



# G-Cloud 11: OrderWise™ Clinical Decision Support

Terms and Conditions for Medcurrent and  
GE Healthcare Partners

May 2019



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## Terms and Conditions for Medcurrent and GE Healthcare Partners

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### 1 Terms and Conditions for Medcurrent's ORDERWISE™ SOFTWARE

#### ORDERWISE™ SOFTWARE LICENSE AGREEMENT

This agreement together with any schedules referenced herein and attached hereto (the "Agreement") dated as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019 is made between MedCurrent Corporation with its principal place of business at 1920 Yonge Street, Suite 300, Toronto ON M4S 3E2 ("MedCurrent") and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ ("Customer").

WHEREAS:

MedCurrent (and / or its Affiliates) develops and licenses Software (as defined hereunder) and provides installation, implementation and consulting services, training and support services in connection therewith;

Customer operates \_\_\_\_\_, and is engaged in the delivery of healthcare or diagnostic services related thereto; and

The parties desire to enter into a contract under which Customer will license the Software from MedCurrent, and obtain installation and implementation, training and support services in connection therewith.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

#### DEFINITIONS & SCHEDULES

##### Definitions

As used in this Agreement, the following terms shall have the meanings set forth below unless otherwise indicated.

"Acceptance" (or "Accept" or "Accepted") shall mean Customer's written acknowledgement that a deliverable under a Statement of Work, including, for greater certainty, the Software and Developed Software, as applicable, successfully passed the Acceptance Test, or Customer's deemed acceptance, in accordance with the provisions of Schedule D.



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“Affiliate” shall mean, with respect to either party, any other entity controlling, controlled by or under common control of a party where “control” means the holding of more than fifty percent (50%) of equity ownership or the right to manage.

“Agreement” shall mean this agreement including its exhibits, attachments and schedules.

“Business Day” means Monday through Friday (excluding statutory holidays in Canada and the United States).

“Confidential Information” means all data and information whether in written, machine readable or other tangible form, or disclosed orally, that is of value to the disclosing party, is not generally known to competitors of the disclosing party, and which is communicated to the other party. Confidential Information shall include, but not be limited to, information relative to the current or proposed business plans of the disclosing party, financial information relating thereto, prices, trade secrets, know-how, formulas, processes, data, network configuration, software details, compilation and configuration, drawings, schema, proprietary information, customer lists, the terms of the Agreement and any other contract between the parties, and any other non-public information which concerns the business and operations of the disclosing party to this Agreement. Notwithstanding the above, all MedCurrent software, and any other materials that are designated as “Confidential” or with similar marking, shall constitute Confidential Information of the applicable party.

“Designated System” shall have the meaning set out in Section 0.

“Developed Software” shall mean all object code form of the computer software developed by or on behalf of MedCurrent for Customer but does not include the Software or any modifications to the Software.

“Documentation” includes any and all user guides and manuals for use in connection with the Software, Developed Software, and any of their component parts and underlying modules and any copies thereof.

“Fixed License Fee” shall have the meaning set out in Section 0.

“License” shall have the meaning set out in Section 0.

“License Fees” shall have the meaning set out in Section 0.

“MedCurrent Property” shall have the meaning set out in Section 0.



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“Minimum Volume” shall have the meaning set out in Section 0.

“Per Unit Fee” shall have the meaning set out in Section 0.

“Procedure [Study]” shall mean each unique radiology order.

“Professional Services” shall mean the services supplied by MedCurrent technical personnel to install, customise, configure and/or perform ongoing work with respect to the Software, or to develop Developed Software.

“Services” shall mean Professional Services, Support Services, and/or Training Services.

“Site” shall mean customer location.

“Software” shall mean the computer software which has the specifications set out in Schedule A generally available to the public by license from MedCurrent and shall mean the object code form of the computer software, all its component parts and underlying modules and all copies thereof, including all Updates and/or Upgrades delivered hereunder.

“Statement of Work” or “SOW” means a document developed by the parties which sets out the work to be performed, the Deliverables, and the timeframe for delivery.

“Support Plan” shall mean the terms and conditions under which the Software is supported as set out in Schedule C.

“Support Services” shall mean the technical support services for the Software as made available under MedCurrent’s Support Plan set out in Schedule C.

“Support Term” shall have the meaning set out in Section 0.

“Taxes” shall have the meaning set out in Section 0.

“Term Year” shall have the meaning set out in Section 0.



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“Trademarks” shall have the meaning set out in Section 0.

“Training Services” shall mean the provision of MedCurrent technical personnel to train Customer representatives.

“Unit” shall mean each Procedure [Study] processed by the Software.

“Updates” shall mean fixes, patches, modifications, improvements to functionality or revisions of the Software or Documentation provided to Customer which MedCurrent generally incorporates into the Software and which are made generally available to MedCurrent’s licensees at no additional charge, other than media and handling charges. Updates shall not include any port-overs between operating systems, additions of new functionality, new releases, customisations, new versions or future products which MedCurrent licenses separately.

“Upgrades” shall mean new releases of the Software which provide significant new functionality and which are generally differentiated from the preceding release by a change in the numeral to the left of the decimal in the product name (i.e., version 1.x vs. version 2.x) and shall not include future products which MedCurrent licenses separately.

“Use” shall mean to install, load, utilize, run, store or display the Software.

### Schedules

The following are the Schedules annexed hereto and incorporated by reference to be part hereof:

- A – Product Description
- B – Fee and Payment Schedule
- C – Support Plan Schedule
- D – Professional Services Schedule
- E – Statement of Work

### LICENSES GRANTED

#### License of Programs



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MedCurrent grants to Customer, for Customer's own internal business purposes, a non-exclusive, non-transferable and (subject to the provisions in this Agreement for termination in respect of the License) perpetual license, without right of sub-license, to Use the Software to provide decision support services solely in respect of the Procedures [Studies] performed at the Site(s), subject to the terms of this Agreement (the "License"). The terms of this Agreement, including but not limited to this Section 2, apply equally to the Developed Software.

Except to the extent that a restriction on copying or using the Software is prohibited by applicable law, no copying or use of the Software (other than as expressly authorised by this Agreement) is permitted. Except to the extent that such express restriction on modifying, reverse engineering, reverse assembling or reverse compiling of software is prohibited by applicable law, Customer shall not and shall not attempt to modify, reverse engineer, reverse assemble or reverse compile any Software or parts thereof; however, Customer may modify the data file portions to the extent and in the manner described in the Documentation. Customer shall not distribute, rent, lease or transfer the Software to any third party without MedCurrent's prior written consent. Customer must not remove or tamper with the copyright notice(s) included or specified by MedCurrent from time to time on any permissible copy. All right, title and interest in any and all copyright, patents and intellectual property rights in and to the Software or any part thereof remain with MedCurrent or the original owner of such rights, as the case may be, and no such rights are transferred or are deemed to be transferred to Customer hereby other than the right to use the same specifically in accordance with the terms and conditions of this Agreement.

