

Master Terms and Conditions of Service New Zealand Law Version

1 AGREEMENT

- 1.1 These terms and conditions of service ("**Terms**") apply to the support services ("**Support**") provided by **GE Healthcare Limited** (company number 815483) of 8 Tangihua Street, Auckland, 1010, New Zealand, trading as GE Healthcare ("**GEHC**", "**we**", "**us**" and "**our**") to the customer ("**Customer**", "**you**" and "**your**") as described in the annexed Support Summary.
- 1.2 The Support Summary, together with any associated Additional Terms and Conditions, Glossary, Schedule of Support Coverage Details ("**Schedule**"), and these Terms constitutes an "**Agreement**" between GEHC and you. Any other terms and conditions submitted by you on any purchase order are hereby expressly excluded.
- 1.3 This Agreement will commence on the Commencement Date and will continue until the End Date unless this Agreement is earlier terminated in accordance with clause 10 ("**Service Term**").

2 SUPPORT SERVICES

- 2.1 We reserve the right to inspect within 30 days after the commencement of the Agreement all Equipment that has not been under warranty or covered by us under the Agreement. The cost of the inspection, as well as any charges necessary to bring the Equipment to GEHC's standards, including parts, will be your responsibility. If no repair is required, the cost of the service call will be at GEHC's expense. If GEHC determines that the deficiencies cannot be repaired, the Equipment may, at GEHC's discretion and as notified to you in writing, be excluded from coverage under the Agreement.
- 2.2 During any Equipment product warranty period, GEHC will provide for the Equipment the support services as specified in the product warranty provided with the Equipment, as well as other types of Support identified on the Schedule. After the Equipment product warranty period, GEHC will provide the Support as specified in the Schedule. Hardware and/or software modifications, if and when applicable and available, will be supplied through the FMI (Field Modification Instruction) program.
- 2.3 Subject to the availability of personnel, GEHC will provide, at your request and additional expense, other services not specified in the Schedule, including service outside Regular Service Hours. The charge for such service or other items will be GEHC's prevailing rates then in effect for the relevant services, including travel time. You will be charged for the actual number of hours and travel time or the minimum applicable call out fee, whichever is higher. Other travel expenses and overnight living expenses will be charged at actual cost.

3 CHARGES, PAYMENTS AND TAXES

- 3.1 The Annual Fixed Charge will be paid on an installment basis. GEHC will invoice you for each installment according to the payment periods specified in the Support Summary, as well as for any other payments due under the Agreement. All amounts payable to GEHC under the Agreement are exclusive of all taxes. Should any taxes be levied on in respect of the supply of any services provided by GEHC, these amounts will be to your account and will be additional to any other amounts paid or payable to GEHC by you.
- 3.2 Where any goods and services tax ("**GST**") is imposed on a supply made by GEHC to you, such GST is to be calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, provided that GEHC issues you with a valid tax invoice.

- 3.3 The invoiced amount must be paid before the commencement of the relevant period of Support. If any invoice is not paid by the date of commencement of the relevant period of Support or in the case of the Additional Charges, within the respective payment period, GEHC may: (a) charge you interest to the extent permitted by law, calculated on the portion of your account overdue at the rate published by GEHC's bankers as its monthly overdraft rate, which interest may be added to the balance due from you and calculated and compounded on a daily basis, as well as charge you all collection costs and legal fees incurred by GEHC in connection with the late payment; and/or (b) suspend the Support and/or terminate the Agreement if you have not complied with a written notice from GEHC requiring you to make the overdue payment within the period specified in the notice.
- 3.4 In addition to the Annual Fixed Charge, you will be responsible to pay for any replacement parts supplied to you by GEHC at the rates indicated in the Schedule, support or items not specified in the Schedule and any support/materials provided, at GEHC's discretion, of the types listed under Clause 5 ("**Additional Charges**"). You will pay such Additional Charges within 30 days of the date of invoice issued by GEHC.

