



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

July 10, 2017

James Roskelly  
1200 North Elm Street  
Greensboro, NC 27401-1020

**Exempt from Review – Replacement Equipment**

**Record #:** 2318  
**Facility Name:** Alamance Regional Medical Center  
**FID #:** 954565  
**Business Name:** The Moses H. Cone Memorial Hospital  
**Business #:** 1811  
**Project Description:** Replace existing linear accelerator at Alamance Regional Medical Center  
**County:** Alamance

Dear Mr. Roskelly:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter dated July 6, 2017, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(f). Therefore, you may proceed to acquire without a certificate of need the Varian TrueBeam linear accelerator to replace the Varian 21 EX Silhouette, Serial Number H140058, located on the main campus of Alamance Regional Medical Center. This determination is based on your representations that the existing unit will be sold or otherwise disposed of and will not be used again in the State without first obtaining a certificate of need if one is required.

Moreover, you need to contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

It should be noted that the Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this office and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Celia C. Inman  
Project Analyst

Martha J. Frisone  
Chief, Healthcare Planning and  
Certificate of Need Section

cc: Construction Section, DHR  
Paige Bennett, Assistant Chief, Healthcare Planning, DHR  
Acute and Home Care Licensure and Certification Section, DHR

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER



July 6, 2017

Ms. Martha J. Frisone, Chief  
Ms. Celia C. Inman, Project Analyst  
Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation, NC DHHS  
2704 Mail Service Center  
Raleigh, NC 27699-2704



Re: Linear Accelerator Replacement at Alamance Regional Medical Center  
License# H0272 / FID: 954565

Dear Ms. Frisone and Ms. Inman:

I am writing to you today to provide prior written notice that Alamance Regional Medical Center (ARMC) intends to replace one (1) linear accelerator at Cone Health Cancer Center at Alamance Regional (CHCC at AR) pursuant to NCGS § 131E-184(f). This equipment replacement project will not increase the total inventory of linear accelerators owned and operated by ARMC or Cone Health.

The existing equipment is a Varian 21 EX Silhouette purchased by ARMC in 2003. Since ARMC purchased the equipment over 10 years ago, the equipment has reached the end of its useful life. The existing accelerator is technologically outdated and cannot perform a range of complex treatments required to meet patient and physician demand for safer, more effective radiation therapy services. Additionally, in the last fiscal year, the existing linear accelerator experienced more than 150 hours of downtime because of equipment malfunctions, resulting in rescheduling of radiation treatment sessions for more than 50 patients. Moreover, the proposed Varian TrueBeam replacement linear accelerator will improve automation of the treatment process, resulting in shorter treatment times, and will provide the most effective treatments available while minimizing negative side effects and discomfort for patients. Please see *Attachment 1* for a comparison of the features of the existing and proposed replacement equipment.

The capital cost for the Varian TrueBeam linear accelerator is \$3,665,187. *Attachment 2* includes a quote from Varian. Pages 4 and 20 indicate that Varian will remove and

Ms. Martha J. Frisone  
Ms. Celia C. Inman  
July 6, 2017  
Page 2

dispose of the existing linear accelerator. The total capital cost for the project is estimated to be \$4,460,187, including \$785,000 of construction costs, which were estimated by Cone Health Construction Management based on their experience with similar projects. A full capital cost breakdown is included in *Attachment 3*.

ARMC's proposed project meets the requirements set forth in NCGS § 131E-184(f). First, ARMC, located at 1240 Huffman Mill Road, Burlington, NC 27215, is a main campus as defined in NCGS § 131E-176(14n). Radiation oncology services are provided on the campus at the same address. ARMC is licensed as an acute care hospital by the Acute and Home Care Licensure and Certification Section of DHR. Please see *Attachment 4* for relevant pages from ARMC's 2017 Hospital License Renewal Application confirming the main campus address and operation of two (2) linear accelerators. Preston Hammock, President, ARMC and Senior Vice President, Cone Health, exercises operational and financial control of ARMC. His office is located in the Administration suite at ARMC. *Attachment 5* includes a campus map of ARMC showing the hospital campus, the administration suite, and the radiation oncology area. Second, ARMC holds a Certificate of Need for this linear accelerator. Please see *Attachment 6* for a copy of the CON for Project ID# G-6590-02 issued to Alamance Regional Medical Center to acquire the relevant linear accelerator. Finally, this letter serves as prior written notice to the Department.

I look forward to receiving confirmation of the exempt nature of this project. Please feel free to reach out to me with any questions you have.

Sincerely,

  
James Roskelly  
Executive Vice President  
Strategic Development

JR/jc

Enclosures

cc: Preston Hammock, President, ARMC and Senior Vice President, Cone Health  
Mario Singleton, Executive Director, CHCC at AR  
B.J. Sintay, Chief Physicist, Cone Health Cancer Center  
Ron Galloway, Director, Cone Health Construction Management

**Attachment 1**  
**Equipment Comparison Form**

EQUIPMENT COMPARISON

	EXISTING EQUIPMENT	REPLACEMENT EQUIPMENT
Type of Equipment (List Each Component)	Linear Accelerator	Linear Accelerator
Manufacturer of Equipment	Varian	Varian
Tesla Rating for MRIs	N/A	N/A
Model Number	21 EX Silhouette	TrueBeam
Serial Number	H140058	TBD
Provider's Method of Identifying Equipment	Serial Number	Serial Number
Specify if Mobile or Fixed	Fixed	Fixed
Mobile Trailer Serial Number/VIN #	N/A	N/A
Mobile Tractor Serial Number/VIN #	N/A	N/A
Date of Acquisition of Each Component	September 2002	10/14/2017
Does Provider Hold Title to Equipment or Have a Capital Lease?	Title	Title
Specify if Equipment Was/Is New or Used When Acquired	New	New
Total Capital Cost of Project (Including Construction, etc.) <Use Attached Form>	N/A	See attached
Total Cost of Equipment	N/A	\$3,665,187
Fair Market Value of Equipment	\$0	\$3,665,187
Net Purchase Price of Equipment	N/A	\$3,665,187
Locations Where Operated	Alamance Regional Medical Center	Alamance Regional Medical Center
Number Days In Use/To be Used in N.C. Per Year	365	365
Percent of Change in Patient Charges (by Procedure)	0	0
Percent of Change in Per Procedure Operating Expenses (by Procedure)	0	0
Type of Procedures Currently Performed on Existing Equipment	Photon therapy including 3D/IMRT; Electron therapy	N/A
Type of Procedures New Equipment is Capable of Performing	N/A	Photon therapy including 3D/IMRT/Arcs; Electron therapy; Stereotactic radiotherapy; Advanced IGRT

**Attachment 2**  
**Equipment Quote**

## Custom System Proposal

Quotation Number - 2016-24406-4-A1

The pricing and configuration contained within quotation 2016-24406-3 is confidential and only intended for Alamance Regional Medical Center. Disclosure or release to others outside of Alamance Regional Medical Center either manually or electronically, without the prior written consent of Varian Medical Systems is strictly prohibited.

### AMENDED QUOTATION

REMOVE from Line Item 6.1 Advantage Contract Credits (SSC001004001), Qty 30  
[REDUCE Advantage Contract Credits (SSC001004001) in Line Item 6.1 to Qty 6]  
OLD CONTRACT PRICE: \$3,680,032.00  
NEW CONTRACT PRICE: \$3,665,187.00

PROVIDED TO REMEDY ERROR ON QUOTATION 2016-24406-4

Alamance Regional Medical Center ("Customer")  
 Preston Hammock  
 1240 HUFFMAN MILL RD  
 BURLINGTON, North Carolina 27215 United States  
 Tel : (336) 538-7452  
 Fax : (336) 832 - 2360  
 Email : preston.hammock@conehealth.com

VMS Inc, Oncology Systems  
 Jeffrey Boone  
 US District Sales Manager  
 3290 Northside PKWY Suite 400  
 Atlanta, GA 30327 US  
 Tel : 704-737-9395

TrueBeam replacement of Varian 21EX SN H140058

**Quote Information**

Quotation Number : 2016-24406-4-A1  
 Quotation Valid Until : June 15, 2017  
 Customer Requested Delivery Date : 90 Days ARO

**Sales**

Incoterms : US2: FOB: Destination  
 Payment Terms : 30 days net  
 Shipment : 85.00%  
 Acceptance : 15.00%

For orders equal or less than \$75K, 100% upon shipment, net 30.

**Quotation Total**

Quotation Total : US \$3,665,187.00  
 Contingent on Board Approval on 2017-04-15 00:00:00

**Terms and Conditions**

This quotation shall be governed by: (a) Terms and Conditions of Sale - Form RAD 16520; (b) any terms and conditions contained within the quotation text related to the specific products or services identified on this quotation; and (c) any other Varian terms and conditions or separate agreements included along with this quotation, except that (a) to (c) shall not apply if and to the extent a separate, signed written agreement is in effect between the customer/purchaser and Varian that governs the purchase and sale of the products, software, support and/or services set forth in this quotation.

For and on behalf of Customer :

For and on behalf of Varian Medical Systems :

Name : Preston Hammock

Name : Jeffrey Boone

Date :

Date :

Title : Lead Clinical Physicist

Title : US District Sales Manager



## Amendment Info



OMNI Quote Number:	N/A
Amended Delta:	\$-14,845
Contract Total:	\$3,665,187
Old Contract Total:	\$3,680,032

## Quotation Summary



Offered Products (Sales)	
Original Configuration - TrueBeam	Included
Original Configuration - TrueBeam Upgrade	Included
Original Configuration - TrueBeam Developer Mode For New Truebeam	Included
Original Configuration - Advantage Credits	Included
Original Configuration - Travel and Lodging for 8 participants	Included
Original Configuration - Advantage Credits	Included
Original Configuration - Adhoc	Included
Original Configuration - TrueBeam Comprehensive package H191533	Included
Original Configuration - 43x43 imager H191533	Included
Original Configuration - Advantage Credits	Included
Original Configuration - Trade-In and Removal of Varian 21EX SN H140058	Included
Original Configuration - Commissioning Services	Included
Amendment - REDUCE Advantage Contract Credits (SSC001004001) in Line Item 6.1 to quantity 6	Included

