varian or a third party.

### 5. Acceptance

For Software that Customer installs, Varian shall invoice Customer when such Product is shipped. Where Varian will be installing the Software, Customer will make its site available to Varian personnel to install the Software no later than thirty (30) days after delivery of the applicable Software to Customer. Customer shall provide a representative who shall be present at all times during installation (including installation of interfaces), and such representative shall be capable of either assisting Varian where necessary or waiving installation of interfaces to the extent that Customer has decided not to install Products requiring such interfaces. When no representative is present or assistance from Customer is not available when required by Varian, Varian may discontinue installation and shall charge Customer for any additional costs incurred at Varian's standard service rates. Customer will have the following periods to review the Software: (a) if Varian performs the installation, thirty (30) days after the date of installation, unless Customer accepts the Software earlier, or (b) if Customer shall perform the installation of third-party software, thirty (30) days after delivery of the Software. Customer may reject Software only if it does not substantially conform to the Documentation. Customer's rejection must be in writing, describe the nonconformity in detail, and be provided to Varian within the applicable thirty (30) day period. Varian will have a reasonable period of time in which to correct, or to provide a workaround, for any such nonconformity. Customer will be deemed to have accepted the Software after the applicable thirty (30) day period if Varian has not received written notice of rejection within such period. Notwithstanding the foregoing, Customer's first productive use of the Software in Customer's business will be deemed to be acceptance of the Software.

### 6. Support and Warranties

#### 6.1. Support in Lieu of Warranty & Limited Warranty

Varian represents that the Varian Software (except Firmware and Operating Systems for Varian Hardware) shall be in substantial compliance with operational features of Documentation or the applicable Product at the time of sale for the time periods set forth below:

- 6.1.1 for Software licensed to Customer for the first time or as a separate new configuration, as opposed to expansions of pre-existing configurations no warranty is provided. Varian will provide Customer with Support Services for a period of one year from the date of installation of the Software by Varian (or the date of delivery if the Software will be installed by, or is electronically delivered to, Customer), or such other period set forth in the Quotation, under the terms of the Service and Support Schedule, at no additional charge to Customer;
- 6.1.2 for Software licensed to Customer that adds one or more modules to, upgrades, or increases the number of licenses purchased under a pre-existing configuration, Varian warrants, for a period of thirty (30) days from the date of installation of the Software by Varian (or the date of delivery where the Software will be installed by Customer), that the Software, will, when used in accordance with the Documentation, substantially conform to the Documentation. Where Customer reports a non-conformity to Varian during the warranty period, Varian will provide workarounds, patches, bug fixes, or other corrections or will replace the affected Software, at Varian's option, and such remedy will be Customer's sole and exclusive remedy for breach of this warranty. If in Varian's sole and exclusive opinion any such workaround, patch, bug fix, correction, or replacement is not commercially reasonable, or if any such remedy fails of its essential purpose, Varian shall negotiate with Customer with respect to a refund of any equitable portion of any sums paid by Customer for the affected Software. Given that this is an expansion of a pre-existing configuration and that it is often difficult to determine whether a Software issue arises out of the original configuration or the expansion, the total support period for expansion will be synchronized to expire at the same time as the original Software, and Varian shall issue an invoice for the amount that the expansion increases the current Support Agreement.

Varian's provision of Mandatory Safety Releases, Updates, and, if applicable, Upgrades (as defined in the Service and Support Schedule) under the warranty or support in lieu of warranty in this Section and pursuant to the Service and Support Schedule shall not extend the original period for such warranty or support.

**6.2. Disclaimer.** EXCEPT AS PROVIDED IN THIS AGREEMENT, VARIAN DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, AND CONDITIONS (EITHER IN FACT OR BY OPERATION OF LAW) INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. VARIAN MAKES NO WARRANTY THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE EXCLUSIVE REMEDY FOR INFRINGEMENT OF THIRD-PARTY RIGHTS IS SET FORTH IN SECTION 10 (INTELLECTUAL PROPERTY INFRINGEMENT) OF THE TERMS OF SALE.