4 CUSTOMER'S RESPONSIBILITIES

At all times during the Agreement, you agree to do the following:

- 4.1 provide a suitable location for the Equipment and maintain the Site and environment (including temperature, clean air and humidity control, incoming power quality with no interference, and fire protection system) in a condition suitable for operation of and service to the Equipment, and provide a secured and protected area for storage of GEHC tools and equipment near the Equipment location;
- 4.2 ensure the Equipment is used solely in accordance with all applicable regulations and the requirements of all manuals relating to the Equipment and spare parts, including any operating, maintenance and other related services documentation; and by properly qualified and licensed personnel;
- 4.3 make the Equipment, and necessary network cabling and communication equipment, where applicable, available without restriction for Support in accordance with a mutually acceptable Support appointment schedule;
- 4.4 facilitate GEHC's performance of remote diagnostic and repair Support by providing remote access methods reasonably requested by GEHC, e.g., modem line, internet access;
- 4.5 designate a primary contact and alternate as GEHC's Support contact; your nominated contacts must have the necessary technical knowledge and expertise to reasonably assist GEHC in providing the Support;
- 4.6 promptly place support service requests in accordance with any reasonable protocols that GEHC provides to you in writing;
- 4.7 promptly notify GEHC in writing of any change in your information specified on the Support Summary, location of Equipment, or your ownership or management control;
- 4.8 when GEHC is required to perform any Support outside of Regular Service Hours, ensure that you provide a second person of site for safety reasons. If you cannot provide such a person, GEHC will do so at your cost and charge you accordingly;
- 4.9 be solely responsible for the day-to-day operation of the Equipment including the accuracy and adequacy of the data entered into the Equipment;



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- 4.10 be solely responsible for back-up and disaster recovery plans and procedures. Support shall not include re-entry of lost data;
- 4.11 be solely responsible for protecting data and images stored or transmitted by Equipment, including by providing and maintaining secure network and network security components as necessary, including, without limitation, any firewalls or security-related hardware or software. GEHC will reasonably consult with you regarding security issues and procedures related to the Equipment.

5 EXCLUSIONS

GEHC's obligations under the Agreement do not cover the following:

- 5.1 the repair, replacement, or disposal of any accessories, power supply equipment or parts, peripheral devices, printers, third party equipment or consumable items, including, but not limited to batteries, patient cables, leadwires, cathode ray tubes, ink lamps, power cords, telephone cords, cold cathode gauges, catheters, sieve material, pump oil, cures, electrodes, fluids, paper, floppy disks, bar code labels, CR plates and cassettes, archive platters and other disposable supply items, unless explicitly listed on a Schedule;
- 5.2 x-ray tubes, image intensifier tubes, detectors, crystals, and probes are subject to optional coverage and are not covered under the Agreement unless explicitly listed on a Schedule;
- 5.3 the provision, payment, or reimbursement of any rigging or facility cost;
- 5.4 consultation or training to assist Customer's development or modification of any software or protocols not provided by GEHC;
- 5.5 material and labor costs associated with reusing existing facilities (wire, termination fields, network facilities, equipment room, peripherals, adjuncts) and temporary installation of Equipment for testing, training, and other purposes;
- 5.6 any service, components or parts replacement, or downtime required as the result of: (a) a design, specification, software program, protocol, or instruction provided by you or your Personnel; (b) your failure to fulfill any of your obligations or responsibilities under the Agreement; (c) the failure of anyone other than GEHC or its contractor to comply with GEHC's written instructions or recommendations; (d) you combining the Equipment with any item of others or with any incompatible GEHC item; (e) any alteration or improper storage, handling, use, or maintenance of any part of the Equipment by anyone other than GEHC or its contractor; (f) design or manufacturing defects, specifications, or functionalities in any item of others; (g) anything external to the Equipment, including building, van, or trailer structural deficiency, power surge, fluctuation or failure, or air conditioning failure (except where expressly included in the Schedule); or (h) anything beyond GEHC's reasonable control other than service necessitated by normal Equipment usage;
- 5.7 any additional service required due to moves, additions, or changes to the Equipment, unless GEHC has been notified in writing at least 30 days in advance and concurred with such moves, additions, or changes; and
- 5.8 the supply and/or installation of hardware or software upgrades or any associated licences.

