

**1. SCOPE.** These Terms, including all exhibits attached hereto and referenced therein, shall govern the sale and/or licensing of Products and/or Services to Customer by Supplier. Supplier's provision of any Products or Services is expressly conditioned on Customer's assent to these Terms. Any additional, different or conflicting terms contained in Customer's request for proposal, specifications, purchase order or any other written or oral communication from Customer shall not be binding in any way on Supplier. These Terms do not constitute an acceptance of any terms provided (at any time) by Customer, and Supplier hereby rejects any Customer-provided terms.

**2. DEFINITIONS.** All definitions used but not defined in these Terms shall have the meaning ascribed to them elsewhere in this Agreement. The following terms used in these Terms shall have the meaning set forth as follows:

**"Acceptance"** means Customer's acceptance of the Products, in accordance with the terms of contained herein and attached hereto and specifically in accordance with any provision entitled Acceptance, which is applicable to the Deliverables.

**"Acceptance Test"** means Supplier's standard protocol and procedure for testing and/or accepting delivery of the Hardware Products, as revised from time to time by Supplier, which is incorporated herein by reference.

**"Affiliate(s)"** means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**"Contractual Delivery Date"** or **"CDD"** means the date on which the Parties intend for the applicable Deliverables to be delivered and/or installed by Supplier and on which Customer's shall have fulfilled all Site Preparations and Site Requirements, including supplying all required technical information and data, including drawing approvals, and all required commercial documentation.

**"Cover Page"** means the document issued by Supplier containing Supplier's offer to the Customer, to which these Terms and all other applicable exhibits are attached.

**"Customer Postponement"** means a situation where the Contractual Delivery Date is delayed due to any instruction, or other act or omission, of Customer, including, without limitation, any non-fulfillment by Customer of the Site Requirements or lack of readiness to accept delivery by or on the Contractual Delivery Date

**"Deliverables"** means the Hardware, Software and/or Services, including Maintenance Services, Cloud Services and Professional Services, listed on the Cover Page and described in more detail in the Scope of Supply.

**"End-User"** means the Person specified in the Cover Page using the Products at the Site.

**"Force Majeure Event"** has the meaning set forth in Section 6.

**"Hardware"** means any tangible property listed in the Scope of Supply, including its Firmware and Operating Systems, as defined in the Hardware Exhibit to the Elekta Standard Terms and Conditions of Sale.

**"Infringement Exclusion"** has the meaning set forth in Section 13.

**"Installation"** means any and all procedures and tasks that are specified by Supplier to be performed by Supplier following delivery of the relevant Products at the Site.

**"License Fee"** means the Price for the licensed Software, as specified in the Cover Page.

**"Lost Profit"** means the Price minus any applicable amounts paid by Customer to Supplier, and minus the total costs Supplier and its Affiliates would have incurred for manufacturing, delivering, installing or performing Deliverables, which they can reasonably avoid.

**"Payment Terms"** means the terms of payment for the Deliverables as set out in the Cover Page.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, trust or unincorporated organization, joint venture, joint stock company or governmental authority.

**"Service Fee"** means Price for the Services, as specified in the Cover Page.

**"Site Requirements"** means the technical requirements specified by Supplier and provided to Customer which the Site must meet for the Installation and use of the Hardware, which are incorporated herein by reference.

**"Software"** means any software listed in the Cover Page and described in more detail in the Scope of Supply.

**"Specifications"** means instructions for use, learning materials, technical and functional documentation, interfaces, and information made available with the applicable Deliverable, which may be updated by Supplier from time to time.

**"Terms"** means these Elekta Standard Terms and Conditions of Sale.

**"Third-Party Products"** means hardware, software, equipment, parts, products, and/or services not manufactured, created or performed by or directly on behalf of Supplier or any of its Affiliates.

**"Third-Party Supplier"** means the supplier, distributor, or servicer of Third-Party Products.

**"Third-Party Responsible Products"** means Third-Party Products for which the Third-Party Supplier takes full responsibility for supply, installation and warranty to Customer and for which Elekta has no direct responsibility to Customer for supply, installation and/or warranty.