**6.3. Limitations.** Except as specifically stated in the Documentation, Varian does not make any representations or warranty regarding the compatibility of the Software with software or hardware not supplied by Varian. Varian will in its sole and exclusive discretion, use reasonable efforts to assist Customer with the use of Software with third party products. Such assistance is limited to telephone and service support regarding compatibility or interface questions. Varian does not make any representation or warranty regarding the clinical use of the Software and/or Varian beam data by Customer for the treatment of patients in performing any medical procedure. Customer acknowledges that the Software and Varian beam data are tools to assist Customer to determine the proper course of treatment that may be needed by a particular patient, and Customer assumes all risks associated with such treatment. Import, export, or distribution of any data or information Customer may develop or use in cooperation with the Software ("**Data Related Activities**") is Customer's sole responsibility, and, subject to applicable law, Customer agrees to defend, indemnify, and hold Varian harmless from any and all claims by Customer and/or third parties, regardless of the nature of such claims, arising either directly or indirectly out of Data Related Activities. The foregoing sentence shall not be construed to limit Varian's obligation to provide warranty work or support under Section 6.1.

## PROFESSIONAL SERVICES SCHEDULE

(Form RAD 10080A)

This Professional Services Schedule supplements and is made a part of the Terms of Sale and applies to and governs those Professional Services provided by Varian to Customer related to the development of interfaces for Varian medical oncology Software installation and certain other Professional Services, all as indicated in a Quotation and set forth under an SOW (as such term is defined below). All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Additional Definitions

- 1.1. **"Change Order"** means any proposed change to the SOW (as defined in Section 1.4 below) mutually agreed to in writing by the parties;
- 1.2. **"Professional Services"** mean the Services identified in each individual SOW (if applicable), including, but not limited to, analysis and performance of integration of Varian's standard Software with Customer's information systems and business practices, development of interfaces between Varian's standard Software and Customer's computer systems and other services available from Varian; Professional Services shall not include training, which shall be governed by the Training Schedule.
- 1.3. **"Schedule"** shall mean any timetable or milestones for the Professional Services that are set forth in the SOW; and
- 1.4. **"SOW"** shall mean a statement of work, description of the work, or work order agreement, either in the Quotation or as separately agreed upon in writing by the parties describing the Professional Services to be performed by Varian for Customer.

### 2. Term

The term for the Professional Services portion of this Agreement shall be from the signing of this Agreement until completion or termination of the Professional Services.

### 3. Professional Services

**3.1. Generally.** In consideration of Customer's timely payment, Varian shall perform the Professional Services set forth in each SOW attached to or referencing this Agreement.

**3.2. Software.** Where Varian provides Customer with other software under an SOW to this Professional Services Schedule, including but not limited to interface engines and interfaces, then such software shall be governed by the Software Schedule. The interface engine, interface, or other software will be licensed under the Software Schedule in the same manner as the underlying application software which requires such interface engine, interface, or other software.

**3.3. Actual and Potential Delays.** Varian shall use commercially reasonable efforts to perform the Professional Services according to the Schedule. Whenever any event delays or threatens the timely performance of the Professional Services that is not due to Customer's fault, then, Varian will make commercially reasonable efforts to notify Customer of such event and furnish all relevant details. If Varian is unable to meet the Schedule for any Professional Services, Varian and Customer shall meet in good faith to discuss possible solutions, including revising the Schedule at no additional cost to Customer, provided that such revision does not add new Professional Services to the SOW.

**3.4. Office Space, Services, and Equipment.** Customer shall provide, at no cost to Varian and subject to Customer's reasonable usage and access requirements, use of office space, services, and equipment (such as copiers, fax machines, modems, and Internet access) as Varian reasonably requires to perform the Professional Services at Customer's site.