### License of Documentation

MedCurrent grants to Customer, for Customer's own internal business purposes, a non-exclusive, non-transferable and perpetual license, without right of sub-license, to use and copy the Documentation solely in respect of the Procedures [Studies], subject to the terms of this Agreement.

### SERVICES

#### Support Services

During the Support Term (as defined below), and subject to the terms of this Agreement, Customer will be provided with Software Support Services as described in the Support Plan Schedule appended as Schedule C.

MedCurrent shall have no obligation to support the Software: (i) for Use on any computer system other than a system or replacement system that meets MedCurrent's requirements and specifications, in its sole reasonable discretion (a "Designated System"); (ii) in the event Customer modifies the Software in breach of this Agreement; (iii) in the event that Customer refuses to implement Upgrades and continues to operate



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with a version of the Software which is more than one version behind MedCurrent's most current version of the Software and MedCurrent no longer supports Customer's version; or (iv) if Customer is in breach of any other material provision within this Agreement (including the schedules hereto). The additional functionality that is associated with an Upgrade is included in Support Services; however, any Professional Services fees that may be required to implement such Upgrade are subject to the terms set out below in Section 3.2.

### Professional Services

MedCurrent shall provide consulting and integration services to Customer for the discovery/analysis, installation, customization, development, configuration, modification and implementation of the Software for Customer's needs. The initial installation and configuration of the Software shall be performed by MedCurrent in accordance with the Initial Statement of Work attached hereto as Schedule E. Future Professional Services shall be provided pursuant to separately issued Statements of Work based on: (i) the general terms and conditions set out in the Professional Services Schedule attached hereto as Schedule D; and (ii) the pricing/fees set out in the Fee and Payment Schedule attached hereto as Schedule B.

### Training Services

MedCurrent will provide Training Services for the number of persons and duration specified from time to time in a Statement of Work.

### On-Site Services

If an on-site attendance is required for the delivery of Services, Customer shall reimburse MedCurrent for attendance of personnel at MedCurrent's Professional Services rate and fees as set out in Schedule B, as amended from time to time, as well as actual, reasonable travel and out-of-pocket expenses incurred.

## FEES AND PAYMENTS

### License and Support Fees

In respect of Customer's license to and use of the Software for processing of up to a total annual minimum volume of 110,000 Units per year ("Minimum Volume"), measured from Acceptance of the Software and each anniversary thereafter for the ensuing year (each, a "Term Year"), Customer shall pay to MedCurrent a monthly fee payable upon execution of this Agreement (the "Fixed License Fee") as defined in Schedule B.





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In addition, for the processing of Units in excess of the total annual minimum volume, Customer shall pay to MedCurrent a per Unit license fee ("Per Unit Fee") which Per Unit Fee will be fixed for the initial contract Term period and subject to change thereafter. Per Unit Fees will be calculated based upon the pricing listed in Schedule B due and payable monthly in arrears within thirty days of the date of the invoice relating to the calendar month when such Unit(s) were processed by the Software. The Fixed License Fee and the Per Unit Fees are collectively referred to as the "License Fees".

### Professional Services Fees

MedCurrent shall provide Professional Services as required by the Initial Statement of Work attached hereto as Schedule B for the fees provided therein. Additional Professional Services and Training Services may be requested by the Customer from time to time, and, if agreed to by MedCurrent, will be delivered pursuant to separately prepared Statements of Work or otherwise. Such services shall either be billable on a fixed price basis or monthly in arrears at the then-current rate for Professional Services and Training Services, plus incremental expenses as applicable, unless otherwise specified in the applicable Statement of Work.

### Software Interface Fees

MedCurrent shall provide an interface to the Customer's \_\_\_\_\_ environment as required by the Initial Statement of Work attached hereto as Schedule D for the fees provided therein. Customer will pay MedCurrent a one-time interface fee detailed in Schedule B. Additionally, the Software interface will be maintained and updated periodically. There will be an annual software maintenance fee for the Software interface detailed in Schedule B.

### General Payment Terms

License Fees, Professional Services Fees and Training Fees shall be invoiced and shall be payable on the terms set out in Sections 4.1, 4.2 and 4.3 and in Schedule B. Except as otherwise stated, all fees and payments will be due and payable monthly within thirty (30) days following the date of Customer's receipt of invoice from MedCurrent.

Set Off: Fees due by Customer shall not be subject to set off, counterclaim, adjustment, reduction, compromise or otherwise, by virtue of any actual or potential claim against MedCurrent.

Currency: All references to currency in this Agreement are to US Dollars and all payments made shall be in US Dollars.



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**Handling:** All media and shipping charges, insurance charges and / or customs duties, to the extent applicable, shall be the responsibility of Customer.

**Payment & Interest:** Any amounts payable by Customer hereunder which remain unpaid after the due date shall bear interest at the rate of one and one-half percent (1.5%) per month (19.56% p.a., compounded) or the maximum amount allowable at law, whichever is less, from the date due and continuing until fully paid.

### Taxes

MedCurrent's rates, fees and other charges set forth in this Agreement do not include and are free and clear of deduction for any and all present or future taxes, levies, customs, duties, deductions, charges or withholdings, and all liabilities (including penalties, additions to tax, interest and expenses) with respect thereto, including but not limited to value added tax, sales tax, consumption tax and similar taxes or duties as well as any city, municipal, state or corporate taxes or any withholding taxes, whether currently imposed or to be imposed in the future (collectively, referred to herein as "Taxes"). If any Taxes are found to be applicable and/or if Customer or any person paying to MedCurrent on behalf of Customer (including banks) shall be required by law to deduct any Taxes from or in respect of any sum payable to MedCurrent hereunder, then: (i) the sum payable to MedCurrent shall – at the same time and on the same conditions as applied to the sum payable - be increased as may be necessary such that following all required deductions or payments (including deductions applicable to the additional sums payable under this Section 0), MedCurrent receives an amount equal to the sum it would have received had no such deductions or payments been made; and (ii) Customer shall pay the full amount deducted, if any, to the relevant taxation authority or other authority in accordance with the applicable law.

Within 30 days of the date of any deduction of any Taxes by or on behalf of Customer, from or in respect of any sum payable to MedCurrent, Customer shall furnish to MedCurrent, at its address referred to herein, the original or a certified copy of a receipt evidencing such deduction of Taxes. Upon the request of MedCurrent, Customer shall promptly take all actions, including, without limitation, the completion of forms, certificates and documents and the provision of information to the relevant taxing authority, of the kind required under the applicable law, and MedCurrent shall take similar actions, to secure the benefit of any exemption from or relief with respect to the Taxes applicable to any sum paid to MedCurrent hereunder.

### CUSTOMER OBLIGATIONS

#### Acceptable Use

Customer, in its use of the Software and Support Services, shall not knowingly (a) engage in any activity which could cause loss or degradation of service to other MedCurrent customers or Internet users; (b) compromise the security or integrity of others' computer systems or software; or (c) breach any applicable



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laws, Internet etiquette rules or protocols, or otherwise infringe any third party's intellectual property or other rights.

