

**AMENDMENT 2 TO
MASTER AGREEMENT**

Between

San Bernardino County on behalf of Arrowhead Regional Medical Center

And

Varian Medical Systems, Inc.

WHEREAS, San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California operating a hospital or surgery center, on behalf of Arrowhead Regional Medical Center (“**Customer**”) and Varian Medical Systems, Inc. (“**Varian**”) executed a Master Agreement on August 24, 2021 (the “**MA**”);

WHEREAS, the parties mutually desire to modify the MA as set forth in this Amendment 2 to the Agreement (“**Amendment**”);

NOW, THEREFORE, the Parties agree as follows:

1. The definitions set forth in the Agreement shall remain in full force and effect and shall apply to this Addendum except to the extent that such definitions are modified in this Amendment.

2. The Term set forth in Section 5.1 of the MA is extended through June 30, 2027. The parties are modifying the Term solely to facilitate the parties’ extension of existing service agreements. Accordingly, no new orders may be placed referencing this MA during the Term except as mutually agreed to by the parties in writing.

3. In Exhibit B (Terms and Conditions of Sale), the payment deadline for invoices, as set forth in Sections 3.1 (Payment Due Dates and Late Payments) and 4.2.2 (Termination Where Product Costs Are Included and Amortized) is changed from 45 days from the date of receipt of the invoice to 30 days from the date of receipt of the invoice.

4. In Exhibit B, in Section 3.3 (Services) the following is inserted at the beginning of this Section: “Varian may invoice Customer up to thirty (30) days prior to the start of rendering Services. If a Support Agreement states that the Services will be billed in increments (such as annual or quarterly), then Varian may invoice Customer up to thirty (30) days prior to the start of each applicable incremental period.”

5. In Exhibit B, Section 12.2 (Direct Damages) is replaced in its entirety with the following:

12.2. Direct Damages. SUBJECT TO APPLICABLE LAW, AND EXCEPT FOR INDEMNITY OBLIGATIONS UNDER SECTION 10 (INTELLECTUAL PROPERTY INFRINGEMENT), THE TOTAL AGGREGATE LIABILITY OF VARIAN, ITS SUPPLIERS AND LICENSORS, AND CUSTOMER FOR DAMAGES OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT UNDER ANY QUOTATION, SHALL BE LIMITED IN PROPORTION TO EACH PARTY’S RELATIVE FAULT, AND FOR SERVICE QUOTATIONS SHALL NOT EXCEED THE TOTAL AMOUNTS PAID DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT SHALL EITHER PARTY’S TOTAL

LIABILITY UNDER THE MA EXCEED \$3 MILLION. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE EXISTENCE OF ONE OR MORE CLAIMS OR PARTIES WILL NOT ENLARGE THE LIMIT

6. In Exhibit B, Section 26 (Insurance), subsection 26.11 is deleted in its entirety and replaced with the following:

26.11 Varian is a wholly-owned subsidiary of Siemens Medical Solutions, Inc. dba Siemens Healthineers (“**Siemens Healthineers**”). Varian is covered by insurance policies executed in the name of Siemens Healthineers, which shall apply to this MA. During the term of this Agreement, Siemens Healthineers agrees to maintain at least the following insurance coverage and to provide Customer with certificates of insurance evidencing such coverage upon written request:

1. General Liability

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

2. Business Auto Liability

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

3. Worker’s Compensation Insurance and Employer’s Liability Insurance

Siemens Healthineers agrees to keep in force statutory coverage for occupational injuries with minimum statutory limits and US\$500,000 employer’s liability applicable in jurisdictions of contract performance.

7. The Service and Support Schedule attached as Exhibit 1 to this Amendment is incorporated by this reference.

8. The Training Schedule attached as Exhibit 2 to this Amendment is incorporated by this reference.

9. All other provisions of the Agreement that are not specifically modified in this Amendment shall remain in full force and effect. In the event of any inconsistency between the Agreement and this Amendment, the terms of this Amendment will prevail. Each party will be responsible for its own costs and expenses in connection with the negotiation of this Amendment. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic

signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized representatives on the date(s) shown below.

VARIAN MEDICAL SYSTEMS, INC.

**SAN BERNARDINO COUNTY,
on behalf of Arrowhead Regional
Medical Center**

By:
Title:

Date: _____

By: Dawn Rowe
Title: Chair, Board of Supervisors

Date:

VARIAN MEDICAL SYSTEMS, INC.

By:
Title:

Date: _____

EXHIBIT 1 TO
AMENDMENT 2 TO
MASTER AGREEMENT

SERVICE AND SUPPORT SCHEDULE
(Form MGM 1580AF)

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

1. Definitions

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

2. Mandatory Safety Releases

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

3. Updates

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

4. Upgrades and Versions

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

5. Telephone Support

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

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

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

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

6. Remote Diagnostic and Remedial Support

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

7. On-Site Support

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

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

8. Periodic Maintenance Inspections

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

9. Severity Levels and Response Times

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

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

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

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

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

will provide contact persons to respond to the different severity level issues. Varian will notify Customer promptly if it is unable to resolve any Severity Level 1, 2 or 3 issue.

10. Parts

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

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

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

11. Customer Responsibilities

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

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

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

12. Service Tools

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

13. Exclusions from Services

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

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

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

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

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

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

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

EXHIBIT 2 TO
AMENDMENT 2 TO
MASTER AGREEMENT

TRAINING SCHEDULE
(Form RAD 10439)

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

1. Term

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

2. Office Space, Services, and Equipment

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

3. Expenses

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

4. Payment

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

5. Intellectual Property

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

6. Applicable Training

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

7. General Rules

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

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

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

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

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

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

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

8. Forfeiture and Expiration

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

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