**3.5. Exclusions from Professional Services.** Except to the extent expressly set forth in an SOW, Professional Services shall not include, and Varian will have no approval or other responsibility for, any matter affecting or related to the adequacy of Customer's operating permit, architectural design, the radiation protection walls and barriers, patient viewing devices, compliance with all facility personnel safety devices and related inspections, utility service design and location, Customer's obligations to comply with applicable laws, and other details pertaining to Customer's site.

### 4. Rates, Expenses, Invoices, and Payment

**4.1. Firm Fixed Price Rates.** Varian may from time to time provide Customer with some pre-packaged Professional Services or other specially negotiated Professional Services on a firm fixed price basis, provided that such Professional Services will be clearly identified as being offered on a fixed price basis. Where the parties agree upon a firm fixed price, the Professional Services included within such price shall be limited to those specifically identified as being covered by such price, and Customer agrees to make payments according to the Schedule, including any applicable milestones.

**4.2. Expenses.** Varian shall submit a monthly time and expense summary to Customer by letter, fax, e-mail, or in person for the Professional Services performed during the prior month. Varian may bill Customer for its reasonable expenses, including, but not limited to, travel, lodging, and meals, required to perform the Professional Services for Customer.

**4.3. Invoices.** Varian shall submit invoices to Customer pursuant to the Schedule set forth in the Quotation or SOW. Upon request by Customer, Varian shall provide receipts or other documentation supporting reimbursable expenses to Customer.

#### **5. Change Orders**

If Customer desires a material change to any SOW, then, upon mutual agreement of the parties, the parties shall execute a Change Order in the form of a revised Quotation or revised SOW. If any Change Order causes a change to the cost of, the time required for, performance, or Schedule of the Professional Services, the appropriate modifications to the SOW shall be reflected in the Change Order.

#### **6. Warranty**

Varian warrants the Professional Services will be performed in a professional and workman-like manner and substantially conform to the SOW. This warranty shall begin upon completion of the Professional Services and expire ninety (90) days after such date. In the event that Varian's performance of the Professional Services fails to conform to the SOW, Varian's sole obligation with respect to the Professional Services will be to promptly bring the Professional Services into conformity with the SOW at no additional cost to Customer. Where this is not possible, Varian shall be entitled to retain, and Customer shall be liable for payment of, a proportionate share of the total payments set forth in the SOW reflecting Varian's percentage of completion of the work in conformity with the SOW, and applicable Varian's expenses.

#### **7. Intellectual Property**

Except as expressly stated in this Agreement or an SOW, neither party is granted any right, title, or interest in the pre-existing intellectual property of the other. With the exception of any data created for Customer, Varian shall own all right, title, and interest in all inventions, feedback and discoveries newly developed in performing the Professional Services.

## SERVICE AND SUPPORT SCHEDULE

(Form MGM 1580AF)

This Service and Support Schedule supplements and is made a part of the Terms of Sale and applies to and governs all Support Services for the Varian Products provided by Varian to the Customer as indicated in a Varian Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

### 1. Definitions

- 1.1. **"Mandatory Safety Release"** means updates, error corrections, or modifications to Software issued by Varian for safety reasons that Varian will require licensees of such Product to install and that are made available by Varian at no additional cost to licensees of such Product.
- 1.2. **"Update"** or **"Maintenance Release"** means bug fixes, patches, and other error corrections to a Software Covered Product designed to enable the Software to conform to its documentation and that are made generally available by Varian at no additional cost to the licensees of such Covered Product; Updates may be indicated by the number to the right of the second decimal in a software version number (e.g., version 2.1.1).
- 1.3. **"Upgrade"** or **"Upgrade Release"** means upgrades, enhancements, and improvements to the features or functionality of Software that are released and marketed by Varian as Upgrades; Upgrades may be indicated by the number to the right of the first decimal in a software version number (e.g., version 2.1).
- 1.4. **"Version"** (including purchase options) means Software applications, modules, or releases of the Software that include new features or functionality and that are released and marketed by Varian as Versions or purchase options; Versions may be generally indicated by the number to the left of the first decimal in a software version number (e.g., version 2.0)<sup>1</sup>.