Item	Description	Qty
Section 1	Original Configuration - TrueBeam	
1.1	NLS: English	1
1.2	<b>Rapid Arc Treatment Delivery License</b>  Capability to simultaneously modulate aperture shape, dose rate, and gantry angle and speed continuously for up to 360 degrees of gantry rotation, with delivery as an arc beam.  When coupled with RapidArc Planning and a RapidArc-compatible information system, provides the capability to generate IMRT-quality dose distributions in a single, optimized arc around the patient. When coupled with the Optical Imager, provides the capability for Gated RapidArc.  <b>FEATURES:</b> <ul style="list-style-type: none"> <li>• Simultaneous modulation of MLC aperture shape, beam dose rate, and gantry angle and rotation speed during beam delivery</li> <li>• Supports dynamic jaw tracking and collimator rotation with supporting treatment planning system</li> <li>• Provides IMRT-quality dose distributions in a single arc delivery in less than 2 minutes</li> </ul>	1
1.3	<b>6/6 MV (BJR 11/17)</b>  40 cm x 40 cm maximum field size, dose rate range 0-600 MU/Min	1
1.4	<b>10/10 MV (BJR 11/17)</b>  40 cm x 40 cm maximum field size, dose rate range 0-600 MU/Min	1
1.5	<b>15/16 MV (BJR 11/17)</b>  40 cm x 40 cm maximum field size, dose rate range 0-600 MU/Min	1
1.6	<b>6 MeV, 0-1000 MU/min</b>  25 cm x 25 cm maximum field size, dose range rate 0-1000 MU/Min	1
1.7	<b>9 MeV, 0-1000 MU/min</b>  25 cm x 25 cm maximum field size, dose range rate 0-1000 MU/Min	1
1.8	<b>12 MeV, 0-1000 MU/min</b>  25 cm x 25 cm maximum field size, dose range rate 0-1000 MU/Min	1
1.9	<b>15 MeV, 0-1000 MU/min</b>	1

Item	Description	Qty
	25 cm x 25 cm maximum field size, dose range rate 0-1000 MU/Min	
1.10	<b>18 MeV, 0-1000 MU/min</b>  25 cm x 25 cm maximum field size, dose range rate 0-1000 MU/Min	1
1.11	<b>6X High Intensity Mode</b>  40cm x 40cm maximum field size, dose rate range 400-1400 MU/Min  Note: Portal Dosimetry (purchasable option) for High Intensity Mode requires 43 x 43 MV Imager on TrueBeam s/n > 2000 ARIA v 13 or higher	1
1.12	<b>10X High Intensity Mode</b>  40cm x 40cm maximum field size, dose rate range 400-2400 MU/Min  Note: Portal Dosimetry (purchasable option) for High Intensity Mode requires 43 x 43 MV Imager on TrueBeam s/n > 2000 ARIA v 13 or higher	1
1.13	<b>6 MeV HDTSE, 0-2500 MU/min</b>	1
1.14	<b>9 MeV HDTSE, 0-2500 MU/min</b>	1
1.15	<b>Low-X Imaging 2.5Mv</b>	1
1.16	<b>RPC Lung Phantom Voucher Option</b>  For customers who purchase an Advanced IGRT and Motion Package, an MDADL service voucher will be provided to allow that customers to practice their end-to-end lung SBRT workflow and verify that they are able to deliver treatment according to their SBRT treatment plan onto a Lung phantom.	1
1.17	<b>Respiratory Motion Mgmt Package</b>  Stereoscopic optical imaging system for monitoring patient respiratory motion and 3D patient position  Performance per RAD 10094  Includes: - TrueBeam Optical Imager - Respiratory Gating License - Dynamic kV and MV Imaging	1

Item	Description	Qty
	Pre-Requisite: - kV Imaging	
1.18	<b>INCL ED: CL222 Respiratory Gating</b>  <b>Description:</b> The Respiratory Gating course provides training for physicists and therapists, to obtain knowledge of principles and practices of respiratory gating in radiation oncology for clinical implementation.  <b>Features:</b> <ul style="list-style-type: none"> <li>• Includes support for TrueBeam Platform</li> <li>• Includes Tuition and Materials for ONE person</li> <li>• Length: 2 days</li> <li>• Offer is valid for 18 months after installation of product</li> </ul> <b>Prerequisites:</b> <ul style="list-style-type: none"> <li>• None</li> </ul> <b>Customer Responsibilities:</b> <ul style="list-style-type: none"> <li>• Customer is responsible for all travel expenses (airfare, hotel, rental car, meals and travel incidentals)</li> </ul> <b>Notes:</b> <ul style="list-style-type: none"> <li>• Training is non-refundable and non-transferable</li> </ul>	1
1.19	<b>Existing Baseframe 52" Fixed Floor</b>  Use of existing baseframe may require modification.	1
1.20	<b>STD TRNG: TrueBeam On-Site Support</b>  - Includes support for TrueBeam/Edge - Support is non-refundable and non-transferable - Offer is valid for 18 months after purchase  On site follow-up review of the TrueBeam/Edge components to include imaging and motion management for support of patient treatment. The emphasis of this support is to ensure that the therapists that attended the TrueBeam Operations (on-site) training are able to operate the TrueBeam in a safe and effective manner in the clinical environment.  PREREQUISITES: TrueBeam/Edge Operations (on-site) training	1
1.21	<b>INCL ED: TB201 TrueBeam for Physicists</b>  The following Education Course is included with the purchase of a TrueBeam/Edge.  - Includes Tuition and Materials for ONE person - Customer is responsible for all travel expenses (airfare, hotel, rental car, meals and travel incidentals) - Training is non-refundable and non-transferable - Offer is valid for 18 months after installation of product  <b>TrueBeam Physics and Administration</b> TrueBeam Physics and Administration course is designed for those personnel responsible for the acceptance, commissioning and QA program development of the TrueBeam in the clinical environment. It is directed primarily towards Medical Physicists. It is recommended that the student attend the TrueBeam Physics and Administration course shortly before the installation of the TrueBeam.	1

Item	Description	Qty
	<p>The course provides instruction of the basic delivery components, basic imaging components and a general overview of the motion management system components. Machine commissioning, calibration, QA and the responsibilities of Customer Acceptance Procedure (CAP) of the machine are included. The course subject matter is presented from a clinical use perspective. The primary emphasis is on the overall commissioning, calibration, and QA of the TrueBeam and its components. Extensive hands-on laboratory exercises are included.</p> <p>PREREQUISITES: None Length: 4 days</p>	
1.22	<p><b>INCL ED: TB101 TrueBeam Operations</b></p> <p>The following Education Course is included with the purchase of a TrueBeam/Edge:</p> <ul style="list-style-type: none"> <li>- Includes Tuition and Materials for ONE person</li> <li>- Customer is responsible for all travel expenses (airfare, hotel, rental car, meals and travel incidentals)</li> <li>- Training is non-refundable and non-transferable</li> <li>- Offer is valid for 18 months after installation of product</li> </ul> <p>TrueBeam Operations is a course designed for those personnel responsible for the routine operation and clinical use of the TrueBeam. It is directed primarily towards Radiation Therapists. It is recommended that both students attend the TrueBeam Operations course shortly before clinical use and the commencement of patient treatments.</p> <p>The course provides instruction of the basic delivery components, basic imaging components and a general overview of the motion management system components. The course subject matter is presented from a clinical use perspective. The primary emphasis is on the overall understanding of the TrueBeam function and operation to include imaging and respiratory gating. Extensive hands-on laboratory exercises are included. The attendees of this class will be provided tools to allow them to instruct other clinical staff upon their return.</p> <p>PREREQUISITES: None Length: 4 days</p>	2
1.23	<p><b>Upper Wedge Set</b></p> <p>4-Way Wedge Set, including 15°, 30°, 45°, 60° wedges</p>	1
1.24	<p><b>VVS Accessory Verification</b></p> <p>Varian Verification System (VVS v. 1.0) is a system which provides the capability to verify accessory and patient identification through the use of a barcode scanning system.</p> <p>Features:</p> <ul style="list-style-type: none"> <li>• One barcode scanner</li> <li>• One barcode label printer</li> <li>• One package of labels for barcode printer</li> <li>• Accessory and patient verification license</li> </ul> <p>Prerequisites:</p> <ul style="list-style-type: none"> <li>• ARIA® Oncology Information Systems for Radiation Oncology v.13.MR1 or later maintenance releases of v.13</li> </ul> <p>Customer Responsibilities: None</p> <p>Notes: TrueBeam Queue does not support patient check in with barcode scanning.</p>	1

Item	Description	Qty
1.25	<p><b>LAP Apollo Green Room Laser Kit</b></p> <p>LAP Apollo Green Room Laser Kit</p> <p><b>FEATURES:</b></p> <ul style="list-style-type: none"> <li>- 1 Apollo Green Remote Controlled Ceiling Crosshair Laser</li> <li>- 2 Apollo Green Remote Controlled Lateral Crosshair Lasers</li> <li>- 1 Apollo Green Remote Controlled Sagittal Line Laser</li> </ul>	1
1.26	<p><b>Varian Intracranial SRS Pkg for TrueBeam</b></p> <p>The Varian Intracranial SRS package offers intracranial real time tracking benefits on the TrueBeam™ platform.</p> <p>The package includes:</p> <ul style="list-style-type: none"> <li>• Optical Surface Monitoring System for real-time tracking of external patient surface             <ul style="list-style-type: none"> <li>◦ System refresh rate optimized for tracking intracranial targets</li> <li>◦ Seamless integration with beam gating for out of threshold patient or target motion</li> <li>◦ SRS Phantom for QA</li> </ul> </li> <li>• Integrated Conical collimator Verification and Interlock system for electronic and automatic collimator verification with plan requirements             <ul style="list-style-type: none"> <li>◦ Includes 7 conical collimators of the following sizes: 4, 5, 7.5, 10, 12.5, 15 and 17.5 (all sizes in millimeters)</li> </ul> </li> </ul> <p>Pre-Requisites:</p> <ol style="list-style-type: none"> <li>1. TrueBeam System version 2.0 or higher</li> <li>2. Motion Management Interface for TrueBeam</li> <li>3. ARIA® Version 11.0 and above or MOSAIQ version 1.6 and above</li> <li>4. Eclipse™ Cone Planning</li> </ol>	1
1.27	<p><b>Eclipse Cone Planning in SRS Package</b></p> <p>Eclipse™ Cone Planning for planning cone-based treatments.</p> <p>Pre-Requisites (not included in this quote):</p> <ol style="list-style-type: none"> <li>1. One of the following:             <ol style="list-style-type: none"> <li>a) Varian Intracranial SRS Package or</li> <li>b) EDGE™ Full Body Radiosurgery System or</li> <li>c) EDGE™ Intracranial Radiosurgery System</li> </ol> </li> <li>2. An Eclipse Planner Desktop Software Package or higher software package must be on order or on-site. Each software package must be sold with an Eclipse Calculation workstation.</li> <li>3. In a Citrix environment, an Eclipse Calculation Workstation or a Framework Agent Server must be on order and must be purchased from Varian Medical Systems.</li> <li>4. Eclipse v.11 or higher must be on order or at site</li> </ol>	1
1.28	<p><b>INCL ED: OM101 Optical Surf Mon Sys</b></p> <p><b>Description:</b></p> <p>Varian Optical Surface Monitoring Systems Training will be provided on this product.</p> <p><b>Features:</b></p> <ul style="list-style-type: none"> <li>• Recommended Participants: Radiation Therapists and Physicists</li> <li>• Includes Tuition and Materials for TWO people</li> <li>• Offer is valid for 18 months after installation of product</li> </ul> <p><b>Prerequisites:</b></p> <ul style="list-style-type: none"> <li>• None</li> </ul>	1