6 INFLATION ADJUSTMENTS

No more than once per year after completion of the first year of the Agreement, GEHC may increase the Annual Fixed Charge to account for

inflation. Each increase will be no more than the increase in the rate of inflation as measured by the higher of: (a) the Consumer Price Index ("CPI") (All Groups Weighted Average) for New Zealand; and (b) the CPI for the healthcare industry (if available), as published from time to time by Statistics New Zealand, or as otherwise agreed to in writing by both parties.

7 RENEWAL

The Agreement will automatically renew for successive 1 year terms unless either party provides to the other party at least 60 days prior to the expiration of the then Service Term written notice that it does not wish to renew the Agreement.

8 END OF SUPPORT ANNOUNCEMENT

In the event GEHC makes a general commercial announcement that it will no longer offer Support services for an item of Equipment or Covered Component or provide a particular Support service feature or option, then upon no less than 3 months' prior written notice to you, GEHC may, at its option, remove any such item(s) of Equipment, Covered Component(s), feature(s), or option(s) from the Agreement, with an appropriate adjustment of charges, without otherwise affecting the remainder of the Agreement.

9 EXCUSABLE DELAYS AND PERFORMANCE ISSUES

Neither party is liable for delays or failures in performance of any obligations under the Agreement, other than payment obligations, due to a cause beyond its reasonable control. In the event of such delay, the time for performance will be extended as reasonably necessary to enable performance.

10 DEFAULT AND TERMINATION

If you default under the Agreement and the default is not cured within 20 days after written notice of it, GEHC may at its option, in addition to any other right under the Agreement: (a) withhold performance under the Agreement until a reasonable time after all defaults have been cured; (b) terminate the Agreement in part or in whole; (c) declare all sums due and to become due under the Agreement to be immediately due and payable; and/or (d) recover possession of any GEHC materials in your possession or control.

11 LIMITED WARRANTIES

- 11.1 GEHC will perform Support in a workmanlike manner. Parts for which you pay a separate charge are supplied with GEHC's standard 90-day warranty on defective parts. All other parts and items are provided "as is".
- 11.2 Except as provided in this clause 11.1, and to the extent permitted by law, no express or implied warranties, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, system integration or data accuracy will apply to anything supplied to you under the Agreement.

12 LIMITATION OF LIABILITY

- 12.1 If GEHC breaches any warranties set out in these Terms or a term or condition that is implied by law and which is not capable of being excluded, the parties agree that GEHC's liability will be limited to, at GEHC's discretion: (a) resupply of the relevant non-conforming Support services; (b) paying the cost of such resupply; or (c) refund to you the fees paid for the relevant non-conforming Support services.
- 12.2 To the extent permitted by law, you agree that: (a) the total liability of GEHC and your exclusive remedy for any and all claims arising out of or related to the Agreement, and the provision of



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the Support by GEHC, regardless of the form of the action, will be limited to 100% of the total fees paid by you to us under the Agreement; and (b) we will under no circumstances be liable to you for any loss of profit, loss of revenue, loss of data, loss of goodwill or business interruption or any indirect, consequential, or punitive damages.

13 OWNERSHIP RIGHTS; RESERVATION OF RIGHTS

You acknowledge that any and all of the copyright, trade-marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the Support or the Equipment are and will remain the sole property of GEHC. If you or your Personnel acquire any such right or interest by operation of law, you hereby irrevocably assigns all such right and interest to GEHC. You will maintain and enforce agreements and policies with your Personnel sufficient to give effect to the provisions of this clause 13.

14 SUPPORT MATERIAL AND DATA ACCESS

14.1 In connection with the installation, configuration, maintenance, repair, and/or de-installation of the Equipment, GEHC might deliver to the Site, along with the Equipment or separately, and store at the Site, attach to or install on the Equipment, and use, materials (that may include Software, documentation and tools) that have not been purchased by or licensed to you. You hereby consents to: (a) this delivery, storage, attachment, installation, and use; (b) the presence of GEHC's locked cabinet or box on the Site for storage of this property; and (c) GEHC's removal of all or any part of this property at any reasonable time, all without charge to GEHC. The presence of this property within the Site will not give you any right or title to this property or any license or other rights to access, use, or decompile this property. Any access to or use of this property (except in compliance with GEHC's written direction to you to determine Equipment performance on GEHC's behalf) and any de-compilation of this property by anyone other than GEHC's personnel is prohibited. You agree that it will use reasonable efforts to protect this property against damage or loss and to prevent any access to or use or de-compilation of this property contrary to this prohibition.