### Records Maintenance

Customer covenants and agrees to keep accurate and complete records and books in connection with the number of Units processed by the Software, and to allow MedCurrent access to the Software to produce a comprehensive monthly report delineating the number of Units processed and other information/data reasonably required by MedCurrent in connection with this Agreement and specifically in respect of invoicing Customer.

MedCurrent may from time to time send its employees or other authorized representatives to Customer's premises (or if preferred by MedCurrent, require remote access into the Software for the same purposes), on seven (7) days' notice to Customer, in order to verify the reports of Units processed generated in accordance with this Section 0. Such attendances shall be kept to a reasonable minimum and shall not unduly interfere with Customer's business. If the number of Units processed revealed by MedCurrent's verification is greater than that reported to MedCurrent by Customer at the required intervals, Customer will be invoiced for the processing of additional Units by the Software at the prices then in effect, in addition to the reasonable cost associated with the resources allocated in respect of such attendance, payable within fifteen (15) days of delivery of the invoice.

### Designated System and Related Responsibilities

Customer will be responsible for the Designated System, including but not limited to payment, implementation, configuration and support. Customer's responsibilities also include: (a) providing its own SSL certificate; (b) establishing and paying for its own third party software; (c) its own web site development and hosting, if applicable; and (d) all end user and patient relations and obligations.

## TERM AND TERMINATION

### Term

The term of this Agreement in respect of Support Services for the Software (the "Support Term") will be 36 months (3 years) from Software Acceptance, and subject to the provisions of this Agreement, the term of this Agreement in respect of the Software License is perpetual (subject to the provisions in this Agreement for termination in respect of the License). The Support Term will each automatically renew for subsequent periods of one (1) year unless either party delivers to the other party written notice of its desire to not renew the Support Term (and thereby have the respective term terminate at its expiry) at least ninety (90) days prior to such automatic renewal (or any subsequent automatic renewal). The term of this Agreement



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in respect of any Professional Services will be specific to each and every Statement of Work or Professional Services engagement that may be agreed to pursuant to this Agreement.

### Material Breach

Either party may terminate this Agreement in respect of Support Services, Training Services, or Professional Services, as applicable, for material breach of any of the terms hereof by the other party provided that before terminating: (i) the party claiming material breach has given the party in breach a written notice specifying the nature of the material breach and providing a thirty (30) day right to cure (other than non-payment for which the right to cure will be five (5) days); and (ii) following the receipt of said notice of material breach, the party in material breach has not cured the breach within the cure period, or has not requested a reasonable extension provided that such party is working diligently and in good faith to cure the breach and is reasonably unable to do so within the cure period; and (iii) the party claiming breach notifies the other in writing of the termination. Notwithstanding any other provision of this Agreement, including the foregoing, MedCurrent may terminate this Agreement in respect of the Software License, based on the provisions and process stipulated in this Section 0 where the nature of the breach by Customer concerns the terms of the License as opposed to the associated Services. Any dispute as to whether a party has materially breached this Agreement shall be determined in accordance with the dispute resolution provisions set out in Section 0.

### Termination for Bankruptcy

Each party may terminate this Agreement in respect of Support Services, Training Services, or Professional Services upon written notice to the other party, in the event the other party is adjudicated bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, makes any arrangement for the liquidation of its debts or a receiver or a receiver and manager is appointed with respect to all or any part of its assets, or commences winding up proceedings, or bankruptcy or insolvency proceedings are instituted by or against such party, and such proceedings are not removed within 60 days.

### Force Majeure

Any delay or failure by either party hereto to perform pursuant to this Agreement (save in relation to an obligation to make any payment) shall be excused if and only to the extent that such delays or failures are caused by occurrences beyond such party's reasonable control, including acts of God, decrees or restraints of governments, strikes or other labour disturbances, war, sabotage, riot, civil commotion, act of terrorism, malicious damage, failure of a utility service or transport or telecommunications network, accident, breakdown of plant or machinery, fire, flood, storm and any other cause or causes, whether similar or dissimilar to those already specified, which cannot be controlled by such party; provided that the party seeking to excuse its performance shall promptly notify the other party of the cause therefore, such performance shall be so excused during the inability of the party to perform but for no longer period, and the cause thereof shall be remedied so far as possible with all reasonable dispatch.



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### Effect of Termination

On termination of this Agreement in respect of the License (as opposed to termination solely in respect of the Services) pursuant to Section 6.2 or Section 6.3 above or Section 7.1.3 below, all Licenses shall terminate, Customer shall cease using the Software (whether or not modified or merged into other materials, programs or applications) and associated Documentation, and the applicable Support, Training and Professional Services obligations on the part of MedCurrent will cease. On termination of this Agreement in respect of Services, the applicable Support, Training, Professional Services obligations on the part of MedCurrent will cease, and Customer's only continuing rights will be to continue Use of the Software in accordance with this Agreement.

### INDEMNITY, WARRANTIES, REMEDIES, LIMITATION OF LIABILITY

#### Defence of Infringement and Limited Indemnity

Subject to the terms and limitations of this Section, MedCurrent or its licensors will indemnify and hold harmless Customer from and against any third party claim that the Software furnished and used within the scope of this Agreement infringes a third party copyright or patent registered in Canada or the United States, provided that (a) Customer notifies MedCurrent in writing within thirty (30) days of receiving notice of any claim against Customer; (b) MedCurrent or its licensors have sole control of the defence and all related settlement negotiations; and (c) Customer provides MedCurrent with assistance, information and authority reasonably necessary to allow MedCurrent to conduct a defence. Reasonable out-of-pocket expenses incurred by Customer in providing such assistance will be reimbursed by MedCurrent. MedCurrent shall not be liable for any costs or expenses incurred by Customer with respect to settlement of an infringement claim without MedCurrent's prior written authorisation.

MedCurrent shall have no liability hereunder and will be indemnified by Customer for any claim of infringement based on: (a) use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software that has been made available to Customer; (b) the combination, operation or use of the Software with software, hardware or other materials not furnished by MedCurrent if such infringement would have been avoided without such software, hardware or other materials or networks; or (c) materials developed according to the specifications, instructions or requirements supplied by Customer.

In the event the Software or a component part thereof is held by a court of competent jurisdiction, or is believed by MedCurrent, to infringe or potentially infringe a third party's rights, MedCurrent shall have the option to: (a) modify, at its expense, the Software to be non-infringing, (b) obtain for Customer a license to continue using the Software, or (c) terminate this Agreement in respect of the Software License and refund any prepaid and unamortized License Fees paid by Customer in association therewith on a pro rata basis.



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This Section sets forth MedCurrent's entire liability and Customer's exclusive remedies against MedCurrent due to infringement. The indemnity shall only apply in respect of a final decision rendered by a court of competent jurisdiction or in respect of a settlement of an infringement action with the prior written consent of MedCurrent.