Item	Description	Qty
	<p><b>Customer Responsibilities:</b></p> <ul style="list-style-type: none"> <li>Responsibilities depend on the region.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Training is non-refundable and non-transferable</li> </ul>	
1.29	<p><b>STD TRNG: Varian Optical Surface Monitor</b></p> <p><b>Description:</b> Training is included with the purchase of Varian Surface Monitoring Systems. Training plan details will be provided by the training management team as part of your product implementation process.</p> <p><b>Features:</b></p> <ul style="list-style-type: none"> <li>Offer is valid for 18 months after installation of product</li> </ul> <p><b>Prerequisites:</b></p> <ul style="list-style-type: none"> <li>None</li> </ul> <p><b>Customer Responsibilities:</b></p> <ul style="list-style-type: none"> <li>None</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Training is non-refundable and non-transferable</li> </ul>	1
1.30	<p><b>INCL ED:EC222 Eclipse Cone Planning</b></p> <p>The Eclipse Cone Planning course is included with the purchase of Eclipse Cone Planning.</p> <ul style="list-style-type: none"> <li>- Includes Tuition and Materials for ONE person</li> <li>- Customer is responsible for all travel expenses (airfare, hotel, rental car, meals and travel incidentals)</li> <li>- Training is non-refundable and non-transferable</li> <li>- Offer is valid for 18 months after installation of product</li> </ul> <p>The Eclipse Cone Planning training program covers stereotactic radiosurgery and/or stereotactic radiotherapy for treatment of intracranial tumors and/or lesions, SRS components and workflow, Eclipse SRS localization, QA and Eclipse Cone Dose Calculation algorithm and Beam data requirements. Designed For Medical Physicist, Radiation Oncologist and Dosimetrist Location: Las Vegas, NV Software Version V11 - for other versions please contact your training coordinator.</p>	1
1.31	<p><b>Additional MotionView CCTV Camera System</b></p> <p>Additional CCTV Camera Kit</p> <p><b>FEATURES:</b></p> <ul style="list-style-type: none"> <li>- Two pan, tilt, zoom CCTV cameras</li> <li>- Two desktop, 8 1/4 inch LCD displays with built in camera controls</li> <li>- Adjustable viewing angle for patient privacy</li> <li>- Push button pan, tilt, zoom, and home position control</li> </ul> <p><b>Prerequisites:</b> Motion View must be selected or installed</p>	1
1.32	<p><b>Additional In Room Monitor</b></p>	1



Item	Description	Qty
1.33	<p><b>Main Circuit Breaker Panel</b></p> <p>General Electric Co. main circuit breaker panel, interfacing to a single power input feed from the facility Mains. Circuit breakers provide independent over-current protection for equipment at the console and in the treatment room. UL and IEC/CE certified.</p>	1
1.34	<p><b>Enhanced Beam Conformance Specification</b></p> <p>The Enhanced Beam Conformance Specifications provide tight tolerances for key X-ray and electron beam energy performance specifications. It guarantees point to point conformance of field intensity profiles to Varian-provided Representative Beam Data (formerly known as "gold beam data"), as available, and guarantees point to point conformance of field intensity profiles to within a specified tolerance in the case where Representative Beam Data is not available.</p>	1
1.35	<p><b>INCL ED: HENRY FORD PRACTICAL START</b></p> <p>Henry Ford Practical Stereotactic Advances in Radiosurgery and Therapy (START). This is a multidisciplinary training course for specialists such as neurosurgeons. The course focuses on the treatment of brain, spine, lung and other body sites using Edge but the principles can be also be applied to TrueBeam. The goal is to teach the fundamentals of SBRT and to present key practical aspects of Radiosurgery/SBRT procedures.</p> <p>Feature(s):</p> <ul style="list-style-type: none"> <li>- Course outline will include:             <ul style="list-style-type: none"> <li>- Overview of multiple imaging modalities</li> <li>- Clinical Observation</li> <li>- Site specific review</li> </ul> </li> <li>- Entitlement: Three attendees</li> <li>- Duration : 3 Days</li> </ul> <p>Location: Department of Radiation Oncology, Henry Ford Hospital Main Campus, Detroit, IL</p> <p>Prerequisite(s):</p> <ul style="list-style-type: none"> <li>- TrueBeam with HDMLC</li> </ul> <p>Customer Responsibilities:</p> <ul style="list-style-type: none"> <li>- Customer is responsible for all travel expenses and incidentals.</li> </ul> <p>Who should attend: Surgeons (Neurosurgeons, Thoracic Surgeons, Head &amp; Neck Surgeons), Radiation Oncologists, Medical Physicists and Radiation Therapist.</p> <p>Notes:</p> <ul style="list-style-type: none"> <li>- This course is offered and exclusively controlled by Henry Ford; Varian is not responsible for and has not reviewed the course topic, content or materials. The student will be required to sign an agreement that disclaims all liability for Varian with respect to the content and training.</li> <li>- The course tuition includes course material. Travel and lodging is not included.</li> </ul> <p>Obligation to provide training is valid up to 18 months after product or order acceptance. If the clinical school is not available Varian will make all reasonable efforts to find a suitable replacement or convert course to Varian product training flex credits.</p>	1
1.36	<p><b>TrueBeam Package</b></p> <p>TrueBeam system integrates respiratory gating, real-time tracking, imaging and treatment delivery enabling a range of treatment techniques such as Intensity Modulated Radiation Therapy (IMRT), Image-Guided Radiation Therapy (IGRT), RapidArc®, Gated RapidArc®, Stereotactic Radio Surgery (SRS) and Stereotactic Body Radiotherapy (SBRT) to be delivered.</p> <p>Features:</p> <ul style="list-style-type: none"> <li>• Small Vault Configuration</li> <li>• Patient monitoring and safety with Motion View, LaserGuard II and Capacitive Collision Detection System on kV Imaging</li> </ul>	1

Item	Description	Qty
	<ul style="list-style-type: none"> <li>• Treatment Techniques including IMRT, SRS/SBRT High Total Dose, Total Body treatment delivery</li> <li>• kV Imaging with 2D planar kV and 3D Cone Beam Computed Tomography (CBCT) Imaging</li> <li>• 43x43 MV Imaging including Advanced MV Radiographic Imaging, Port Film Graticule and Portal Dose Image Acquisition with High Intensity Mode support</li> <li>• Advanced IGRT and Motion package</li> <li>• Customer selectable up to 5 Photon Energies</li> <li>• Customer selectable up to 8 Electron Energies</li> <li>• Electron Applicator Set (if electron energies selected for system):</li> <li>• 6cm x6cm, 6cmx10cm, 10cmx10cm, 15cmx15cm, 20cmx20cm, 25cmx25cm Includes electron arc applicator and final defining aperture mold frame set</li> <li>• Motion Management Interface</li> <li>• PerfectPitch™ 6 Degrees of Freedom (6DoF)</li> <li>• 6DoF Motion Management Interface license, supporting PerfectPitch 6DoF couch-based patient set up positioning as directed by a validated external device</li> <li>• 6MeV and 9MeV High Dose Total Skin Electron Mode treatment technique</li> <li>• Low-X Imaging for reduced metal artifacts and improved soft tissue contrast</li> <li>• 6X and 10X High Intensity Mode for dose rate delivery at 1400MU/minute and 2400MU/minute respectively</li> <li>• Installation and one year warranty</li> </ul> <p>Prerequisites:</p> <ul style="list-style-type: none"> <li>• ARIA Oncology Information System (OIS) for Radiation Oncology/ Eclipse v.10 MR4 and ARIA Practice Management v.10 MR5</li> <li>• ARIA Practice Management v.11 MR1 and ARIA OIS for Radiation Oncology v.11 MR3 for TrueBeam with PerfectPitch 6DoF couch</li> <li>• TrueBeam v. 2.5 and higher for 6DoF interoperability with PerfectPitch and ExacTrac.</li> <li>• Requires ARIA Practice Management v.11 MR1 and ARIA OIS for Radiation Oncology v.11 MR3</li> <li>• For customers with Brainlab ExacTrac, 6DoF Interoperability with PerfectPitch is available for ExacTrac v. 6.2 only</li> </ul> <p>Customer Responsibilities:</p> <ul style="list-style-type: none"> <li>• Customers with 3rd party Oncology Information Systems must confirm compatibility with their suppliers.</li> </ul>	1
1.37	<p><b>120 Multileaf Collimator</b></p> <ul style="list-style-type: none"> <li>• Performance per RAD 10094</li> <li>• High resolution leaf width of 5 mm (projected at isocenter) for central 20 cm</li> <li>• Leaf width of 10 mm (projected at isocenter) for outer 20 cm</li> </ul>	1
1.38	<p><b>Power Cond., 3phase 50KVA, TrueBeam</b></p> <p>Transtector 50KVA, 3-phase power conditioning unit, providing transient protection, line power regulation, and Input and Output circuit breakers for over-current protection. UL and IEC/CE certified.</p> <p>Available in all voltage configurations from 208 to 600 VAC and in 50 or 60 Hz for US and ROW applications.</p>	1
1.39	<p><b>Integrated IGRT Couch Top</b></p> <p>Carbon fiber treatment couch top, free of metal or other radiation-opaque materials, thereby reducing imaging artifacts</p> <p>FEATURES:</p> <ul style="list-style-type: none"> <li>- Clinically usable section of 120.0 cm</li> <li>- Supports patients up to 500 lbs (227 kg)</li> <li>- Indexed Immobilization® for compatible accessories</li> <li>- Head extension with interface for alternative patient immobilization and positioning device</li> </ul>	1

Item	Description	Qty
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1.40	<b>SRS Encompass IMB for IGRT Couch Top</b>	1
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**Description:**

The Encompass™ immobilization package from Qfix™ is a dedicated SRS immobilization package specifically tailored for use with the IGRT couch top.

**Features:**

- Encompass Intracranial Standalone Device (quantity: 2)
- Encompass mask system (quantity: 10)
- Direct Indexing™ Adapter for Varian IGRT couch top (quantity: 1)
- Locating bar (quantity: 1)
- Prerequisites
  - IGRT couch top
  - Customer Responsibilities
- None

**Notes:**

- Training will be provided by Qfix.

1.41	<b>Beam Conf. to Cust Ref X-rays</b>	1
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Enhanced Beam conformance to match Existing TrueBeam H191533 to new TrueBeam with Enhanced Beam Conformance.