### 2. Mandatory Safety Releases

Varian shall provide Customer with and install Mandatory Safety Releases at no additional cost until the later of (a) the end of support of the Product specified in a notice by Varian pursuant to Section 4.2.4 of the Terms of Sale, or (b) such later date as required by any regulatory agency.

### 3. Updates

Varian shall provide Customer with and install Updates for Covered Products at no additional cost. Varian may, at its election, install Updates remotely if applicable.

### 4. Upgrades and Versions

Varian shall offer Upgrades and Versions for Covered Products, along with associated installation and training, to Customer at the prices and upon the terms set forth in the Quotation.

### 5. Telephone Support

Varian shall provide telephone Support Services for Covered Products at no additional cost through (a) help desk telephone support and (b) technical telephone support.

**5.1. Help Desk Telephone Support.** Varian shall provide application help desk support for Covered Products at no additional cost during standard hours.

**5.2. Technical Telephone Support.** Varian shall provide technical telephone support for Covered Products at no additional cost during standard hours.

### 6. Remote Diagnostic and Remedial Support

Varian provides diagnostic and remedial Support Services for Covered Products remotely through remote services tools. Customer authorizes and consents to Varian (together with its Support Services personnel located at various locations globally) accessing, handling, and viewing Customer Data, including PHI (which may include in the case of certain Products, images via camera or video feed), in the course and for the purpose of providing and performing Support Services via the remote services tools. Customer shall be solely responsible for obtaining patient consent and complying with applicable privacy law in connection with Varian's use of the remote services tools and access to Customer Data as more particularly described in the Terms of Sale.

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<sup>1</sup> Note that "version" with a lower case "v" is used interchangeably with "release" and is not an indicator of new functionality, but is used as a generic descriptor used to describe all software.



## 7. On-Site Support

**7.1 Generally.** Where an issue cannot be resolved by telephone or remote Support Services, Varian shall provide on-site Support Services for Covered Products during standard hours at no additional cost. Where Customer requests, and Varian can offer, on-site support outside of Varian's standard hours, Customer agrees to pay for non-standard hours coverage at the hourly rates set forth in its then current labor rates and working hour schedule; provided, however, that such after-hours coverage shall be at no additional cost to Customers who have purchased a non-standard hours coverage option as part of their Support Agreement.

**7.2. Customer Hours, Holidays, and Site Rules.** Varian's employees and agents shall reasonably observe the working hours, holiday schedule, and site rules of the Customer while working on Customer's premises, provided that Customer provides in advance a copy of the hours, schedule, and rules to Varian, and those hours, schedule, and site rules shall not modify the terms of the Agreement unless mutually agreed upon by the parties in writing.

## 8. Periodic Maintenance Inspections

Varian shall provide Periodic Maintenance Inspections ("PMI's") for Hardware Covered Products at mutually agreed upon times with the understanding that unless the parties make other arrangements, Customer shall be expected to give access to Varian to begin performing PMI's before 1:00 p.m. (local time) to enable the PMI's to be completed during standard hours. Where Varian can offer to perform PMI's outside of Varian's standard hours and Customer can give access to Varian to begin performing PMI's before 5:00 p.m. (local time), Customer agrees to pay for non-standard hours PMI coverage at then current labor rates; provided, however, that such after-hours PMIs shall be at no additional cost to Customers who have purchased a non-standard hours coverage option as part of their Service agreement.