**"Working Day"** means each day on which banks are open for business in the country where Customer Site resides.

**3. CONTRACTUAL DELIVERY DATE.** While Supplier shall make commercially reasonable efforts to meet the Contractual Delivery Date, all delivery dates are approximate only and Supplier shall not be liable for any loss or expense (consequential or otherwise) incurred by Customer if Supplier fails to meet the specified Contractual Delivery Date if (a) Supplier has made commercially reasonable efforts to meet such date, or (b) Customer Postponement

**4. PRICE, PAYMENT TERMS AND CHANGES.** The Price shall be due and payable as provided in the Payment Terms on the Cover Page. All Prices are net and exclude any costs, taxes, tariffs, and duties. Customer shall be solely responsible for any costs, taxes, tariffs and/or duties payable in connection with Customer's purchase or license, as well as any additional costs or expenses incurred by Supplier resulting from changes, modifications, or delays (including Customer Postponement) attributable to Customer. The Customer shall not be entitled to deduct, withhold, or set off any amounts owed by the Supplier. Past due balances shall bear interest at a rate of 1.5 percent per month, but not to exceed the maximum amount permitted by applicable law.

In the event that the Contractual Delivery Date for any Product or the provision of Services is more than twelve months from the Effective Date of this Agreement, Supplier reserves the right to increase the Price annually by the percentage change based on the local Consumer Price Index (CPI) or equivalent official inflation index applicable in the relevant jurisdiction (or, if specified, the inflation index specifically set forth on the Cover Page) for the period between the Effective Date and the Contractual Delivery Date for such Product or between the Effective Date and the first

anniversary of the Effective Date (and again on each subsequent anniversary of the Effective Date) for provision of Services.

Additionally, if there is a Customer Postponement beyond 90 days after CDD, 20% of the then-outstanding Price becomes immediately due and payable. If such postponement extends beyond 180 days after CDD, an additional 20% of the then-outstanding Price becomes due. For Customer Postponements exceeding 270 days after CDD, the Supplier may either terminate the Agreement for material breach (and seek all remedies for such breach available herein) or deliver the Products to storage at the Customer's risk and expense, including transport, storage, and insurance costs. If the Products are delivered to storage under these circumstances: (i) any unpaid balance of the Price for the stored Products becomes immediately due and payable; (ii) the Products are considered Accepted by the Customer; and (iii) the Warranty Period begins on arrival in storage.

**5. CUSTOMER'S DEFAULT.** If Customer fails to make any payments by the due date thereof or otherwise breaches this Agreement, then Supplier may give Customer written notice of such failure or other breach and Supplier may suspend all performance under this Agreement. If Customer fails to make full payment or cure such other breach within thirty calendar days after the date of Supplier's notice thereof, Supplier may elect to terminate this Agreement and/or any licenses granted hereunder by giving written notice of termination. Such termination shall be effective as of the date of such termination notice. If any Products have been delivered to Customer, Supplier shall be entitled, without prejudice to its other rights and remedies, to enter the Site and remove and repossess and/or disable the Products. In the event Supplier terminates this Agreement due to Customer's breach, Supplier shall be entitled, without prejudice to its other rights and remedies, to recover from Customer the Lost Profit and all reasonable attorneys' fees and costs of recovery thereof. Supplier may also exercise any rights and privileges available to it as a secured creditor of Customer under applicable law.

**6. FORCE MAJEURE.** If either Party suffers delay or failure in performance due to any cause beyond its reasonable control (each, a "**Force Majeure Event**"), including, without limitation, acts of nature (e.g., hurricanes, tsunamis, earthquakes, etc.), strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, pandemic, cyberattacks, delays of carriers, failure of normal sources of supply, infrastructure or transportation disruption, or acts of government (including changes in legislation), then the affected Party shall timely notify the other Party and the time of performance (except for payment of money) shall be extended or excused, as applicable, for a period of time equal to the period of the delay. If either Party suffers such delay in performance for a continuous period in excess of six (6) months, Supplier may by written notice terminate this Agreement in whole or in part, in which case Supplier shall have no liability except that right and liabilities that accrued prior to such termination shall continue to subsist.

**7. CANCELLATIONS.** After the acceptance of the Offer, the resulting Agreement may not be terminated, canceled or modified by Customer. If Customer wrongfully terminates this Agreement, without prejudice to any remedies Supplier may have under this Agreement (or at law, in equity, or otherwise), Customer shall pay to Supplier the Lost Profit including the reasonable attorney's fees and costs of recovery thereof.

**8. PROPRIETARY NOTICES.** Supplier or Supplier's licensors own all right, title, and interest (including, without limitation, all intellectual property rights) in the Products and to all drawings, designs, Specifications, manuals, and code furnished by Supplier to Customer or End-User and to any Product-related suggestions or other feedback. Customer shall not remove, alter, or obscure any copyright, trademark, trade secret, government restricted right, or other proprietary or confidentiality notices or legends from any copy of such materials that are (i) placed or embedded by Supplier or its licensors on/in the Products, (ii) displayed when the Products run, or (iii) applied to the Products, their packaging, labels, or any other materials provided under this Agreement. All such materials and related information as well as this Agreement are supplied in confidence to Customer and shall be handled in accordance with Section 9.