The X-Ray Beam Conformance to Customer Reference Data provides on-site refinement of the X-ray D(10) depth of ionization and field intensity performance to conform to customer reference system values

**Features:**

- None

**Prerequisites:**

- Enhanced Beam Conformance

**Customer Responsibilities:**

- None

**Notes:**

- None

**Section 2 Original Configuration - TrueBeam Upgrade**

2.1	<b>TrueBeam Developer Mode</b>	1
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TrueBeam Developer Mode is a special mode on the Ilac that enables features and/or functionalities not routinely available through standard Clinical mode, including tracking. Developer Mode is intended for Non-Clinical Use only. Developer Mode will be enabled when Varian receives your signature on the Non-Clinical Use Acceptance Certificate for Developer Mode ("Acceptance").

The Non-Clinical Use Acceptance Certificate for Developer Mode MUST be renewed every two (2) years.

2.2	<b>TrueBeam Developer Mode 2 Yr Support</b>	1
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Item	Description	Qty
	<p>Support for Developer Mode is available during normal business hours (PST) Monday through Friday. Support is administered in English and the primary means of communication is email.</p> <p>Support for a two (2) year period starts at the time of Acceptance. The two (2) year support is required as part of the initial purchase. The two (2) year support can be renewed for \$20K.</p> <p>While under support the user is entitled to updates of the Developer Mode license.</p> <p>Support for TrueBeam Developer's Mode includes:</p> <ol style="list-style-type: none"> <li>1. Unlimited access during the duration of the support period, to the following resources, as they become available and updated:               <ul style="list-style-type: none"> <li>Developer Mode manuals and "cookbooks"</li> <li>FAQ list</li> <li>e-training modules by Varian and collaborator experts</li> <li>Updated documentation on the SetBeam Schema</li> <li>Library of xml example files, including QA and imaging capabilities</li> <li>Documentation (and scripts, when available) to examine the TrueBeam Trajectory Log files</li> <li>Updates to the CheckBeam xml code validation program</li> <li>Release notes on new research products, features and schema changes/additions</li> <li>Conversion programs to aid backwards compatibility for older SetBeam files as the tools (including the schema) to support Developer Mode evolve.</li> <li>New and updated material will be added on an ongoing basis.</li> </ul> </li> <li>2. Access to a website for SetBeam Developers that facilitates distribution of the above resources and may also include user community comments and discussion</li> <li>3. Access to a Varian expert to provide consultations and assistance in troubleshooting non-clinical xml scripts via an email support line.</li> </ol>	
<p><b>Section 3 Original Configuration - TrueBeam Developer Mode For New Truebeam</b></p>		
3.1	<p><b>TrueBeam Developer Mode</b></p> <p>TrueBeam Developer Mode is a special mode on the lilac that enables features and/or functionalities not routinely available through standard Clinical mode, including tracking. Developer Mode is intended for Non-Clinical Use only. Developer Mode will be enabled when Varian receives your signature on the Non-Clinical Use Acceptance Certificate for Developer Mode ("Acceptance").</p> <p>The Non-Clinical Use Acceptance Certificate for Developer Mode MUST be renewed every two (2) years.</p>	1
3.2	<p><b>TrueBeam Developer Mode 2 Yr Support</b></p> <p>Support for Developer Mode is available during normal business hours (PST) Monday through Friday. Support is administered in English and the primary means of communication is email.</p> <p>Support for a two (2) year period starts at the time of Acceptance. The two (2) year support is required as part of the initial purchase. The two (2) year support can be renewed for \$20K.</p> <p>While under support the user is entitled to updates of the Developer Mode license.</p> <p>Support for TrueBeam Developer's Mode includes:</p> <ol style="list-style-type: none"> <li>1. Unlimited access during the duration of the support period, to the following resources, as they become available and updated:               <ul style="list-style-type: none"> <li>Developer Mode manuals and "cookbooks"</li> <li>FAQ list</li> <li>e-training modules by Varian and collaborator experts</li> </ul> </li> </ol>	1

Item	Description	Qty
	<p>Updated documentation on the SetBeam Schema            Library of xml example files, including QA and imaging capabilities            Documentation (and scripts, when available) to examine the TrueBeam Trajectory Log files            Updates to the CheckBeam xml code validation program            Release notes on new research products, features and schema changes/additions            Conversion programs to aid backwards compatibility for older SetBeam files as the tools (including the schema) to support Developer Mode evolve.            New and updated material will be added on an ongoing basis.</p> <p>2. Access to a website for SetBeam Developers that facilitates distribution of the above resources and may also include user community comments and discussion</p> <p>3. Access to a Varian expert to provide consultations and assistance in troubleshooting non-clinical xml scripts via an email support line.</p>	
<b>Section 4 Original Configuration - Advantage Credits</b>		
4.1	<p><b>Advantage Contract Credits</b></p> <p>Advantage Credits can be utilized for Varian's Professional Services, such as consulting, on-site applications training, education, and third-party services including physics services and clinical schools that are purchased through Varian. For further details, please reference the attached Terms and Conditions.</p>	32
4.2	<p><b>ED:TB201 TrueBeam Platform Physicist v2.5</b></p> <p>(Qty: 2, Credit per Qty: 16.0 )            Includes Tuition and Materials for ONE Person</p> <p>This course provides training for Medical Physicists responsible for commissioning and administration of the TrueBeam machine. The course consists of combination of lectures, demonstrations, and hands-on exercises carried out in a lab equipped with fully functioning TrueBeam system. The course provides an overview of TrueBeam hardware, software and control system, to a depth sufficient for the user to prepare the system for clinical use. The course also includes demonstration of common IGRT, Motion Management and treatment plan delivery techniques. PLEASE NOTE: For more in-depth calibration and maintenance training, see TrueBeam Technical Maintenance I &amp; II.</p> <p>Designed for Medical Physicists            Pre-Requisites: Masters degree in Medical Physics, or equivalent</p> <p>Duration and Location            4.0 days            Varian Education Center            Las Vegas, Nevada, USA</p> <p>Application has been made to CAMPEP credits            Advantage Credits Eligible</p> <p>Customer is responsible for all travel expenses (airfare, hotel, rental car, meals and travel incidentals), unless otherwise stated.</p>	Included
4.3	<p><b>Travel and Lodging</b></p> <p>Allowance is applied only to the travel and lodging expenses, including airfare, hotel accommodations and rental car.</p> <p>The customer is responsible for any expenses outside of the allowance. Travel and lodging charges will be direct billed and are not reimbursable if travel is booked outside of Balboa Travel. The hotel must be Varian preferred. Any remaining balance is non-refundable.</p>	2

Item	Description	Qty
	<p>Please contact Balboa Travel Agency at 877-593-7220 in order to make the necessary travel arrangements once you complete the online registration at <a href="http://www.variantraining.com">www.variantraining.com</a> and receive an email confirmation for the course. Be sure to provide Balboa your Varian sales order number.</p> <p>The Travel and Lodging allowance expires 24 months from the acceptance date of your equipment. Any unused portion will not be available, cannot be traded for other products or services and will not be returned.</p>	
<b>Section 5</b>	<b>Original Configuration - Travel and Lodging for 8 participants</b>	
5.1	<p><b>Travel and Lodging</b></p> <p>8 additional travel and lodging</p>	8
<b>Section 6</b>	<b>Original Configuration - Advantage Credits</b>	
6.1	<p><b>Advantage Contract Credits</b></p> <p>The Varian Advantage Program offers a customized services portfolio of solutions comprising of, but not limited to, consulting services, programs, and end to end solutions to help customer safely and efficiently adopt and increase the efficient utilization of technology within their facility. This portfolio, which consists of a specific subset of Varian services, is sold as Advantage Credits. Advantage Credits are enclosed with the Varian quote to allow flexibility to change services as needed without modifying the purchase order. Each annual contract entitles customer to Advantage Credits which are defined per-year for the valid contract period. Unconsumed Advantage Credits will expire at the end of the defined year. A Varian Advocate will partner with you to address your technology, business, clinical and operational needs and continual learning of the facility and will create the written Scope of Work required before the delivery of any service. The number of credits provided with the original order is an estimate of the number of credits needed. Final credits needed, will depend on the Scope of Work and actual services ordered.</p> <p>For services outsourced by Varian, the customer is paying or using Advantage Credits as payment to hire a third party, through Varian, to perform services set forth in the applicable Statement of Work. Varian has reviewed the current licensing, qualifications, experience, and training of the third party service provider and will act primarily as a pay agent, to collect fees for services from customer and to pay fees for such services to the third party service provider. Customer has the final decision to purchase services through Varian third party service providers or to select another service provider outside of this quotation. Customer shall work directly with the service provider to develop any required modifications to service provider standard Statement of Work. All services shall be performed by the service provider under permits, licenses, authority, supervision, and control of Customer and its staff, including licensed physicists, physicians, and other qualified healthcare professionals. Customer and its staff shall have the requisite permits (including applicable certificates of need), licenses, and authority to oversee and have such services performed on Customer's behalf.</p> <p>Customer has the right to reasonably terminate the service provider or to have any service provider employees, contractors, or agents removed from the project. Such termination shall be subject to cancellation fees and other terms and conditions applicable to the Statement of Work. Where Customer terminates an order with the service provider and/or changes the service provider, Customer agrees to pay any non-cancellable fees and additional costs incurred by Varian or the provider. Customer, the service provider, and, if applicable, its subcontractors, shall have full responsibility for services as defined in the Statement of Work. The service provider shall not be construed to be a subcontractor, employee, or agent of Varian. Varian will pass along any requests for warranty work that it receives from Customer to the service provider. Except as otherwise provided in this section of the Quotation, the Terms and Conditions of Sale (Form RAD 1652, current version issued with this Quotation) shall apply to this section just as it applies to all other parts of this Quotation.</p>	36
6.2	<p><b>Product Applications TrueBeam (per hour)</b></p> <p>(Qty: 40, Credit per Qty: 0.9 )</p>	Included