Customer shall indemnify and hold harmless MedCurrent, its Affiliates and their respective directors, employees, agents and contractors from and against any claim that the materials furnished to MedCurrent by Customer and used in the production of Developed Software, infringe a third party copyright or patent or other intellectual property right registered or recognized in Canada or the United States, provided that: (a) MedCurrent notifies Customer in writing within thirty (30) days of any claim against MedCurrent; (b) Customer has sole control of the defence and all related settlement negotiations; and (c) MedCurrent provides Customer with assistance, information and authority necessary to allow Customer to conduct a defence. Reasonable out-of-pocket expenses incurred by MedCurrent in providing such assistance will be reimbursed by Customer. Customer shall not be liable for any costs or expenses incurred by MedCurrent with respect to settlement of an infringement claim without Customer's prior written authorisation.

Subject to the terms and limitations of this Section, Customer will indemnify, defend and hold harmless MedCurrent, its Affiliates and their respective directors, employees, agents and contractors from and against all claims, actions, causes of action, damages and expenses, obligations, liabilities, penalties, and losses (together the "Liabilities") imposed on, incurred by or asserted against said indemnified parties as a result of or in connection with (A) any Procedures or Studies, including any personal injuries or deaths related thereto; (B) any claims by any of Customer's clients, contractors, service suppliers or other similar parties; (C) the release of any information or data related to any purchaser or prospective purchaser of any Unit through the use of the Software, including, but not limited to, in violation of Canada's Personal Information Protection and Electronic Documents Act, or any similar law, rule or regulation of any federal, state, local or provincial governmental or quasi-governmental entity; (D) data transmitted, received or stored on or over the Software in violation of the provisions of Section 0 above; and (E) any illegal, libellous, slanderous, dangerous or defamatory content on any of Customer's websites hosted by MedCurrent, provided that: (a) MedCurrent notifies Customer in writing promptly after receiving notice of any claim against MedCurrent; (b) Customer has sole control of the defence and all related settlement negotiations; and (c) MedCurrent provides Customer with reasonable assistance, information and authority necessary to allow Customer to conduct a defence. Reasonable out-of-pocket expenses incurred by MedCurrent in providing such assistance will be reimbursed by Customer. Customer will not be liable for any costs or expenses incurred by MedCurrent with respect to settlement of a claim without Customer's prior written authorization.

### License Warranties

Subject to the terms hereof, for the Software License, MedCurrent warrants for a period of ninety (90) days from Software Acceptance that the Software, unless modified by Customer, will be free of any material defects and will operate and conform to the specifications in Schedule A in all material respects.



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Customer's sole remedy in the event of nonconformity with respect to the warranties set out in 0 will be:

correction of the condition making it non-conforming in accordance with Section 0 below and the priority and response terms in the Support Plan Schedule at no cost to Customer; or

in the event of defective media, the replacement of the media.

MedCurrent warrants that the Software will run properly on the Designated System. However, MedCurrent does not warrant that the Software will run properly on each and every other computer hardware or operating system other than the Designated System, or that the Software will meet all of the requirements of Customer or operate in the combinations which may be selected for use by Customer, or that the operation of the Software will be uninterrupted or error free, or that all errors will be corrected.

MedCurrent shall attempt to correct errors, which give rise to a non-conformity as outlined in Section 0 on a commercially reasonable basis, in a standard consistent with the industry, and as outlined in the Support Plan.

### Exclusion of implied terms

Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute, common law or otherwise (including but not limited to the implied warranties and conditions of merchantability and fitness for a particular purpose) are, to the fullest extent permitted by applicable law, excluded from this Agreement.

### Exclusions

Subject to Section 0, neither party shall be liable to the other (or any person claiming under or through the other) whether in contract, tort (including for negligence) or otherwise for any (a) indirect or consequential loss or damages; (b) loss of revenue; (c) loss of profits; (d) loss of business or goodwill; (e) loss of, damage to or corruption of data; (f) punitive damages; or (g) loss of use, even if such party has been advised by the other party of the possibility of such loss or damages.

The parties agree that Section 0 shall not apply in respect of breaches of Sections 0 and 0 or the payment obligations/commitments of Section 0 of this Agreement.

### Limitation of Liability



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The sole liability of MedCurrent in case of any loss or damage resulting from any error or defect in the Software or from Services provided by MedCurrent hereunder that cause errors or defects, will be to correct, as soon as is reasonably possible, such error or defect in accordance with and to the extent of MedCurrent's Support Plan obligations. In the event of an error or defect that renders the Software inoperative or has a material adverse effect on the functioning of the Software, MedCurrent shall, as soon as reasonably possible, commence diagnostic and corrective measures, and take such remedial measures (including, but not limited to, temporary fixes, emergency bypasses and/or workarounds), as may be required to correct such error or defect, to render the Software operative, and/or to eliminate such material adverse effect.

Subject to Section 0 and Section 0, the total aggregate liability of MedCurrent, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed proven direct damages in a sum equal to the fees paid for the License or the Service in question during the twelve month period immediately prior to the month in which the event giving rise to the liability occurred. The aforementioned total aggregate liability cap shall not apply to claims for indemnification pursuant to Section 0.

### Exclusion of Liability for Use of Data

CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF ALL DATA AND OUTPUT FROM THE SOFTWARE AND/OR THE SERVICES, INCLUDING CONFIRMING THE CONDITION, QUALITY, ACCURACY, RELIABILITY, SUITABILITY AND FUNCTIONALITY OF THE DATA AND OUTPUT. MEDCURRENT IS not engaged in the practice of medicine, and NEITHER THE ACR CRITERIA NOR ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT SHOULD BE considered medical advice OR TOOLS FOR MEDICAL DIAGNOSIS. The sSOFTWARE AND/OR services shall not be used in connection with rendering patient care by anyone other than an appropriately licensed medical professional exercising professional judgment.

### CONFIDENTIALITY

All Confidential Information shall remain the sole property of the disclosing party. Without limiting the generality of the foregoing, each party shall hold the Confidential Information of the other in strictest confidence; will not use the Confidential Information for purposes outside the scope of this Agreement; will not make any disclosures of the Confidential Information (including methods or concepts utilised in the Confidential Information) without the express written consent of the other, except to Customer, its Affiliates and their respective employees, officers, directors or consultants on a need to know basis who are bound by a written agreement with that party to maintain the confidentiality of such Confidential Information in a manner consistent with this Section 0; will take all reasonable steps to maintain the confidentiality of all Confidential Information, including without limitation all copies of the Software; and ensure that its Affiliates and permissible recipients of Confidential Information comply with the terms and requirements of this Section, and any associated provisions set out elsewhere in this Agreement, and be responsible for any related breaches of this Agreement. For greater certainty, and notwithstanding anything to the contrary contained herein, Customer will not allow access to the Software (nor disclose any of MedCurrent's Confidential Information) on the part of any person or party that would reasonably be





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considered to be a competitor of MedCurrent, where “competitor” means an entity (including Affiliates of such entity) that develops, licenses and/or resells or otherwise provides access to proprietary decision support software or technology solutions. Neither party shall, without first obtaining the written consent of the other party, disclose the terms and conditions of this Agreement, except to such party’s professional advisors and duly authorized representatives and except as may be required to implement and enforce the terms of this Agreement, or as may be required by law.