**9. CONFIDENTIALITY.** Except as required by law or with the express written approval of Supplier, Customer agrees to receive and maintain all

information received from Supplier (including, without limitation, any non-public aspects of or information regarding any Products or Specifications) in confidence, using the same degree of care which Customer employs with its own confidential information, provided this is no less than a reasonable, appropriate standard of care, and Customer will not disclose to any person or make public or authorize the disclosure of any such information and will not use such information for any purpose, except as expressly agreed to by Supplier in writing or in another applicable written agreement between Supplier and Customer. Customer shall not make or imply any claims or statements regarding Supplier or any Deliverables (or any output or results thereof) without Supplier's express prior written authorization. Supplier will be entitled to claim, in addition to any other remedies available to it, interlocutory and permanent injunctive relief to restrain any anticipated, present or continuing breach of this Section.

**10. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS.** Supplier shall defend, indemnify and hold harmless Customer from third-party claims to the extent alleging that the Products (as delivered by Supplier to Customer) infringe such third party's patent, trade secret or copyright rights, except to the extent resulting from any of the following (each, an "**Infringement Exclusion**") (a) use of Products in combination with any product, software or services not furnished or authorized in writing for use by Supplier where no infringement would occur save for such combination, (b) modification (not made by Supplier) of Products, (c) use or distribution of Products other than as permitted or directed by Supplier, (d) conformance to any Customer-provided instructions, designs, or requirements; or (e) breach by Customer of this Agreement. If any such claim materially interferes with Customer's use of the Products, Supplier shall, at its option: (i) substitute functionally equivalent (in all material respects) non-infringing Products; (ii) modify the infringing Products so that they no longer infringe but remain functionally equivalent (in all material respects); (iii) obtain for Customer at Supplier's expense the right to continue to use the infringing Products; or (iv) if the foregoing are not commercially reasonable, refund to Customer the Price of the infringing Products, as depreciated (based on five year straight-line depreciation), in which event Customer shall cease use immediately and return the infringing Products to Supplier. Any claims and losses arising from Customer's use of allegedly infringing Products after Supplier's notification to discontinue use and offering one of the remedies set forth above are the sole responsibility of Customer. The above indemnification obligation is conditional upon Customer providing Supplier prompt written notice of the infringement claim, allowing Supplier to control the defense of such claim, and reasonably cooperating with Supplier in such defense. Supplier shall not be responsible for any compromise or settlement, or claim made by Customer without Supplier's written consent.

**11. THIRD-PARTY PRODUCTS.** With respect to Third-Party Products, Customer agrees and acknowledges that: (a) Customer has made the selection of these Third-Party Products on its own, and Customer will comply with all terms and restrictions applicable to such Third-Party Products; (b) the Third-Party Products are being acquired by Supplier solely at the request of and for the benefit of Customer, in order to eliminate the need for Customer to issue a separate purchase order to the manufacturer of the Third-Party Products; (c) Supplier is entitled to charge Customer a special handling fee for the Third-Party Products; (d) no representation, warranty or guarantee is or has been made by Supplier with respect to the Third-Party Products; (e) the obligation of Customer to pay Supplier for the Third-Party Products is absolute and unconditional; (f) Supplier has no responsibility to provide any services with respect to such Third-Party Products; (g) Customer will assert no claim whatsoever against Supplier with respect to the Third-Party Products, and will look solely to the manufacturer regarding any such claims; (h) Customer will indemnify and hold Supplier harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the Third-Party Products or any work or service provided by or on behalf of any Third-Party Supplier. Regarding Third-Party Responsible Products, Elekta shall have no responsibility whatsoever for supply, delivery, installation and/or warranty as all aspects of such products, other than payment, are handled 100% directly between Customer and Third-Party Supplier. **ALL WARRANTIES ON THIRD-PARTY PRODUCTS, INCLUDING THIRD-PARTY RESPONSIBLE PRODUCTS, ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT PERMITTED BY LAW.**