14.2 Customer agrees to permit GEHC to connect to the Equipment, or to otherwise access data related to the Equipment or the Support provided, to allow GEHC to gather, aggregate, compile, and use Equipment and resource usage data in various ways, including quality initiatives, benchmarking, and reporting services. The data collected by GEHC will be used, during and after the term of the Agreement, in a manner that will maintain patient and customer level confidentiality.

15 INDEPENDENT CONTRACTOR

GEHC provides Support under the Agreement as an independent contractor. GEHC employees are under GEHC's exclusive direction and control, contractors' employees are under their exclusive direction and control, and Customer's employees are under Customer's exclusive direction and control. The provision of Support under the Agreement will not result in any partnership, joint venture, trust, or employment relationship between GEHC or its contractors and you.

16 SURVIVAL, WAIVER, SEVERANCE, AND JURISDICTION

16.1 Clauses 3, 11, 12, 13, 16 and 19 of these Terms will continue in full force and effect after the expiration or earlier termination of the Agreement.

16.2 Any clause or part of any clause in the Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or

where possible, the offending part) is to be severed from the Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.3 A right created by the Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party operate as a subsequent waiver of the same or of any other right of that party.

16.4 The Agreement will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts competent to hear appeals from those courts.

17 SUBCONTRACTS AND ASSIGNMENTS

17.1 The rights and benefits of GEHC (in whole or in part) under and in connection with the Agreement may be assigned by GEHC to any party with the Customer's prior written consent (which consent must not be unreasonably withheld or delayed).

17.2 The Customer may not assign the rights or benefits under the Agreement without the prior written consent of GEHC.

17.3 We can hire a subcontractor or use our related bodies corporate to perform work under the Agreement. No such subcontract will release GEHC from those obligations to you.

18 FINANCING AGREEMENTS

18.1 You must inform GEHC if it has arranged finance in respect of the service fees for the Equipment as follows: (a) you must notify GEHC in writing of the details of such finance company and must procure the finance company to purchase the Equipment; (b) we will address the invoice(s) for the service fees for the Equipment to the finance company; (c) if the finance company for any reason fails to pay the full amount of any invoice(s) addressed to it, we may re-address such invoice(s) to you and you hereby agree to pay such invoice(s) in accordance with the Agreement; and (d) subject to clauses 18.1(a) and 18(b), you acknowledge that no discussions, correspondence or other communications between you and any finance company will in any way effect your obligations under the Agreement.

18.2 You acknowledges that GEHC is not able to modify, cancel or reissue any invoices for service fees for the Equipment issued to you, if notification that you have arranged finance in respect of the service fees for the Equipment, through a finance company is only given to us: (a) after delivery of the Equipment to you; or (b) after GEHC has issued an invoice for the service fees to you.

19 CONFIDENTIAL INFORMATION AND PRIVACY

19.1 GEHC and its contractors will treat patient information as confidential. In addition, each party (the "receiving party") will treat the other party's written, proprietary business information as confidential for a period of 3 years from the date of receipt by the receiving party as long as it is marked as confidential and/or proprietary prior to its disclosure and is not otherwise available to the receiving party from a lawful source. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by law, in which case such party will so notify the other party as soon as practicable and in any event prior to such party making such required disclosure.

19.2 Each party must comply, and must ensure that their respective Personnel comply, with all applicable Privacy Law as they apply to that party.



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19.3 If any Personal Information is provided or otherwise made available to GEHC or its Personnel by you or your Personnel, you represents and warrants to GEHC that you have procured and obtained all necessary individual consents (as required by all applicable Privacy Law) to enable and permit GEHC and its Personnel to collect, store, use, disclose or otherwise deal with the Personal Information for the sole purpose of providing the Support services to you as anticipated under the Agreement.