### GENERAL TERMS AND CONDITIONS

#### Ownership

Customer acknowledges that it obtains no ownership rights in the Software, the Developed Software or any elements or components thereof (collectively, the “MedCurrent Property”). All right, title and interest in and to the MedCurrent Property, including any and all modifications and additions thereto and copies thereof (whether or not developed at the request of Customer or paid for by Customer) and any and all material (including but not limited to documentation, reports, programs, source code, manuals, flow charts, tapes, card decks, listings and any other programming materials and inventions, whether or not patentable, together with all intellectual property rights therein including copyright, patent rights, trademarks, registered designs and trade secrets), shall at all times remain with MedCurrent or any third party from/to whom MedCurrent has licensed or procured software, technology or other elements.

#### Trademarks

Any trademarks and service marks (“Trademarks”) adopted by MedCurrent or its licensors to identify the Software and other products and services, belong to MedCurrent and/or its licensors, as the case may be. Nothing herein grants, or shall be construed to grant, to Customer any rights to such Trademarks or other MedCurrent intellectual property other than as provided for in this Agreement, and the parties acknowledge and agree that the Software as provided to Customer will be “skinned” and branded using Customer’s name, logo, branding and look and feel as part of the Initial SOW or otherwise and MedCurrent shall have a non-exclusive license to the applicable Customer-owned or licensed trademarks for that purpose. MedCurrent shall not have any liability to Customer for any claims made by third parties relating to Customer’s unauthorized use of the Trademarks.

#### Development Input

Customer shall be entitled to provide MedCurrent with information and feedback concerning the Software’s functional requirements and product definition which MedCurrent shall consider when formulating the product development plan. This co-operative process between MedCurrent and Customer does not create any obligation upon MedCurrent to adhere to Customer’s input, nor does it create any ownership interest



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in the Software on the part of Customer should MedCurrent incorporate any of Customer's suggestions into the development plan or ultimately into the Software.

### Relationships between the Parties

In all matters relating to this Agreement, Customer and MedCurrent are independent contractors. The relationship between MedCurrent and Customer is that of licensor/licensee and service provider/recipient. Neither party will represent that it has any authority to assume or create any obligation, express or implied on behalf of the other party, nor to represent the other party as agent, employee, franchisee or in any other capacity.

### Assignment

Neither party shall assign or otherwise transfer any rights or obligations under this Agreement without the other's prior written consent, such consent not to be unreasonably withheld. MedCurrent's performance of this Agreement may involve participation of sub-contractors. Thus, notwithstanding the above, the parties agree that MedCurrent may subcontract any of its obligations and/or assign any of its rights hereunder to any of MedCurrent's Affiliates and/or to specialist subcontractors (all referred to in this Agreement as the "Authorized Subcontractors").

The applicable terms of this Agreement shall also apply to the Authorised Subcontractors. The parties agree that the Authorised Subcontractors may require access to the premises and facilities of Customer for their participation in the performance of this Agreement, and that if so requested by MedCurrent, Customer shall deal with the personnel of the Authorised Subcontractors and with any reasonable requests of the Authorised Subcontractors, in all respects, as if such personnel were the personnel, and such requests were the requests, of MedCurrent.

Notwithstanding Section 0, MedCurrent may assign this Agreement and any of the rights and obligations hereunder to an Affiliate, without prior consent.

### Notice

Any notice which is required or permitted by this Agreement to be given to either party hereto shall be in writing and shall be sufficiently given if delivered personally, sent by facsimile transmission, e-mail or sent by pre-paid registered mail to the addresses listed in the title or such other address as either party may from time to time advise the other party by notice in writing (Attention: President in the case of MedCurrent and Attention: John Adziovsky in the case of Customer). Any notice or communication given by registered mail to either party at the address specified herein shall be deemed to have been received by such party on the sixth Business Day after which it is sent provided that a strike or lockout of postal employees is not then



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in effect or generally known to be impending, in which case notice must be delivered personally or sent by facsimile transmission to be effective. Any notice given by personal delivery or e-mail (with return confirmation of receipt) shall be deemed to be received on the date of delivery. Any facsimile transmission shall be deemed to be received on the next Business Day following confirmed transmission. The fax contact number for the respective parties is: 1-855-279-3385 (MedCurrent) and \_\_\_-\_\_\_-\_\_\_\_ (Customer). The e-mail address for each of the respective parties for purposes of notice under this Agreement is: John.Adziovsky@Medcurrent.com (MedCurrent) and \_\_\_\_\_ [insert e-mail address] (Customer). To expedite order processing, Customer agrees that either party may treat faxed documents as original documents; nevertheless, either party may require the other to exchange original signed documents.

### Governing Law/Jurisdiction

This Agreement will be governed by and construed in accordance with the Province of Ontario and Ontario will have exclusive jurisdiction in reference to any matters herein.

### Dispute Resolution

The parties agree that should a dispute arise with respect to this Agreement or any Statement of Work, it shall be resolved in the following manner:

The parties shall use all reasonable efforts to resolve any controversy or claim through good faith negotiations. However, if such good faith negotiations do not resolve the controversy or claim, such matter will be resolved exclusively by arbitration as provided in and subject to Section 0.

Subject to Section 0, any controversy or claim, whether based on contract, tort or other legal theory (including, but not limited to, any claim of fraud or misrepresentation, but other than in respect of equitable relief that may be sought), arising out of or relating to this Agreement, including its interpretation, performance, breach of or termination not resolved by good faith negotiations, as provided in Section 0, shall be resolved exclusively by arbitration in Toronto, Ontario, by a sole arbitrator (the "Arbitrator") appointed by agreement of the parties; in the event that the parties fail to agree upon the appointment of the Arbitrator within ten (11) days after a notice of arbitration is given by either party to the other, then the Arbitrator shall be selected and appointed at the request of either party in accordance with the Arbitration Act (Ontario)(the "Rules") and shall conduct the arbitration in accordance with such Rules. The Arbitrator will be bound by the provisions of this Agreement. Prior to his/her appointment, the selected Arbitrator shall be made aware of the terms of this Agreement and the relevant Statements of Work. Following his/her appointment, the Arbitrator shall set forth the schedule and timing of the arbitration proceedings and shall conduct the proceedings in accordance with the Rules. The Arbitrator shall have the right to assess the costs incurred by the successful party against the unsuccessful party or in such manner as he or she deems just. Upon rendering an award or a decision, the Arbitrator shall set forth in writing the basis of such award or decision. The award rendered by such Arbitrator shall be final and binding. Judgment on the



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award or any other final or interim decision rendered by the Arbitrator may be entered, registered or filed for enforcement purposes in any court having jurisdiction thereof.

Notwithstanding the foregoing in this Section 0, in any matter at issue which (a) relates solely to the collection of outstanding amounts due hereunder or (b) arises as a result of a breach of confidentiality, the party owed such outstanding amounts (or whose confidentiality protection has been breached) may, in its sole discretion, seek resolution in equity or law before a court of competent jurisdiction without first subjecting such matter to the arbitration process.

### Survival

Sections 4, 5, 6.5, 7, 8 and 9, as well as any other provision which is stated to survive or by its nature is intended to survive this Agreement, shall survive the termination of this Agreement.