**12. COMPLIANCE.** This Agreement is subject to Supplier's ongoing determination that Customer and this Agreement comply with all applicable laws and regulations, including those relating to workplace health and safety, medical device or pharmaceutical regulatory issues anti-bribery, export/import control, including sanctions requirements, and money laundering prevention. Customer represents and covenants that it is purchasing the Products for its own use consistent with the terms of this Agreement and that it will not re-sell the Products to any other party or to export or re-export the Products outside the country to which Supplier delivers the Products, except for supplying the Products to the End-User. Customer shall procure at his own cost all licenses and documents required for import of the Products, which may also be required for using the Products. Refusal of import permission does not entitle Customer to withdraw from this Agreement or to claim damages. Supplier shall not be liable for any non-performance or any delay in performance under this Agreement in the event that there is (i) a change in applicable laws and regulations or (ii) a refusal or a delay by any applicable competent authorities to issue a license or (iii) a refusal by a Third-Party Supplier or financial service provider to engage in transactions with any particular country. Further, Supplier shall not be liable for any non-performance or any delay in performance under this Agreement where this is due to Supplier, acting reasonably, determining that it is unsafe to send a service engineer or other personnel to the relevant country.

In any event, Customer shall not export or re-export, directly or indirectly to or for use in any country where the use of any Deliverables supplied by Supplier in connection with this Agreement would violate applicable export or import controls, including, without limitation, Russia or Belarus. Additionally, Customer shall: (a) undertake its best efforts to ensure that the purpose of this Section is not frustrated by third parties and (b) establish and maintain an adequate monitoring mechanism to detect conduct by any third parties that would frustrate the purpose of this Section. This provision is a material aspect of this Agreement and any violation shall be considered a material breach of this Agreement.

[This Agreement is subject to the discount provisions of the federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), and the discount safe harbor regulations, 42 C.F.R. § 1001.952(h). In accordance with such provisions, Customer shall, as appropriate, fully and accurately report all prices paid (net of discounts) and all costs claimed or charges made under any federal or state healthcare program, and provide information upon request to Medicare, Medicaid and other applicable federal and state health care programs on all discounts and price reductions received from Supplier.]  
\*\*\*US Only\*\*\*

**13. INDEMNITY.** CUSTOMER SHALL INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, LOSSES, LIABILITIES, PENALTIES, SANCTIONS, FINES AND THIRD-PARTY (INCLUDING, WITHOUT LIMITATION, AUTHORIZED USER) CLAIMS AND ACTIONS TO THE EXTENT ARISING FROM OR RELATED TO (A) CUSTOMER'S NON-COMPLIANCE WITH SECTION 14 OR ANY OTHER BREACH BY CUSTOMER OF THIS AGREEMENT; (B) ANY INFRINGEMENT EXCLUSION; OR (C) ANY NEGLIGENCE, FRAUD, VIOLATION OF LAW, OR WILLFUL MISCONDUCT BY OR ON BEHALF OF CUSTOMER OR ANY END-USER OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, REPRESENTATIVES OR CONTRACTORS IN CONNECTION WITH THIS AGREEMENT OR ANY USE OF ANY DELIVERABLES.

**14. CUSTOMER USAGE AND RESPONSIBILITIES.** Customer is not authorized and shall not copy, print, alter, decompile, disassemble, or reverse engineer, decode or translate any Products or any part thereof, nor permit anyone else to do so, except where expressly permitted in writing by Supplier or to the extent such provision is void under applicable law. Customer shall be solely responsible for establishing, maintaining, and adhering to appropriate security, virus protection, backup and disaster recovery plans and measures (consistent with industry standards) for any relevant data, images, systems, software, or equipment. Supplier shall have no obligation or liability with respect to the recovery of lost data or images. Supplier makes no assurances regarding, and shall not be responsible for, Product performance affected by or related to the use of parts not supplied by Supplier. All clinical and medical treatment and diagnostic decisions are the responsibility of Customer or the End-User,

and its professional healthcare providers, and the Products shall not be run, operated or otherwise used, except by qualified employees or physicians who are suitably skilled and experienced to use the Products and in accordance with Supplier's instructions. Due to the large variety of potential applications, the Products may not have been tested in all situations, and Customer is also responsible for establishing the adequacy of independent procedures for testing and the reliability and the accuracy of the Products. The Products shall be used solely at the Site and shall not be removed from the Site. Customer shall provide Supplier with any access, information, records, or cooperation reasonably necessary for Supplier's performance of this Agreement.

**15. INSTALLATION.** In situations where Supplier is responsible for Installation as specified in the Scope of Supply, Supplier shall arrange for Installation of the Products at the Site. Customer shall provide reasonable and adequate access to the Site and the Customer's representatives, as required by Supplier to perform Installation, and shall comply with Supplier's or its representative's reasonable requirements. If Installation, in whole or part, or training has not been completed within six months of the arrival of the Products at the Site or within six months of the date that Supplier makes the Deliverables available to Customer, through no fault of Supplier, then Supplier shall no longer be required to provide such Installation and/or training.