## 9. Severity Levels and Response Times

"**Severity Level 1**" means an issue which prevents the performance of any mission critical functions of a Covered Product, and which cannot be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 2**" means an issue which significantly impairs the performance of any mission critical functions of a Covered Product, and which cannot be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 3**" means an issue which does not prevent or significantly impair the performance of any mission critical functions of a Covered Product, or where such prevention or impairment can be circumvented or avoided on a temporary basis by Customer.

"**Severity Level 4**" means a low impact issue or documentation issue.

Varian shall give preference to Customers with Covered Products. Varian shall respond to Severity Level 1 and 2 issues within thirty (30) minutes and Severity Level 3 and 4 issues by the end of the next business day. Varian shall continue working Severity Level 1 and 2 issues until a solution or acceptable workaround is provided. For extended downtime of a Covered Product, Varian's customer support manager shall notify Varian's senior service and sales management, including, when required, product and design engineers. Workarounds do not constitute a resolution of an issue but may result in the issue being reassigned to Severity Level 3. The permanent resolution of Severity Level 3 and Severity Level 4 issues may appear in future Product releases. Varian issue resolution efforts may be suspended by agreement of Customer or during such period Customer assistance is required by Varian to continue effective work and is not available. Varian will provide contact persons to respond to the different severity level issues. Varian will notify Customer promptly if it is unable to resolve any Severity Level 1, 2 or 3 issue.

## 10. Parts

**10.1. Provision of Parts.** Varian shall provide to Customer all parts required in connection with Support Services for Covered Products at no additional cost. Parts provided pursuant to Services shall be included within the definition of "Products" for all purposes within the Terms of Sale except for the length of the warranty period. The Quotation may contain additional terms regarding parts depending on the support level selected by Customer. This Section shall not cover parts ordered for spare or stock.

**10.2. Spare Parts Kit.** During the support period for a Covered Product, Customer shall maintain a spare-parts kit including all of the spare parts listed in the Varian standard spare parts list for such Covered Product.

**10.3. Parts Inventory.** Spare parts that the Customer has on hand in its spare-parts kit shall be available to the Varian customer Support representative. If the Covered Product is under warranty or under a Support Agreement, a part from Customer's spare-parts kit used by Varian to replace a part in a Covered Product will be replaced by Varian at no additional cost. If the Covered Product is not under warranty or under a Support Agreement, it is the responsibility of the Customer to replenish its spare parts stock as such parts are used for replacement.

## 11. Customer Responsibilities

**11.1. Authorized Representatives.** Customer shall request Services on a time and materials basis and order parts only through its authorized representatives and will provide a list of such authorized representatives upon request by Varian.

**11.2. Access to Premises.** Customer shall provide Varian with sufficient access to the Covered Products and Customer's premises and personnel to perform Varian's obligations and to install all Mandatory Safety Releases, including access for both remote diagnostics and onsite Services.

**11.3. Qualified Operator and Equipment.** Customer shall arrange for a qualified operator to be present, when, in the opinion of the Varian customer support representative, the situation requires two (2) persons for safety. To fulfill its Service responsibility, Varian will supply normal hand tools, test equipment, and other specialized fixtures. Customer shall provide other assistance and equipment reasonably required for Varian to perform Service responsibilities.

## 12. Service Tools

Any firmware and operating systems provided by Varian pursuant to Services is provided pursuant to Section 6 of the Terms of Sale (Firmware and Operating Systems), and any Software provided pursuant to Services is provided pursuant to the terms set forth in the Software Schedule; provided, however, that Varian's provision of such Software shall not extend existing warranty periods, if any, nor create any new ones. Subject to any signed security agreement or applicable site rules, during the initial warranty or software support period, and during Post-Warranty Support, Varian reserves the right to install and activate service-related software tools and service-related hardware tools at the customer site which allow Varian to enhance its ability to provide timely, high-quality service and preventative maintenance. If the initial warranty or software support period has expired and the customer is not under a Support Agreement, Varian will de-activate service-related tools that are non-essential to performing service activities.