### Export

Customer agrees not to export any Software or any underlying component part or module of the Software from the jurisdiction for which the License is granted unless it complies with all applicable laws, including any applicable export control legislation or requirements.

### Waiver

The waiver by either party of any default or breach of any term of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for non-payment or breach of MedCurrent's proprietary rights in the Software, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

### Further Acts

The parties hereto agree to execute and deliver such further and other documents and perform such further acts and other things as may be necessary or desirable to give full effect to this Agreement and every part thereof.

### Modifications



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This Agreement may not be changed or modified, nor may any provisions hereof be waived, nor may any consent or confirmation be deemed to have been given, except by an agreement in writing signed by the party against whom enforcement of the change or modification is asserted.

### Headings

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not be construed to affect the interpretation of this Agreement. Words importing the singular shall include the plural and vice versa and words importing gender shall include all genders.

### Severability

If any provision of this Agreement is determined to be unenforceable, invalid or in breach of any law by any tribunal, public body or court of competent jurisdiction for any reason whatsoever, the unenforceability or invalidity of such provision shall not affect the enforceability or validity of the remaining provisions of this Agreement and such unenforceable or invalid provision shall be severed from the remainder of this Agreement and as so modified this Agreement shall continue in full force and effect.

### Precedence of Documents

The documents referenced herein are intended to be complementary. What is called for by one, is as binding as if called for by all. If either party discovers a conflict, error or discrepancy in these documents, it shall be called to the attention of the other party for resolution. In resolving any matter, the documents shall be given precedence in the following order:

- A particular Statement of Work;
- The body of the Agreement;
- The Schedules to the Agreement.

### Entire Agreement

This Agreement, including the Schedules hereto, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. Customer acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not and whether it was made negligently or innocently) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other



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than as expressly set out in this Agreement. This Agreement may be executed in any number of counterparts all of which shall constitute together but one and the same document. Delivery of a signed copy of this Agreement by facsimile, .pdf or other electronic means is as valid as delivery of a signed original. All terms and conditions of any Customer purchase order or other ordering document shall be superseded by the terms and conditions of this Agreement.

## 2 GEHCP Terms and Conditions for Added Services

**WHEREAS, Customer desires to engage GE Healthcare Finnamore Limited (GEHCF), a GE Healthcare Partners (GEHCP) business, to perform and deliver the Products described in The Proposal of this Agreement; and**

**WHEREAS, GEHCF is willing to perform and deliver such Products in accordance with The Proposal and the terms and conditions of this Agreement;**

**NOW THEREFORE, in consideration of the foregoing, and of the mutual promises contained in this Agreement, the parties agree as follows:**

### 1. DEFINITIONS

**As used in this Agreement, the following terms shall have the following meanings:**

- 1.1. "Agreement" shall mean the legally binding agreement documented in The Proposal and all its appendix, as listed within The Proposal and including these Terms and Conditions. The Agreement shall become effective upon signature of the Agreement Acceptance Appendix by both parties.**
- 1.2. "Deliverables" shall mean the deliverables specified in The Proposal.**
- 1.3. "Participating Facilities" shall mean all distinctly identifiable operational entities (i.e., separately managed and/or separately located facilities) on whose behalf Customer is licensing or purchasing Products as may be set forth in The Proposal or an Appendix thereto.**
- 1.4. "Products" shall mean collectively the Services and Deliverables as set forth in The Proposal.**
- 1.5. "The Proposal" shall mean the main document of the Agreement, setting forth the Product descriptions and specific terms and conditions pertaining to specific Products.**
- 1.6. "Services" shall mean the services to be performed by GEHCF, as described in The Proposal.**
- 1.7. "Specific T&C's" shall mean the specific Terms and Conditions, outside the scope of these T&C's, applicable to the Agreement as set forth in The Proposal.**



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### 2. AGREEMENT STRUCTURE, ORDER OR PRECEDENT & RESPONSIBILITIES

- 2.1. These T&Cs, together with the Specific T&C's, apply to GEHCF's provision of the Products as set forth in The Proposal.
- 2.2. From time to time, Products may be added to, amended or removed from this Agreement and these T&C's and the Specific T&C's may be varied by written agreement of the parties or pursuant to the terms of an applicable additional Proposal.
- 2.3. Should there be a conflict between these T&Cs and the Specific T&C's, then the Specific T&C's shall take precedent.
- 2.4. The parties agree that this constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter of this Agreement, and supersedes any and all prior agreements and understandings between the parties pertaining to such subject matter.
- 2.5. Additional or different terms in any purchase order submitted by Customer shall not become part of this Agreement.
- 2.6. GEHCF's performance of its obligations is subject to Customer's performance of any Customer responsibilities, including those set out in The Proposal and/or any Appendix thereto, in a timely and effective manner. In addition, Customer shall, without being held to perform any of the obligations of GEHCF under this Agreement, provide GEHCF with any such co-operation as GEHCF may reasonably require, (this includes, but is not limited to, ensuring accessibility to any sites and facilities as well as data-files, documentation and/or information and ensuring timely availability of appropriately qualified personnel of Customer in relation thereto), and, generally, not act in any manner that would unreasonably hinder GEHCF in the performance of any of its obligations under this Agreement. In addition Customer shall ensure proper safety conditions for GEHCF staff during the provision of the Services and in particular ensure that, prior to the provision of any Services, the Customer's site (and the relevant equipment) shall be suitably clean and exempt from potentially infected materials. GEHCF's personnel may, without incurring any liability, suspend Services if they consider that there is a risk to their safety and health.

### 3. CUSTOMER CONFIDENTIAL INFORMATION

- 3.1. GEHCF agrees to keep in confidence all information relating to Customer's business to which GEHCF may have access as a result of performing its obligations under this Agreement. Customer shall provide all information to GEHCF in a format that preserves the confidentiality of patient-level data (e.g. by deleting or encrypting patient-identifiable information).
- 3.2. Notwithstanding the foregoing, Customer expressly consents to the use by GEHCF of any performance data generated by or contained in the Products, provided that such use shall be in accordance with all applicable laws and regulations and in a manner that will maintain confidentiality.