**16. REPORTING.** To the extent reasonably required by Supplier, Customer shall collect and provide Supplier case reports and information concerning patient treatments. Customer shall also provide Supplier with a copy of any information with respect to a reportable event required to be reported according to applicable laws, regulations or recommendation relating to the Products. All reports submitted to Supplier shall be sanitized to omit individually identifiable information.

**17. ANONYMIZED DATA.** Supplier continually improves its services and systems. To optimize Supplier's system and Product availability, safeguard quality and improve treatment outcomes, Supplier uses anonymized healthcare, diagnostic, usage, performance, operational and technical data of Supplier's Products systems and services (collectively, the "Anonymized Data"). As such, Customer authorizes and agrees that Supplier and any of its Affiliates may: (a) anonymize the healthcare, operational and technical data of Supplier's products systems and services, and (b) access, collect, store, copy, aggregate, modify, analyze, publish or otherwise make use of such Anonymized Data for Supplier's and its Affiliates' commercial business purposes.

**18. DATA PROTECTION:** Both Customer and Supplier shall adhere to all applicable privacy, data protection, and similar laws and regulations. If Supplier is required to store and/or process private information, protected health information (PHI), and/or other related data, the following terms shall be incorporated into this Agreement and govern such activities:

- a) Supplier's Business Associate Agreement
- b) Supplier's Data Processing Agreement

**19. LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER'S (AND ITS AFFILIATES') TOTAL LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO SUPPLIER BY CUSTOMER FOR THE DELIVERABLE THAT IS THE BASIS FOR THE CLAIM. EXCEPT FOR ANY BREACH OF CONFIDENTIALITY OBLIGATIONS (OR USE RESTRICTIONS) UNDER THIS AGREEMENT, EXCEPT FOR ANY AMOUNTS AWARDED OR PAID TO A THIRD PARTY THAT ARE COVERED BY THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT FOR AMOUNTS PAYABLE HEREUNDER FOR DELIVERABLES, EXCEPT FOR ANY VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER CUSTOMER NOR SUPPLIER (NOR THEIR RESPECTIVE AFFILIATES) SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, TIME, OPPORTUNITY OR LOSS OR CORRUPTION OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT, BREACH OF WARRANTY, PRODUCT LIABILITY, STATUTE, EQUITY OR OTHERWISE. THE LIMITATION OF LIABILITY AND EXCLUSION OF

DAMAGES SHALL APPLY EVEN IF THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**20. ASSIGNMENT / END USER OBLIGATIONS.** Except as otherwise provided in this Agreement, neither Party may assign its respective rights or obligations under this Agreement in whole or in part to any person without obtaining the prior written consent, of the other Party. Notwithstanding the foregoing, Supplier may (i) assign this Agreement in whole or in part to an Affiliate and in such case, Supplier shall take full responsibility for the Affiliate's compliance with this Agreement, (ii) Supplier shall have the right to assign receivables under this Agreement for financing purposes to Supplier's Affiliates or third parties. If Customer makes an assignment (which shall require consent of Supplier) or if Customer is not the End-User, Customer hereby undertakes to ensure that (a) the terms and conditions in this Agreement are included in the agreement with the End-User/assignee and (b) Customer takes full responsibility for the End-User's/assignee's compliance with this Agreement. Customer shall also assist Supplier with all reasonable measures that Supplier may deem necessary to preserve the rights of Supplier under this Agreement.

**21. AMENDMENT; WAIVER; SEVERABILITY; SURVIVAL.** Except as otherwise set forth in this Agreement, this Agreement may be amended only in writing signed by both Parties, including this Section. Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either Party's right to later enforce each and every provision. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of both Parties. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision. The terms of this Agreement that by their nature are intended to survive its expiration (such as the confidentiality provisions included herein) will continue in full force and effect after its expiration.

**22. APPLICABLE LAW AND VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Georgia, without regard to its conflict of laws principles. The applicability of the UN Sales Convention (CISG) shall be explicitly excluded. All disputes arising out of, or in connection with, this Agreement or any Order will be finally settled by a state or federal court located in the State of Georgia, U.S.A.

**23. ENTIRE AGREEMENT AND CONFLICTING PROVISIONS.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral.

[sections references checked]  
[CPI added back in]  
[Customer Postponement added]  
[Costs for changes added in]