## 13. Exclusions from Services

The Services provided shall be limited to support of Covered Products. Products which are not Covered Products include, without limitation, Customer's network, any hardware upon which a Software Covered Product is loaded, any interfaces between Covered Products and other products (other than interfaces between Varian Products), and any products which interface with the Covered Products; however, these restrictions shall not apply to the extent that such network, hardware, interfaces, or products are included as Covered Products. In addition, Varian shall not be required to: (a) provide Services for any Products if, in Varian's reasonable opinion, they are required because of Customer's failure to install Mandatory Safety Releases, Updates, or Upgrades made available to Customer or because of causes other than defects or errors in the Covered Products; (b) render Services at locations other than the Customer site(s) listed in the Quotation. Varian shall also have no responsibility or liability for delays caused by Customer.

**14. SmartConnect Remote Access Opt Out.** Where a Customer requests that Varian not use SmartConnect Remote Access as its remote access support tool, this Section 14 shall apply.

**14.1 Entitlements No Longer Supported.** Varian shall not support the following without the SmartConnect Remote Access tool: (a) cPMPs, (b) PMP Tool User Access, (c) First Responder Level 2 and 3, (d) Smart Services Package options, (e) Smart Services Package discount, (f) A-la-Carte Smart Services, (g) SmartConnect Plus, (h) SmartConnect discount, (i) SmartConnect Customer Access, (j) SmartDocs, (k) HASP key, and (l) Uptime Performance Guarantees.

**14.2 Entitlements with Limited Supported.** Varian shall have limited support of the following without the SmartConnect Remote Access tool: (a) mandatory Upgrades coverage and (b) all entitlements that include software Upgrades.

**14.3 Additional Customer Responsibilities for SmartConnect Opt Out.** Customer will be responsible for any additional labor and travel costs related to: (a) the installation of Mandatory Safety Releases, Updates, Upgrades, and Versions, (b) providing diagnostic and remedial Support Services on site, (c) labor required for training on Customer's remote service tool and additional time required to perform Services by using Customer's remote service tools and any associated procedures required for its use, and (d) performance of Periodic Maintenance Inspections.

**14.4 Severity Levels.** Varian shall make commercially reasonable efforts to respond to all severity level issues when the customer chooses not to install the SmartConnect remote access.

**14.5 Service Tools other than SmartConnect.** If Customer chooses not to install the SmartConnect Remote Access tool and requests that the Varian service team use a different unvalidated remote service tool, then (a) Varian shall have the option of whether to agree to use such tool, (b) Customer will be responsible for all costs, licenses, training, and administrative functions related to the use of this tool, and (c) Customer will be responsible for any additional labor required to use this tool. Varian disclaims all liability for, and Customer shall be responsible for, any failures of performance or security issues caused by the tool. Varian shall be entitled to terminate its use of such tool for reasonable cause.

**TRAINING SCHEDULE**  
(Form RAD 10439)

This Training Schedule supplements and is made a part of the Terms of Sale and applies to and governs educational courses provided by Varian or its subcontractors to Customer, as indicated in a Quotation. All capitalized terms not otherwise defined shall have the meaning set forth in the Terms of Sale.

**1. Term**

The term for the training portion of this Agreement shall be from the signing of this Agreement until completion, expiration, or termination of the training.

**2. Office Space, Services, and Equipment**

Customer shall provide, at no cost to Varian and subject to Customer's reasonable usage and access requirements, use of office space, services, and equipment (such as copiers, fax machines, modems, and Internet access) as Varian deems reasonably necessary to perform the Professional Services at Customer's site.

**3. Expenses**

If Varian is required to conduct training at Customer's site, Varian may bill Customer for its reasonable expenses, including, but not limited to, travel, lodging, and meals, required to perform the training for Customer.

**4. Payment**

Except to the extent that a special payment arrangement has been agreed to by the parties in a Quotation or SOW, Customer shall pay each invoice within thirty (30) days from the date of the invoice.