Item	Description	Qty
Section 7	Original Configuration - Adhoc	
7.1	Trade-In  Machine Trade-In	1
7.2	Remove/Dispose Existing Equipment  Machine Removal	1
Section 8	Original Configuration - TrueBeam Comprehensive package H191533	
8.1	<p><b>UPG, PERFECTPITCH™ 6DOF COUCH</b></p> <p>The PerfectPitch™ 6-Degree of Freedom couch represents an industry leading solution to providing complete flexibility and accuracy in patient positioning. With a patient load capacity of 440lbs and sub-millimeter accuracy, a wide range of patients can be accurately and repeatably positioned for treatment. Fully integrated into the TrueBeam System 2.0, the PerfectPitch couch allows remote positioning and repositioning of the patient based on input from the imaging system</p> <p>Feature(s)</p> <ul style="list-style-type: none"> <li>- Fully robotic positioning of the patient using 6-degrees of freedom</li> <li>- Sub-millimeter positioning accuracy in both translations and rotations</li> <li>- Patient load capacity: 440lbs with the Varian IGRT couchtop</li> <li>- Compatible with Pivotal Prone Breast solution and Calypso (requires optional items to be purchased)</li> <li>- Fully integrated into system software for remote patient repositioning facilitating delivery of robotic treatments</li> </ul> <p>Prerequisite(s):</p> <ul style="list-style-type: none"> <li>- TrueBeam system software version 2.0</li> <li>- ARIA version 11</li> <li>- Laserguard 2 is required if a Qfix Couchtop is used</li> </ul> <p>Note:</p> <p>Note: The TrueBeam 2.0 and the PerfectPitch 6DoF Couch have been tested in conjunction with MOSAIQ versions 2.3 and 2.5. These MOSAIQ upgrades are not included. Please contact Elekta for details of the necessary upgrades.</p>	1
8.2	<p><b>LOW-X IMAGING AT 2.5MV</b></p> <p>Low-X imaging at 2.5MV provides the benefits of higher soft tissue contrast when using MV beams to generate an image that is in-line with the treatment beam</p> <p>Prerequisite(s):</p> <ul style="list-style-type: none"> <li>- TrueBeam System 2.0 and higher</li> </ul> <p>Or</p> <ul style="list-style-type: none"> <li>- Edge System</li> </ul> <p>Delivery</p> <ul style="list-style-type: none"> <li>- Not deliverable before October 2013 when purchased with TrueBeam</li> <li>- Not deliverable before January 2014 when purchased with an Edge System</li> </ul>	1
8.3	<b>Integrated IGRT Couch Top</b>	1

Item	Description	Qty
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Carbon fiber treatment couch top, free of metal or other radiation-opaque materials, thereby reducing imaging artifacts

**FEATURES:**

- Clinically usable section of 120.0 cm
- Supports patients up to 500 lbs (227 kg)
- Indexed Immobilization® for compatible accessories
- Head extension with interface for alternative patient immobilization and positioning device

8.4	<b>"Upg, Advanced IGRT &amp; Motion Package"</b>	1
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The Advanced IGRT & Motion Package from Varian Medical Systems provides a comprehensive set of tools that can allow users to customize imaging and treatment protocols based on the unique needs of every patient. Using features included in the package, the user can have industry leading flexibility to image and deliver treatment based on target location, target motion or delivered dose considerations.

**Feature(s)**

- Imaging based on triggers determined by Delivered dose (MU)
- Elapsed time
- Angular motion of the gantry
- Instant imaging & 2D/3D Matching
- Advanced Reconstructor including 4D CBCT (offline feature)
- Extended length CBCT (offline feature)
- Planning structures on pre-treatment fluoroscopic trace
- On-line Image Approval
- Auto Beam-hold  
(Auto beam-hold validated to work with Gold Seed (cylindrical markers) for prostate and liver.)

**Prerequisite(s):**

- TrueBeam System 2.0 or higher
- ARIA Version 11

8.5	<b>MOTION MGMT INTERFACE (MMI) FOR TRUEBEAM</b>	1
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The Motion Management Interface (MMI) on TrueBeam enables third party systems to provide target location information to the TrueBeam system. The third party system may also be able to provide beam gating and couch repositioning input to the TrueBeam system. \* On the TrueBeam, the MMI allows the simultaneous connection of up to 4 external devices, 2 of which may be used for beam gating.

**Features:**

- Bi-directional interface for 3rd parties to connect to the TrueBeam system
- Ability to connect up to 4 external devices simultaneously with 2 of the 4 connections usable for gating

**Validated Devices:**

- Vision RT: Align RT v5.0.1747
- OSMS v5.0.1747
- CRAD: Catalyst and Catalyst HD v5.2 (TrueBeam v2.0 only)
- Shimadzu: SyncTraX v5.0 (TrueBeam v2.0 only)
- Varian: Calypso v3.0
- BrainLab: ExacTrac v6.0 and v6.1

**Prerequisite(s):**

- TrueBeam System 2.0, TrueBeam System 2.5

**Customer Responsibilities:**

N/A

**Notes:**

- \* For Varian 6DoF couch configuration, 6DoF patient repositioning will only work with TrueBeam image guidance. Can be used with 6DoF couch with up to 4 degrees of correction. Full 6DoF correction is currently not supported.



Item	Description	Qty
8.6	<p><b>RPC Lung Phantom Voucher Option</b></p> <p>For customers who purchase an Advanced IGRT and Motion Package, an MDADL service voucher will be provided to allow that customers to practice their end-to-end lung SBRT workflow and verify that they are able to deliver treatment according to their SBRT treatment plan onto a Lung phantom.</p>	1
<p><b>Section 9 Original Configuration - 43x43 imager H191533</b></p>		
9.1	<p><b>Upg, 43x43 MV Imager</b></p> <p>Upgrade to the 43 x 43 imager for TrueBeam</p> <p>Features:</p> <ul style="list-style-type: none"> <li>- Imaging of larger treatment fields and elimination of the need to acquire multiple images and translation of the MV imager between irradiations thereby simplifying the workflow</li> <li>- Image acquisition using the FFF energy allowing portal dosimetry for all treatment beams, including flattened and un-flattened beams</li> </ul> <p>Prerequisites:</p> <ul style="list-style-type: none"> <li>- TrueBeam 2.0 MR1 or higher</li> <li>- Existing 40 x 30 MV imager</li> <li>- Eclipse v13 or higher is required to perform Portal Dosimetry predictions</li> </ul> <p>Customer Responsibilities:</p> <p>N/A</p> <p>Notes:</p> <p>N/A</p>	1
<p><b>Section 10 Original Configuration - Advantage Credits</b></p>		
10.1	<p><b>Advantage Contract Credits</b></p> <p>The Varian Advantage Program offers a customized services portfolio of solutions comprising of, but not limited to, consulting services, programs, and end to end solutions to help customer safely and efficiently adopt and increase the efficient utilization of technology within their facility. This portfolio, which consists of a specific subset of Varian services, is sold as Advantage Credits. Advantage Credits are enclosed with the Varian quote to allow flexibility to change services as needed without modifying the purchase order. Each annual contract entitles customer to Advantage Credits which are defined per-year for the valid contract period. Unconsumed Advantage Credits will expire at the end of the defined year. A Varian Advocate will partner with you to address your technology, business, clinical and operational needs and continual learning of the facility and will create the written Scope of Work required before the delivery of any service. The number of credits provided with the original order is an estimate of the number of credits needed. Final credits needed, will depend on the Scope of Work and actual services ordered.</p> <p>For services outsourced by Varian, the customer is paying or using Advantage Credits as payment to hire a third party, through Varian, to perform services set forth in the applicable Statement of Work. Varian has reviewed the current licensing, qualifications, experience, and training of the third party service provider and will act primarily as a pay agent, to collect fees for services from customer and to pay fees for such services to the third party service provider. Customer has the final decision to purchase services through Varian third party service providers or to select another service provider outside of this quotation. Customer shall work directly with the service provider to develop any required modifications to service provider standard Statement of Work. All services shall be performed by the service provider under permits, licenses, authority, supervision, and control of Customer and its staff, including licensed physicists, physicians, and other qualified healthcare professionals. Customer and its staff shall have the requisite permits (including applicable certificates of need), licenses, and authority to oversee and have such services performed on Customer's behalf.</p>	30

Item	Description	Qty
	<p>Customer has the right to reasonably terminate the service provider or to have any service provider employees, contractors, or agents removed from the project. Such termination shall be subject to cancellation fees and other terms and conditions applicable to the Statement of Work. Where Customer terminates an order with the service provider and/or changes the service provider, Customer agrees to pay any non-cancellable fees and additional costs incurred by Varian or the provider. Customer, the service provider, and, if applicable, its subcontractors, shall have full responsibility for services as defined in the Statement of Work. The service provider shall not be construed to be a subcontractor, employee, or agent of Varian. Varian will pass along any requests for warranty work that it receives from Customer to the service provider. Except as otherwise provided in this section of the Quotation, the Terms and Conditions of Sale (Form RAD 1652, current version issued with this Quotation) shall apply to this section just as it applies to all other parts of this Quotation.</p>	
10.2	<p><b>Prof Serv Addl Custom Report Generation</b></p> <p>(Qty: 10. Credit per Qty: 3.0 )            An ARIA Reports Specialist will customize up to (1) ONE report designed to fit the needs of the department.</p> <p>Prerequisites for the service:            1. ARIA Database system            2. Reports Author has been purchased with the primary ARIA purchase            3. SmartConnect Remote Diagnostic software            4. Details of desired Custom Report must be provided by the customer since reports are designed to fit the needs of the department.</p> <p>- Services are non-refundable and non-transferable.            - Offer is valid for 18 months after installation of product.</p>	Included
<p><b>Section 11 Original Configuration - Trade-In and Removal of Varian 21EX SN H140058</b></p>		
11.1	<p><b>Trade-In</b></p> <p>Varian 21EX SN H140058</p>	1
11.2	<p><b>Remove/Dispose Existing Equipment</b></p> <p>Varian 21EX SN H140058</p>	1
<p><b>Section 12 Original Configuration - Commissioning Services</b></p>		
12.1	<p><b>ALZ4a Comm custom 5X+SRS</b></p> <p>Advantage Commissioning of TrueBeam with custom Models and SRS and Eclipse Treatment Planning System            Alyzen Medical Physics will commission TrueBeam accelerator for up to 3 flattened and 2 unflattened X-ray and up to 6 electrons energies. This group will also commission SRS for MLC and cones for one photon energy. The service will be performed by 2 physicists and is estimated to be 6 business days.</p> <p>Scope of Work:            1. Eclipse set up with pre-configured beam models for AAA, Acuros and EMC algorithms for each energy.            2. Benchmarking measured data against Eclipse predicted (End-to-End Test).            3. Benchmarking measured data against the AQUIRE commissioning database.            4. Benchmarking measured data set against the Varian reference data set.            5. Eclipse and Aria configuration.            6. Enhanced Dynamic Wedge Validation.</p>	1

Item	Description	Qty
7.	Portal Dosimetry Configuration.	
8.	IMRT Configuration and Validation with multiple test plans.	
9.	RapidArc® Configuration and Validation with multiple test plans.	
10.	Cone and/or MLC Based SRS	
	· PDDs, Profiles, and Off-Axis Ratio measurements for up to 7 Cones.	
	· Small-field measurements (PDDs, Profiles, OF) for MLC based SRS/SBRT.	
	· Validation of Conical Dose Calculation (CDC) by benchmarking measured data.	
	<b>Deliverables:</b>	
	· Digital copy of all measured data in eclipse format, import ready (W2CAD).	
	· Comprehensive report describing the commissioning process in detail.	
	· Robust data books in hard and soft copy format (Hand Calculation Ready)	
	· Comprehensive walkthrough of all services performed and associated systems at completion.	
	· Sample of various plans for end to end testing with Portal Dosimetry	
	· Review of TPS configuration and settings	
	<b>Prereq:</b>	
	· Customer site physicist must be present for deliverables and approvals	
	· Must have acceptance of accelerator and Eclipse before Advantage Commissioning can start	
	· Full access to the accelerator, accessories and the control room	
	· Secured Internet access	
	<b>Not included:</b>	
	· This service does not include any commissioning for Hard Wedge. Customer must purchase Hard Wedge commissioning separately	

**Section 13 Amendment - REDUCE Advantage Contract Credits (SSC001004001) in Line Item 6.1 to quantity 6**

13.1

[Remove] 1

REMOVE from Line Item 6.1 Advantage Contract Credits (SSC001004001), Qty 30.