### 4. GEHCF CONFIDENTIAL & PROPRIETARY INFORMATION



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- 4.1. All Products, and all information, data, designs, patents, copyrights, trademarks, trade secrets, methodologies and any other intellectual property related thereto, (collectively, the “Proprietary Information”) are the property of GEHCF. Except to the extent that GEHCF grants rights to Customer to use the Proprietary Information pursuant to this Agreement, GEHCF shall retain all rights to the Proprietary Information and no license to Customer under any patent, copyright, trademark or other intellectual property right of GEHCF is either granted or implied by Customer’s receipt of any Proprietary Information. Notwithstanding the above and except as may be otherwise modified or further restricted by any provision of The Proposal, upon full payment in accordance with Section 6 of the respective invoices submitted by GEHCF to Customer in respect of The Proposal, GEHCF grants to Customer a perpetual, non-transferable license to use the reports and documents generated by GEHCF pursuant to such Proposal and delivered to Customer (the “Reports and Documents”) solely for the management of Customer’s business operations. Customer will have the right to use, reproduce, and adapt the Reports and Documents for such purpose, but shall not market, sell, sublicense, distribute, or disclose all or any portion of the Reports and Documents to any third party without GEHCF’s prior written consent. Customer will retain ownership of any data specific to Customer’s employees or business operations contained in the Reports and Documents.
  - 4.2. Customer agrees not to, and shall ensure that its employees shall not, sell, lease, assign or otherwise transfer, disclose or make available, in whole or in part, any portion of the Proprietary Information or the terms of this Agreement, and Customer shall prevent, and shall ensure that its employees shall also prevent, disclosure of any part of the Proprietary Information or the terms of this Agreement to any employee or third party for any reason, except for disclosure for internal use by a Participating Facility.
  - 4.3. Customer’s duties and obligations that are included in this Section 4 shall survive any termination of this Agreement and/or Customer’s right and license to use a Product.
  - 4.4. Nothing contained in this Agreement shall be construed as precluding GEHCF from independently developing ideas, negotiating with, or entering into any agreement with others relating to the general subject matter of this Agreement.
5. DATA PROTECTION
- 5.1. The Customer shall make all reasonable endeavours to ensure that patient data or images (“patient personal data”) are anonymised before they are provided or made accessible to GEHC, such that they are not considered “personal data” as defined under applicable data protection laws. Where possible, such anonymisation should include the removal of all data elements that would reasonably likely enable GEHCF to identify the Customer’s patients, such as: patient name, identification number, date of birth or diagnostic information.
  - 5.2. The Customer has the sole and exclusive authority to determine the purposes and means of the processing of patient personal data provided to or accessible by GEHCF in the context of the Agreement, and shall comply with applicable data protection laws.
  - 5.3. GEHCF undertakes to keep patient personal data confidential and shall process such data only for purposes of providing the Services in accordance with the Customer’s





## Terms and Conditions for Medcurrent and GE Healthcare Partners

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instructions under this Agreement or authorizations given to GEHCF in the framework of other agreements concluded with the Customer.

- 5.4. GEHCF shall implement technical and organizational measures to protect patient personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access. GEHCF shall restrict access to patient personal data to GEHCF employees and service providers who need access for purposes of providing the Services and inform those having access to patient personal data of the relevant confidentiality and security requirements. Elements under Customer control which contribute to a secure environment for data processed by networked Equipment, such as the Customer's and the telecommunication providers' own networks, and not within the scope of GEHCF's responsibility. GEHCF encourages Customer to employ industry best practices including isolating Equipment and related networks from other Customer enterprise networks and from the internet via appropriate firewalls, providing active user password management and establishing ongoing processes to monitor network traffic to identify and address unauthorized access.
  - 5.5. On the termination of the Agreement, GEHCF shall, at the choice of the Customer, return all patient personal data received to the Customer or shall destroy such data, unless any legislation imposed upon GEHC prevent it from doing so. In that case, GEHC warrants that it will not actively process the personal data anymore.
  - 5.6. Prior to and during the delivery of the Services defined in The Proposal, the Customer may provide GEHC with personal data relating to patients, healthcare professionals, the Customer's personnel or other individuals involved in the use of the Services, the processing of which may be subject to applicable data protection laws. The Customer consents to the processing of this personal data by GEHC, its affiliates and their respective Service Suppliers, and shall, to the extent legally required, provide appropriate notice to each individual and or obtain from each individual his or her consent for the processing of his or her personal data, for the following specific purposes: (i) performing the Services; (ii) providing information to Customer's personnel about GEHC offers, products and services relevant to the Services under this Agreement, (iii) transferring personal data to recipients in countries outside of the European Economic Area, and (iv) satisfying legal or regulatory requirements.
  - 5.7. In connection with the Services under this Agreement, GEHC may transfer personal data relating to patients, healthcare professionals, the Customer's personnel or other individuals involved in the use of the Services to recipients in countries outside of the European Economic Area, where the laws may not provide the same level of data protection as the country in which the data was initially collected. GEHC has taken steps to provide adequate protection with respect to personal data sent outside of the European Economic Area.
  - 5.8. The Customer agrees that GEHC may process certain de-identified and/or aggregated data it generates during the course of providing the Services, for the purposes of driving operational efficiency, benchmarking, product development, continuous improvement of the Equipment's performance or for other GEHC research and development purposes.
6. PRICE, INVOICES & CHARGES



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- 6.1. The price, excluding VAT, to be paid by Customer for the Products is set forth in The Proposal.
- 6.2. The Price as set forth in The Proposal may from time to time, be varied in accordance with article 2.2 of these T&C's
- 6.3. Within ten working days of the commencement of the assignment, the Customer will either provide GEHCF with a Purchase Order (PO) or confirm that a PO is not required to proceed. Such confirmation may be either in writing or documented in the Agreement Acceptance Appendix.
- 6.4. Unless otherwise specified in The Proposal, payment shall be made by Customer within thirty (30) days from the date of invoice. In the event that Customer fails to make payment within this period, the parties agree that GEHCF may charge Customer, without giving prior notice, interest on late payments at the rate of 7% per annum above the Bank of England base rate or the highest amount allowed by law, whichever is less, on any and all late payments. Unless otherwise specified in The Proposal, all prices mentioned in this Agreement are in Pounds Sterling.
- 6.5. The parties agree that the prices set forth in the Agreement do not include any sales or use taxes, any duties, any similar assessments, or any other tax imposed on any party by virtue of this Agreement, all of which, excluding only taxes based on GEHCF's income, shall be invoiced by GEHCF as incurred, and shall be the sole liability of and payable by Customer.
- 6.6. Unless specified otherwise in The Proposal, GEHCF shall invoice Customer in addition for all travel, living and other out-of-pocket expenses incurred by GEHCF in the course of performing and delivering the Products. Travel costs shall be invoiced to Customer as they are incurred and shall be payable within thirty (30) days of date of invoice.
- 6.7. Any work requested by Customer that falls outside the scope of work included in The Proposal shall be added to the scope of work in the manner prescribed by article 2.2 and shall be invoiced to Customer according to the amendments thereby agreed. Work which for any reasons cannot be included in a variation to the Agreement shall be subject to a separate Proposal and Agreement between GEHCF and the Customer.
- 6.8. Any additional work by GEHCF that may result from any failure by Customer to perform its responsibilities according to this Agreement, including stand-by time for delays caused by Customer that extend the implementation of the Products in excess of thirty (30) calendar days beyond contract schedule established in the Proposal shall be invoiced separately to Customer at GEHCF's then current standard rate.
- 6.9. Any work requested by Customer that falls outside the scope of work included in The Proposal, or any additional work by GEHCF that may result due to any failure by Customer to perform its responsibilities according to this Agreement, including stand-by time for delays caused by Customer that extend the implementation of the Products in excess of thirty (30) calendar days beyond contract schedule established in The Proposal shall be invoiced separately to Customer at GEHCF's then current standard rate.