**5. Intellectual Property**

Except as expressly stated in this Agreement or an SOW, neither party is granted any right, title, or interest in the pre-existing intellectual property of the other. With the exception of any data created for Customer, Varian shall own all right, title, and interest in all inventions, feedback and discoveries newly developed in performing the training.

**6. Applicable Training**

Except as otherwise agreed in writing by the parties, this Section applies to all training provided by Varian to Customer, including training that is included in the purchase price of a Product or Service and training that is purchased in the form of professional service and training credits (e.g., Advantage or FlexCredits).

**7. General Rules**

**7.1.** Each day of on-site training or Professional Services is defined as eight (8) hours – between 8 a.m. to 5 p.m. local time, normal working days, excluding holidays. Time over eight (8) hours per day will be deducted from remaining balance of the on-site training entitlement.

**7.2.** Varian employees and agents shall observe the statutory holiday schedules for both Varian and the Customer. Travel and lodging to attend classroom training is not included in the price unless otherwise stated in this Agreement.

**7.3.** All classroom training must be attended at the nearest Varian education center where the class is offered.

**7.4.** On-site training or Professional Services requires that the equipment or software to be used for training is available and in good working order. The Customer staff that is to be trained shall be available during the scheduled time of the training event.

**7.5.** As part of a Service contract the Customer may be entitled, as set forth in the Quotation, to training before or at the time Upgrades are installed. The method of delivery of that training is at the discretion of Varian and may include web-based digital streaming media or instructor-led remote webinar. Training material shall be delivered via electronic media.

**7.6.** Customer acknowledges that, prior to Varian providing training, Varian may provide Customer and/or Customer's representatives with supplemental training terms ("**Supplemental Training Agreements**"), such as training program prerequisites, safety guidelines, and Varian equipment-loan agreements. Customer agrees that Customer is deemed to have accepted and agreed to the terms of the Supplemental Training Agreements, on behalf of itself and its representatives participating in Varian's training, upon the commencement of the training, even if the Supplemental Training Agreements have not been executed by Customer. Customer further expressly agrees: (a) to comply with the terms of the Supplemental Training Agreements; (b) to ensure that all of its representatives participating in Varian's training are aware of, and have agreed to comply with, the terms of the Supplemental Training Agreements; and (c) to be responsible for Customer's representatives' breach of, or failure to comply with, the Supplemental Training Agreements.

**7.7.** Travel and lodging that is purchased through Varian can only be used for attendance of Varian clinical schools and education courses at a Varian Education Center. The amounts paid to Varian for such travel and lodging shall be applied only to the travel and lodging expenses, including airfare, hotel accommodations, and rental car fees. The Customer is responsible for any expenses outside of such amounts paid to Varian. Travel and lodging charges will be direct billed and are not reimbursable if travel is booked outside of Balboa Travel or the travel agents used by Varian only. The hotel must be Varian preferred. Any remaining balance is non-refundable. Travel and lodging cannot be used to attend tradeshow or any event not related to Varian education and training courses.

## **8. Forfeiture and Expiration**

**8.1 Forfeiture for Inadequate Notice of Cancellation.** A training event that is part of a Support Agreement or purchased separately will be forfeited if it is scheduled and then cancelled by the Customer within two (2) weeks of the training event date. It cannot be reinstated or rescheduled, except where this training is required due to an Upgrade.

**8.2 Expiration.** Training that is included within the purchase price of a Product shall expire eighteen (18) months after the completion of installation of the Product. Purchased Professional Service and training credits (e.g., Advantage or FlexCredits) that are purchased as part of a Support Agreement shall expire at the end of the original term of the Support Agreement regardless of any extensions of that agreement. Purchased Professional Service and training credits that are purchased in standalone training orders shall expire twenty-four (24) months from the purchase date or acceptance of the first Product in that order, whichever is the latter.