REDUCE Advantage Contract Credits (SSC001004001) in Line Item 6.1 to quantity 6.

Advantage Credits can be utilized for Varian's Professional Services, such as consulting, on-site applications training, education, and third-party services including physics services and clinical schools that are purchased through Varian. For further details, please reference the attached Terms and Conditions.

Advantage Credit Table

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Section 10

Year 1 Total	30.0
Total Credits	30.0

Section 4

Year 1 Total	32.0
Total Credits	32.0

Section 6

Year 1 Total	36.0
Total Credits	36.0



Quotation Total

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Quotation Total

US \$3,665,187.00

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NON-CLINICAL Use Certification for Developer Mode

By signing below, I certify on behalf of the entity that is purchasing the Developer Mode for the Varian TrueBeam™ system (“Customer”) that Developer Mode is intended for use NON-CLINICALLY. On behalf of Customer, I understand and agree that:

1. Developer Mode is a capability that will be enabled on the TrueBeam system to enable features and functionality that are not typically available in the Treatment Mode setting that is cleared to permit patient treatment;
2. Developer Mode is intended for non-clinical use only. "Non-clinical" or "non-clinical use" means usage not involving: (i) the direct observation of patients; (ii) the diagnoses of disease or other conditions in humans or other animals; or (iii) the cure, mitigation, therapy, treatment, treatment planning, or prevention of disease in humans or other animals to affect the structure or function thereof;
3. Developer Mode is NOT U.S. FDA 510(k) cleared for use on humans. There is no interlock or other automatic or fail safe mechanism to prevent use of Developer Mode clinically, or to prevent personnel at the facility from treating patients using Developer Mode;
4. any use of Developer Mode outside of its intended use (“off-label”) could lead to physical harm or death of patients;
5. Customer will cause all related facility personnel using the Varian TrueBeam system to read and agree to the terms of this NON-CLINICAL Use Certification prior to their use of the Varian TrueBeam system; and

In any event, Customer is solely responsible for any off-label use of Developer Mode on the Varian TrueBeam system and hereby agrees to indemnify and hold harmless Varian, for any liability, demand, damage, cost or expense arising from or relating to such use of Developer Mode.

Customer will be asked to sign a Non-Clinical Use Certification for Developer Mode statement every two years after the Acceptance of Developer Mode. In the event Customer does not sign such statement, Customer hereby grants Varian express permission to disable Developer Mode without notice. Varian covenants that Developer Mode shall be re-enabled upon the execution of the then current Non-Clinical Use Certification for Developer Mode and without any additional consideration required.

I hereby certify to the above statement on behalf of Customer effective \_\_\_\_\_ (date).

\_\_\_\_\_  
Signature  
Name  
Title

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**Annual Service contract for Advantage Credits & Outsourced Professional Services**

The Varian Advantage Program offers a customized services portfolio of solutions comprising of, but not limited to, consulting services, programs, and end to end solutions to help customer safely and efficiently adopt and increase the efficient utilization of technology within their facility. This portfolio, which consists of a specific subset of Varian services, is sold as Advantage Credits. Advantage Credits are enclosed with the Varian quote to allow flexibility to change services as needed without modifying the purchase order. Each annual contract entitles customer to Advantage Credits which are defined per-year for the valid contract period. Unconsumed Advantage Credits will expire at the end of the defined year.

A Varian Advocate will partner with you to address your technology, business, clinical and operational needs and continual learning of the facility and will create the written Scope of Work required before the delivery of any service. The number of credits provided with the original order is an estimate of the number of credits needed. Final credits needed, will depend on the Scope of Work and actual services ordered.

For services outsourced by Varian, the customer is paying or using Advantage Credits as payment to hire a third party, through Varian, to perform services set forth in the applicable Statement of Work. Varian has reviewed the current licensing, qualifications, experience, and training of the third party service provider and will act primarily as a pay agent, to collect fees for services from customer and to pay fees for such services to the third party service provider. Customer has the final decision to purchase services through Varian third party service providers or to select another service provider outside of this quotation. Customer shall work directly with the service provider to develop any required modifications to service provider standard Statement of Work. All services shall be performed by the service provider under permits, licenses, authority, supervision, and control of Customer and its staff, including licensed physicists, physicians, and other qualified healthcare professionals. Customer and its staff shall have the requisite permits (including applicable certificates of need), licenses, and authority to oversee and have such services performed on Customer's behalf.

Customer has the right to reasonably terminate the service provider or to have any service provider employees, contractors, or agents removed from the project. Such termination shall be subject to cancellation fees and other terms and conditions applicable to the Statement of Work. Where Customer terminates an order with the service provider and/or changes the service provider, Customer agrees to pay any non-cancellable fees and additional costs incurred by Varian or the provider. Customer, the service provider, and, if applicable, its subcontractors, shall have full responsibility for services as defined in the Statement of Work. The service provider shall not be construed to be a subcontractor, employee, or agent of Varian. Varian will pass along any requests for warranty work that it receives from Customer to the service provider. Except as otherwise provided in this section of the Quotation, the Terms and Conditions of Sale (Form RAD 1652, current version issued with this Quotation) shall apply to this section just as it applies to all other parts of this Quotation

Legal Disclaimer regarding Physics services

Customer is paying to hire a third party, Alyzen Medical Physics ("ALZ") through Varian, to perform the physics services set forth in any applicable Statement of Work. Varian shall act primarily as a pay agent, to collect fees either in cash or with any form of Varian prepaid credits for such physics services and to pay fees for such services to the party performing the physics services. Varian has reviewed the current licensing of ALZ and the qualifications, experience, and training of ALZ current employees who will provide the services, but Customer has the final decision of whether to proceed with ALZ or select its own provider of physics services outside of this quotation. Customer shall work directly with ALZ to develop any required modifications to its standard Statement of Work. All physics services shall be performed by ALZ under the permits, licenses, authority, supervision, and control of Customer and its staff, including licensed physicists, physicians, and other qualified healthcare professionals, and Customer and its staff shall have the requisite permits (including applicable certificates of need), licenses, and authority to oversee and have such physics services performed on Customer's behalf.

Customer has the right to reasonably terminate ALZ or to have any of its employees, contractors, or agents removed from the project, although such termination shall be subject to any cancellation fees and other terms applicable to such services. Where Customer terminates any order with ALZ, Customer agrees to pay any non-cancellable fees and costs incurred by Varian or ALZ. Customer, ALZ, and, if applicable, its subcontractors, shall have full responsibility for all physics services, and Varian shall have no responsibility whatsoever for such services. ALZ shall not be construed to be a subcontractor, employee, or agent of Varian. Varian will pass along any requests for warranty work that it receives from Customer to ALZ. Except as otherwise provided in this section of the Quotation, the Terms and Conditions of Sale (Form RAD 1652, current version issued with this Quotation) shall apply to this section just as it applies to all other parts of this Quotation.



**Labor Rates**

	<b>Standard Hours</b>	<b>Non-Standard Hours</b>
Customer Support Representative* (2-hour minimum)	\$385/hour	\$580/hour
Product Support Engineer/Product Specialist* (2-hour minimum)	\$580/hour	\$870/hour
Applications & Clinical Help Desk Support* (30-minute minimum)	\$385/hour	\$580/hour
On-Site Applications Support (2-day minimum, includes travel)	\$5,000/day	\$10,000/day

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

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

Unless a Non-standard hours or Extended Hours coverage option is included in the selected Service Level Agreement, Customers may request that service be performed during Non-Standard hours and authorization to approve Customer's request lies solely with the respective District Service Manager. Where such requests are approved, Customer will be invoiced at the Standard Hours rate with a 20% discount. The billing rates for Non-Standard hours service for Customers with a Varian Service Agreement is \$308/hour for a Customer Support Representative and \$464 per hour for a Product Support Engineer/Product Specialist.

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

**Working Hours**

"Standard Hours" (formerly "Normal Hours") are from 8 A.M. to 5 P.M. on Mondays through Fridays, not including Varian holidays

"Non-Standard Hours" (formerly "Non-Normal Hours") are from 5 P.M. to 8 A.M. (following day), Sunday through Saturday, including Varian holidays

"Extended Hours" 5 P. M. to 9 P.M. on Mondays through Fridays, not including Varian holidays

**List of U.S. Holidays**

1. New Year's Day
2. Presidents' Day
3. Good Friday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Thanksgiving Day
8. Day after Thanksgiving
9. Christmas Holiday 1
10. Christmas Holiday 2

Form MGM 1582J 02/2017

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## Terms and Conditions of Sale

Form RAD 1652U (12/11)

VARIAN MEDICAL SYSTEMS, INC. (“Varian”)

### GENERAL TERMS

These General Terms shall apply to all Products and Services sold by Varian to Customer under this Agreement.

#### 1. Applicable Terms and Conditions

These Terms and Conditions of Sale, including any exhibits, schedules, addenda, and other attachments (collectively, the “Agreement”), shall govern Varian’s furnishing of all products (“Products”), including hardware products manufactured by Varian (“Varian Hardware”), third party hardware products that are integrated into a Varian Product (“Non-Varian Hardware”) (Varian Hardware and Non-Varian Hardware are collectively referred to as “Hardware Products”), application software products created or licensed by Varian under the Software Section or provided to Customer by Varian under the terms of the Support Section (“Varian Software”), third party software products that are not integrated into a Varian Product (“Non-Varian Software”) (Varian Software and Non-Varian Software are collectively referred to as “Software Products”), Varian warranty work and services provided under the datasheet accompanying the Quotation (“Datasheet”) and the Support Section and interface development and other customized service work provided under the Professional Services Section (“Varian Services”), and third party services (“Non-Varian Services”) (Varian Services and Non-Varian Services are collectively referred to as “Services”), each identified in the applicable Varian quotation (“Quotation”) issued to the customer identified in such Quotation (“Customer”). While Varian may acknowledge receipt of a purchase order issued by Customer by signing and returning it, any Customer terms and conditions in any specific order documentation, preprinted or otherwise, shall be inapplicable and shall not modify this Agreement. If an earlier revision of a Quotation is signed, subsequent unsigned corrections of the Quotation shall apply upon agreement of the parties.