19.4 The parties acknowledge and agree that breach of clause 19.1 may cause irreparable harm to the other. The parties agree that in the event of any breach of this provision, a party will be entitled to seek injunctive relief in addition to seeking any other remedy provided in the Agreement or available at law.

20 EQUIPMENT DE-INSTALLATION

In the event that any of the Equipment is de-installed during the Service Term, the Annual Fixed Charge remains payable in respect of the de-installed Equipment until 60 days after GEHC receives written notification from you of the intended date of de-installation or the actual date of de-installation (as the case may be).

21 GENERAL PROVISIONS

21.1 The Agreement is the complete and exclusive statement of the terms of the arrangement between you and GEHC regarding its subject matter. No prior proposals, statements, course of dealing, or usage of the trade will form a part of Agreement. Any terms and conditions stated or attached to your purchase order are hereby expressly excluded. If any of these Terms conflict with any Support Summary or the Schedules, the Support Summary will take precedence, followed by the Schedules and then these Terms.

21.2 The Agreement may only be varied by a subsequent written document signed by the authorized representatives of each party. A signed copy of the Agreement delivered by facsimile machine is binding and enforceable on both parties.

21.3 The Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

22 DEFINITIONS AND INTERPRETATION

22.1 In these Terms, unless the context otherwise requires:

"Annual Options Charge" means GEHC's charge specified on the signature page of the Support Summary titled "Annual Options Charge" for any Optional Services requested by you to be provided by us which would otherwise be excluded under clause 5 of these Terms.

"Annual Fixed Charge" means GEHC's charge specified on the signature page of the Support Summary titled "Annual Service Coverage Charge" for the Service Coverage to be performed by GEHC.

"Coverage Hours" means the number of hours per workday, and weekends and holidays if applicable, selected by the Customer for service coverage by GEHC.

"Covered Components" means all Equipment referred to as Covered Components in the Support Summary.

"Equipment" means the medical equipment and/or Licensed Software covered under the Agreement as specified on the Support Summary.

"Error" means any Licensed Software-related problem that: (a) materially and adversely interferes with your use of the Equipment; and (b) results from a failure of the Licensed Software to conform in any

material respect to the specifications of the Equipment as set out in GEHC's published documentation.

"Error Correction" means: (a) any modification of the Licensed Software that corrects an Error by bringing the Licensed Software into material conformity with the specifications of the Equipment; or (b) a procedure or routine that, when observed in the regular operation of the Equipment, avoids the material adverse effect of the applicable nonconformity.

"Field Modification Instruction (FMI)" means any modification, operational improvement, or adjustment to address a safety concern or Error Correction for Customers or others made by GEHC to the Equipment or Licensed Software that is generally provided by GEHC to all GEHC customers with that equipment type as part of the Field Modification Instruct (FMI) program.

"Licensed Software" means the applicable Software rights licensed to you by GEHC, if any.

"Optional Services" means the additional optional services to be performed by GEHC, at your option at the Annual Options Charge, to the Equipment during the Coverage Hours as specified on the Support Summary.

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a patient of the Customer whose identity is apparent, or can reasonably be ascertained, from the information or opinion. For the avoidance of doubt, Personal Information includes health information of a patient of the Customer.

"Personnel" means, in respect of each party, all employees, agents and sub-contractors of that party.

"Privacy Laws" means any privacy legislation which binds a party including the Health Information Privacy Code 1994 and the Privacy Act 1993 and any and all other relevant privacy law and regulations.

"Regular Service Hours" means 8.30 am to 5.00 pm Monday to Friday but excluding public holidays (local site time).

"Service Coverage" means the services to be performed by GEHC on the Equipment during the Coverage Hours as selected by the Customer and specified on the signature page of the Support Summary.

"Site" means the address of the premises or the specific vehicle in which the Equipment is located, as specified in the Support Summary.

"Software" means a computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of any machine or device.

22.2 In these Terms, unless the context clearly indicates otherwise:

(a) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

(b) monetary amounts are expressed in New Zealand dollars;

(c) neither the Agreement nor any part of it is to be construed against a party on the basis that the party or its representatives were responsible for its drafting.