## 7. LIMITED WARRANTY



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- 7.1. GEHCF undertakes to perform the Services in a professional and workmanlike manner. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, and GEHCF's sole liability, GEHCF shall, at its option, re-perform the non-conforming Services or refund to Customer the fees paid for the non-conforming Services.
- 7.2. The warranty set forth above is in lieu of all other warranties, express or implied, including the implied warranty of fitness for a particular purpose or of merchantability.

### 8. FORCE MAJEURE

Neither party shall be liable to the other for failing to fulfil any obligation under this Agreement, other than payment obligations, if such failure is caused by an event that is beyond such party's reasonable control and that is not caused by its fault or negligence, including without limitation, acts of God, acts of war, fires, strikes, lightning, floods, epidemics, civil unrest, power shortages, equipment failure and delays in transportation.

### 9. LIMITATION OF LIABILITY

- 9.1. Notwithstanding any other provision of this Agreement, neither of the parties shall be liable to the other for special, punitive, incidental, indirect or consequential damages (even if the defaulting party is advised of the possibility of such damages) however occasioned.
- 9.2. Neither party shall have any tort liability to the other party in connection with this Agreement except to the extent either party commits an act of gross negligence or wilful misconduct.
- 9.3. Customer agrees that in no event shall GEHCF be liable for damages regarding any claim or other matter arising under The Proposal in excess of an aggregate of all the fees that Customer shall have paid to GEHCF under the applicable Proposal during the then previous twelve (12) months.
- 9.4. Customer accepts responsibility for checking the quality of the Products (including that of any related information provided by GEHCF), for the proper implementation thereof and for the consequences of their use and for ensuring that its implementation of the strategies and recommendations provided by GEHCF complies with all applicable laws. The Products should not be construed as professional advice (including clinical, medical or otherwise) on any particular set of facts or circumstances and neither as the sole basis upon which any specific conduct is recommended or undertaken, but are intended to serve Customer as a guide only. Customer is advised to consult with its medical staff with respect to matters that involve clinical practice and patient treatment, and with other appropriate professionals concerning legal, tax, or accounting issues, before implementing any strategies or other recommendations provided by GEHCF hereunder.
- 9.5. Notwithstanding any Products directed toward improving clinical outcomes and clinical quality, Customer agrees that it is solely responsible for such clinical outcomes and clinical quality, and that in no event shall GEHCF's provision of the Products in connection therewith be deemed the rendering of medical advice or services by GEHCF. GEHCF shall have no liability for any damage, loss, charge, claim, liability, expense, award, or fine



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arising out of, based upon, relating to, or resulting from any Products directed toward improving clinical outcomes and clinical quality.

- 9.6. Customer shall indemnify, defend, and hold harmless GEHCF and any of its directors, officers, employees, agents, shareholders, affiliates, consultants, or representatives from and against any and all claims, demands, losses, expenses (including reasonable attorneys' and professional fees and expenses), damages, charges, liabilities, awards, or fines arising out of, based upon, relating to, or resulting from Customer's or Participating Facilities' implementation and/or use of any Products except as provided under Section 10.

### 10. INDEMNIFICATION FOR INFRINGEMENT

- 10.1. GEHCF undertakes to make every effort to ensure that the Products do not infringe on any intellectual property rights of a third party. If GEHCF determines that any Product infringes, or is likely to infringe, on an intellectual property right of a third party, GEHCF will, at its expense, (i) procure for Customer the right to continue using such Product; (ii) modify, re-perform, or replace such Product so that it is no longer infringing; or (iii), if neither (i) nor (ii) above are commercially reasonable, refund the fees paid by Customer for such infringing Product.
- 10.2. The rights and obligations set forth in this Section 10 are Customer's sole and exclusive remedy, and GEHCF's sole liability, for any infringement claim.
- 10.3. Notwithstanding the above, GEHCF shall have no liability for any loss, cost, claim, or expense caused by (i) alteration of any Product provided hereunder by any party other than GEHCF; (ii) any loss, expense, or liability resulting from any infringement that is a consequence of GEHCF's compliance with specifications submitted by Customer; (iii) the use of any Product in combination with products or services not licensed or sold to Customer by GEHCF or failure of any third party to perform in connection with such combined offerings; or (iv) continuation of the allegedly infringing activity by Customer after being notified in writing thereof.

### 11. SUBCONTRACTORS

GEHCF shall be entitled to subcontract part of the Services to a third party. Notwithstanding this, GEHCF shall remain responsible and liable to the Customer for the obligations performed by such subcontractor.

### 12. SUCCESSORS & ASSIGNS

This Agreement shall be binding upon GEHCF and Customer and shall inure to the benefit of each party and its respective permitted successors and assigns. Customer shall not assign or otherwise transfer this Agreement without the prior written consent of GEHCF, which consent shall not be unreasonably withheld. GEHCF shall not assign or otherwise transfer this Agreement without the prior written consent of Customer, except that GEHCF may assign this Agreement to an affiliate of GEHCF without obtaining such consent. Customer may not reinstall, transfer or use any Product from any Participating Facility for the benefit of another facility without GEHCF's prior written consent. Any attempted assignment or transfer in violation of this Section 12 shall be void and of no force or effect.

### 13. MISCELLANEOUS



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### 13.1. Invalidity:

If any of the provisions of this Agreement, or portions thereof, are deemed to be invalid under any applicable laws, they are to that extent to be deemed omitted.

### 13.2. Waiver:

Neither party shall be deemed to have waived any term or provision of this Agreement, nor consented to any breach of this Agreement, unless such party shall waive such term or provision, or shall consent to such breach, in a writing signed by the party who is waiving such term or provision or is consenting to a breach.

### 13.3. Independent Contractor:

Nothing contained in this Agreement is intended nor shall it be construed as creating a partnership or joint venture between GEHCF and Customer, nor is anything contained in this Agreement intended to be construed as creating or requiring any on-going or continuing relationship or commitment between GEHCF and Customer, except as specifically set forth in this Agreement.

### 13.4. Reference:

Customer agrees that GEHCF is allowed, in good faith, to use the Customer as a reference in its marketing materials, its website and case studies during the term of this Agreement and thereafter, unless the Customer notifies GEHCF otherwise in writing. In this regard, the Customer agrees that GEHCF shall be entitled to use the Customer's logo, subject to GEHCF complying with any guidelines on use that the Customer provides to GEHCF.

### 13.5. Amendment:

This Agreement may be amended only in a writing signed by both parties.

### 13.6. Governing Law & Jurisdiction:

This Agreement shall be governed by the laws of England. Should any litigation arise from the validity, interpretation, performance or termination of this Agreement, and should the parties fail to reach an amicable out-of-court settlement, it is explicitly agreed that its settlement shall fall within the exclusive territorial competence of the courts of England.

### 13.7. Survival:

The terms of this Agreement that by their nature are intended to survive its expiration will continue in full force and effect after the expiration of the Agreement.

### 13.8. Headings:

All headings used in this Agreement are for convenience only and shall not be considered in construing the terms of this Agreement.

January 2019