#### 2. Quotations and Prices

(a) A Quotation shall expire at the end of the period identified in the Quotation, or if none is stated in the Quotation, the Quotation shall expire sixty (60) days from the date of issuance. A Quotation to a non-U.S. Customer shall be considered a solicitation for an offer to purchase. (b) Varian’s prices exclude, and Customer shall be responsible for, all taxes or levies of whatever nature arising out of or in connection with this Agreement, including the sale, delivery, ownership, or use of the Products or performance of the Services, but excluding taxes based on Varian’s net income and the Medical Device Excise Tax, if applicable. If Customer asserts that any transaction under this Agreement is tax exempt, Customer shall provide to Varian a tax or levy exemption certificate acceptable to the taxing or levying authority. (c) Varian’s acceptance of any order and Varian’s performance are expressly conditioned upon Customer’s compliance with all applicable codes, regulations, and recommendations of competent health or radiation-protection authorities affecting Products or installation and use of the Products, including obtaining all required permits, and Varian’s approval of Customer’s credit. Where applicable, Customer acknowledges that Varian has notified Customer that there are regulatory requirements associated with possession and use of radiation-generating devices. Prior to installation of a radiation-generating device Customer must apply for and obtain approval for installation of the device from the appropriate local and/or state radiological regulatory agency and must provide Varian with a copy of the approval form to verify that the required authorization has been obtained prior to the transfer of the radiation-generating device. (d) Customer shall disclose the dollar value of any discounts or reductions in price for the Products and Services furnished by Varian in Customer’s costs claimed or charges made to Medicare, Medicaid, and any other federal, state, or local program providing reimbursement to Customer.

#### 3. Payment

- 3.1 **Product Orders.** The payment schedule and payment terms are set forth in the Quotation, provided, however, that if a Product is not installed within six (6) months after delivery to Customer and such delay is not due to the fault of Varian, then all remaining unpaid balances shall become immediately due regardless of the payment schedule in such Quotation. Varian may charge interest for past due balances at a rate of the lesser of one percent (1%) per month or the maximum amount permitted by applicable law. For partial shipments, Products will be billed when shipped (for example, if Customer orders two linear accelerators on one Quotation to be installed on different dates, then Varian may bill as set forth in the Quotation when the first accelerator and accessories are installed). Except as set forth in the Quotation or otherwise agreed upon by the parties, all reasonably undisputed amounts invoiced shall be due and payable within thirty (30) days of the date of invoice. Varian may cancel or delay delivery of Products when Customer’s payments are late under any orders with Varian. Varian shall retain a purchase money security interest in all Products and the proceeds thereof until Customer has made payment in full to Varian of all sums due, including late fees and collection costs. Customer agrees to execute any financing statements or other documents requested by Varian, which may be reasonably necessary to perfect such security interest.
- 3.2 **Service Orders.** Services fees for work not covered by warranty or support will be invoiced periodically in advance, as set forth in the Quotation. If Customer is paying for Services on a time and materials basis, labor charges and expenses, including travel expenses, will be invoiced as such Services are rendered or expenses are incurred, at the rates specified in the Quotation or as set forth in Form MGM 1383 (Labor Rates and Working Hours). Except as set forth in the Quotation or otherwise agreed upon by the parties, all reasonable

undisputed amounts invoiced shall be due and payable within thirty (30) days of the date of invoice. On delinquent accounts, Varian shall be entitled to withhold performance of any Services or distribution of any Maintenance Releases, Upgrade Releases, or Purchase Options, or discounts on the purchase of the same until all outstanding amounts are paid in full.

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

4.1. **Product Orders.** Either party may terminate any Product order for material breach upon thirty (30) days written notice to the other if such material breach has not been cured. Except for termination for material breach, deposits or down payments, if any are non-refundable. No Product order accepted by Varian may be terminated, canceled, or modified by Customer except by prior mutual agreement in writing. Where Customer breaches this clause, Customer shall forfeit its deposit or down payment, or if no deposit or down payment was made, shall pay to Varian all damages reasonably incurred by Varian. This Section shall not limit, and Varian shall be entitled to pursue any other remedies that it may have under the law or in equity.

#### 4.2. Service Orders.

4.2.1. **Generally.** Either party may terminate any Services agreement for material breach upon thirty (30) days written notice to the other if such material breach has not been cured. Customer may terminate any Services agreement for any reason upon ninety (90) days written notice to Varian and receive a refund of any prepaid fees for Services not received or to be received. However, that Customer shall be responsible for the costs of upgrades, updates, installation, and training provided by Varian to Customer during the twelve (12) months prior to termination, if any, plus twenty-five percent (25%) of the remaining annual Service fees for the year in which the Agreement is terminated.

4.2.2. **Termination of Service Agreements in Which Product Costs Are Included and Amortized.** Customers, who prematurely terminate a Service Level Agreement which include and have amortized the cost of any additional Products, such as delivery system upgrades, software licenses, or any other purchasable options, into the cost of the Service Level Agreement will be liable and invoiced for the unpaid portion of these additional Products at the current list price. Payment is due within thirty (30) days of termination.

4.2.3. **Failure to Maintain.** There may be instances where Customer requests Varian to issue a quotation for Varian Services prior to examining the Products covered by the Services (for example, Customer may need to spend allocated budget before a fiscal year end). Varian reserves the right to terminate Services and refund any payments for such Services to Customer immediately upon written notice to Customer for any Covered Product which in Varian's sole opinion, has not been properly maintained except for agreement renewals and instances where such Product has been under continuous support by Varian. If Varian has not had an opportunity to inspect a Covered Product prior to the issuance or signing of a Quotation, Varian shall have the right to inspect the Product to determine whether it meets a level of operation acceptable to Varian and, at its option, revoke the Quotation before its signing, or terminate the Agreement earlier in this Section after the Quotation is signed. Varian's agreement to provide Services for Covered Products may be further contingent upon the completion of repairs or maintenance indicated as required by such inspection. Except as agreed by the parties Customer must purchase all labor and parts from Varian to maintain the Covered Product. Varian reserves the right to terminate the Agreement where Customer fails to comply.

#### 5. Use Restrictions

Customer shall not decompile, disassemble, or reverse engineer any part of a Product except to the extent such prohibition is void under applicable law. Customer must ensure that anyone with authorized access to the Products will comply with the provisions of this Agreement. The following shall apply to all Firmware and Operating Systems (as defined below) and Software Products licensed to Customer under this Agreement. Nothing in this Section shall prohibit Customer from allowing hospitals and healthcare workers affiliated with Customer from using the Products if they have the requisite training or experience to do so. Without the written consent of Varian, Customer may not (i) sublicense, sell, lease, rent, timeshare, distribute, or otherwise attempt to transfer its license to such software and/or Documentation to any other person or entity; or (ii) use the such software in a facility management or Service Bureau manner or permit third parties to access the such software over the internet or through an application service provider model. "Service Bureau" means an arrangement pursuant to which (i) third parties are permitted to access and use such software, directly or indirectly, by any means to process their own data or (ii) Customer uses such software to process the data of any third party. Except to the extent that these restrictions are void under applicable law, Customer shall not (i) copy (except as expressly set forth in Section 2 of the Software Section below and except for transitory copies created as part of the normal use of the Product), print, alter, or translate such software; (ii) circumvent any usage or other restrictions imposed by any license manager; (iii) create any derivative work based on such software; or (iv) use such software for application development purposes. Customer agrees that these provisions shall also apply to any copies of such software that Customer acquires from third parties. Customer agrees that it shall not use any part of such software apart from the hardware or software Product with which it was intended to operate.

#### 6. Firmware and Operating Systems

The Product may contain internal system code that executes below the external user interface and which is integral to the operation of the Product ("Firmware"), as well as operating system software ("Operating Systems"). Varian or its licensors own all Firmware and Operating Systems. Except where such Firmware or Operating System is owned by a third party which licenses it directly to Customer, Varian hereby grants Customer, only for so long as Customer shall own the Product, a limited, personal, non-transferable, non-exclusive license to use the applicable Firmware and Operating System as part of the normal operation and maintenance of the Product.

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

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

## 8. Confidential Information

Each party ("Recipient") may be exposed to certain information of the other party ("Discloser") which is confidential to the Discloser and is valuable to Discloser and not generally known to the public ("Confidential Information"). Notwithstanding the foregoing, information shall not be Confidential Information unless, if disclosed in writing, it is conspicuously marked "Confidential" or bears some similar marking, or, if disclosed orally or by observation, its confidential nature is stated by the Discloser at the time of disclosure and confirmed in writing to the Recipient within fourteen (14) days after the disclosure. Except as expressly and unambiguously allowed in this Section, Recipient will hold Discloser's Confidential Information in confidence and will treat Discloser's Confidential Information with the same degree of care taken to protect its own similar confidential information but in no event with less than reasonable care. Recipient further agrees to limit disclosure of such information to those of its directors, employees, contractors, and agents who have a need for such information to effect the use permitted under this Agreement and who are bound under a written agreement or legal obligation to keep such information confidential. For purposes of this Agreement each party's standard director or employee agreement covering confidential information issues will satisfy this requirement with respect to such directors or employees. Recipient will not be required to protect or hold in confidence any information which: (1) becomes publicly known through no wrongful act or omission of Recipient; (2) was previously disclosed by Discloser to Recipient without indication of confidentiality; (3) becomes known to Recipient, without confidential restriction from a third party unless Recipient had or should have had knowledge of its confidentiality; (4) is approved by Discloser for disclosure without restriction in a written document which is signed by a duly authorized officer of the Discloser; or (5) is independently developed by Recipient without use of Discloser's Confidential Information. Disclosure of Confidential Information will not be precluded by this Section if such disclosure is: (a) necessary to establish rights under this Agreement subject to Recipient's obligation at its expense to make a good faith attempt to obtain a protective order prior to such disclosure; or (b) required by law or regulation or in response to a valid order of a court or request of other governmental body of a country or political subdivision thereof, provided that Recipient notifies Discloser of such order on a timely basis and if possible prior to such disclosure. All Confidential Information, including copies made by Recipient, will remain the property of Discloser. The obligations of confidentiality imposed by this Agreement shall survive any termination of this Agreement. This Section shall not apply to any Confidential Information covered by a separate Business Associate Agreement between the parties.

## 9. Warranty

9.1 **Warranty for Hardware Products.** See the Hardware Section.

9.2 **Warranty Remedies.** See the Hardware Section.

9.3 **Warranty for Software Products and Services.** See the Software Section and Support Section, respectively.

9.4 **Exclusions from Coverage:** Any warranty claim, support claim, or liability is excluded where such claim or liability is not caused by Varian and arises out of: (1) accident, theft, misuse, or neglect; (2) use of the Products outside of normal operating conditions, specifications, or environment or in a manner not authorized by Varian as set forth in the applicable Product documentation or written instructions from Varian; (3) user modification of any Product not authorized by Varian in the applicable Product documentation or other writing; (4) computer viruses and other changes to the operating system or environment which adversely affect the Product; (5) defects, problems, or failures created by third party products (except those comprising parts or components of Varian Products) or their interface with Varian Products; or (6) acts of God, electrical power surges, or other causes external to the Products.

9.5 **Third Party Product Terms and Warranties.** Except as otherwise set forth in this Agreement, a third party product that is integrated into a Varian Product and not separately identified in the Quotation as a third party product shall be covered by the warranty or support obligations applicable to the Varian Product into which it is integrated. All other third party products, including, without limitation, equipment, accessories, or software that are separately identified in the Quotation as third party products ("Separate Third Party Products") shall be governed by that third party's terms and conditions, including, but not limited to, usage guidelines and restrictions, software licenses, warranties, and any other terms; Customer must agree to those third party terms and conditions unless it negotiates otherwise directly with the manufacturer (or authorized distributor) of those Separate Third Party Products. Varian makes no representation or warranty with respect to the compatibility of Separate Third Party Products with Varian Products, nor that the Separate Third Party Products are designed or offered to work with Varian Products as a single system that has received regulatory clearance or approval. Varian remains the manufacturer or record of its products, and the Separate Third Party Product manufacturer remains the manufacturer or record of its products. Varian is reselling the Separate Third Party Products on its Quotation for the Customer's convenience. In no event shall Varian have any liability with respect to Separate Third Party Products, nor shall Varian have any liability for failure of the third parties to perform on their warranties. Customer agrees to seek any remedies with respect to the Separate Third Party Products from the third party manufacturer (or authorized distributor as the case may be).

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

#### 10. Intellectual Property Infringement

Varian shall defend, at its expense, any third party claim brought against Customer that the design or manufacture of any Varian Hardware or Varian Software furnished by Varian to Customer under this Agreement infringes any patents or other intellectual property rights of (1) the country where Customer takes delivery of the Product if such country is the United States, Canada, Japan, Switzerland, or any of the fifteen (15) original members of the European Union (namely, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom), or (2) the United States where Customer takes delivery of the Varian Hardware or Varian Software in a country not listed earlier in (1) ("Claim"), and shall pay any settlement and any damages, costs, and attorney's fees finally awarded against Customer arising out of a Claim. The foregoing is conditioned upon Customer (a) notifying Varian promptly in writing of the Claim; (b) giving Varian sole control of the defense, management, and settlement of the Claim, provided that Customer may participate in such defense at its own cost with counsel of its choice if it gives Varian such control; and, (c) upon request, at Varian's cost, reasonably cooperating with Varian in such defense. Varian shall not enter into any settlement imposing liability on Customer for which Customer is not indemnified without Customer's written consent. If (1) such Product's use is enjoined as a result of any Claim, or (2) in Varian's opinion, such Product is likely to become subject to a Claim, Varian may, at its expense and sole option, (a) modify the Product so that it becomes non-infringing; (b) procure for Customer the right to continue to use the Product; (c) substitute for the infringing Product another product having a functionality substantially equivalent to the Product; or (d) accept return of the Product and refund its purchase price, less reasonable depreciation. Varian EXPRESSLY EXCLUDES from liability and Customer shall indemnify and hold Varian harmless from: (1) settlements and their related costs and expenses where Customer settles Claims without Varian's prior written consent; and (2) any Claims arising out of (a) use of the Product in a manner not authorized by Varian, as set forth in the applicable documentation for the Product or written instructions by Varian; (b) modification of the Product except modifications performed by Varian or pursuant to Varian's instructions; (c) combination of the Product with any other equipment, apparatus, software, processes, or materials not furnished by Varian except as requested or performed by Varian; (d) compliance by Varian with Customer's designs, specifications, or instructions; or (e) methods of use of a Product, unless the Product has no substantial non-infringing use, where such infringement would not have occurred but for such use, modifications, combination, or compliance. This Section states Varian's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

#### 11. Bodily Injury

With respect to bodily injury liability to third parties, each party shall be responsible in such proportion as reflects its relative fault for damages arising from or in any way related to the use or operation of any Product. Varian shall have no responsibility whatsoever for, and Customer shall indemnify, defend, and hold Varian harmless from, any and all damage or injury which arises from or relates to (1) any use, operation, or service of any Product by anyone other than Varian personnel prior to completion of applicable acceptance tests by Varian and the radiation survey by Customer, or (2) any use, operation, or service of any Product contrary to any written warning or instruction given by Varian with respect to such Product, including but not limited to unauthorized use and/or modification of any equipment, components, software, or accessories by any user, or their use on or with any explosive or incendiary materials, or (3) claims or damages associated with any non-Varian design, manufacture, or installation of any product or any custom design, manufacture, or installation by Varian that is performed pursuant to Customer's specifications, designs, or plans. This Section states each party's entire liability for bodily injury.

#### 12. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL VARIAN OR ITS SUPPLIERS OR LICENSORS OR CUSTOMER BE LIABLE UNDER CONTRACT TORT OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST BUSINESS, LOST PROFITS, LOSS OF USE, OR LOSS OF OR DAMAGE TO DATA, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VARIAN AND ITS SUPPLIERS AND LICENSORS' AND CUSTOMER'S TOTAL LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE UNDER THE AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE MATERIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES AND THAT PRICES FOR THE PRODUCTS WOULD BE HIGHER WITHOUT THEM. (1) Liability to third parties for bodily injury, including death, resulting from Varian Hardware or Varian Software or its use; (2) liability for breach of confidentiality; and (3) obligations related to intellectual property shall not be affected by the liability limitations stated above in this Section.

#### 13. Export Compliance

Customer acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, European Union, and Switzerland, and Customer agrees to comply with such laws and regulations. Customer agrees that it shall use its best efforts to ensure that the Products and related technology are not (1) sold, transferred or diverted to any U.S. or E.U. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan and Syria), unless authorized by U.S. export license or regulation; (2) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury's Specially Designated Nationals List, the U.S. Department of State's Debarred Parties listing, or any E.U. or local country listing of sanctioned persons; (3) sold, transferred, or diverted to any nuclear weapons,

nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-user; or (4) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders. Customer shall promptly advise Varian in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing. Customer understands that Varian's performance under this Agreement is subject to Varian's receipt of all necessary licenses, permits, or approval from all relevant governments or their agencies for the import or export of the Products and that Varian shall be free from all liabilities for deficient performance under this Agreement if such deficiency is caused by the non-receipt or late receipt of such licenses, permits, or approval. The obligations of this Section as to these laws shall survive any termination of this Agreement.

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

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

#### **15. Disputes, Mediation, Arbitration, and Applicable Law**

The parties shall endeavor to settle any dispute arising out of this Agreement, except those pertaining to intellectual property issues, by mediation under the Mediation Rules of the American Arbitration Association ("AAA"). The parties will attempt to agree on a mediator. Failing such agreement, the mediator will be appointed by the AAA Vice President in charge of Mediation. Any dispute arising out of or relating to this Agreement, including the breach, termination, or validity thereof, which has not been resolved by mediation as provided herein within thirty (30) days after appointment of a mediator or such time period as the parties may otherwise agree, shall be finally resolved by binding arbitration in accordance with the AAA Commercial Rules, by three (3) independent and impartial arbitrators, all of whom shall be appointed by AAA, provided, however, that if one party fails to participate in the mediation as agreed in this Section, the other party can commence arbitration prior to the expiration of the time periods set forth above. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of arbitration shall be Palo Alto, California. The governing law of the substance of this Agreement shall be the commercial law of the state of California, and the United Nations Convention for the International Sale of Goods shall not apply. The procedural law shall be the law of the place where arbitration is conducted. Arbitral proceedings shall be conducted in English. The arbitration tribunal shall not award punitive damages. The expenses of the arbitration, including the arbitrator's fees, expert witness fees, and attorney's fees, may be apportioned between the parties in any manner deemed appropriate by the arbitrator; however, in the absence of any formal ruling by the arbitrator each party shall share equally in the payment of the arbitrator's fees and bear its own costs, expert witness fees, and attorney's fees. The arbitration award shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement. Nothing in this Agreement shall prohibit either party from seeking to prevent any unauthorized copying, disclosure, use, retention, or distribution of its Confidential Information or intellectual or other property by injunctive relief or otherwise in a court of law. Varian shall have the exclusive right to bring legal action for failure to pay for Products or Services furnished in the courts of Varian's corporate domicile or any other place.

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

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

#### **17. Notices**

Any notices required or permitted to be given pursuant to this Agreement shall be in writing, delivered (1) in person, (2) by international courier, (3) by first class certified mail, return receipt requested, or its international equivalent, or (4) by facsimile with confirmation of delivery and an extra copy mailed. All such notices shall be addressed to Varian at Legal Department, Varian Medical Systems, Inc., 3100 Hansen Way, M.S. E-250, Palo Alto, CA 94304, fax 650-424-5998, and to Customer at the address and/or fax numbers set forth in the Quotation or to such other address as may be specified from time to time by notice in writing to the other party. Notice shall be deemed to have been given when received.

#### **18. Headings**

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

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

This Agreement contains the complete and exclusive statement of the terms of agreement of the parties with respect to this subject matter, and supersedes all prior and contemporaneous understandings, representations, and warranties, written and oral. This Agreement may be amended or modified only in a writing signed by both parties. If a court or arbitrator holds any part of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity or enforceability of the remaining provisions, or portions of them, will not be affected, and such provisions will be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or court decisions. In the event of a conflict, the documents shall be interpreted to give priority in the following order: (1) amendments or addenda to this Agreement, if any, with highest priority given to the most recent amendment or addendum, (2) Quotation, and (3) Terms and Conditions of Sale.

## 20. Waiver

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

## 21. Assignment

Except as to rigging, neither party may assign its rights nor delegate its duties under this Agreement without the written consent of the other, and any attempted assignment without such consent will be void. However, either party may assign or otherwise transfer its rights or delegate its duties under this Agreement, in whole or in part and subject to the terms of this Agreement, to a subsidiary or affiliate, or a purchaser or transferee of substantially all of the assets used by such party in its business, to which this Agreement relates or in the event of a merger, acquisition, corporate restructuring, or change in control upon written notice to the other party.

## 22. Relationship of the Parties

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

## 23. Counterparts

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

## 24. Sales to United States Government Agencies

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

### HARDWARE SECTION

(Formerly Form RAD 9905 OS Schedule and Form RAD 9906 BT Schedule)

This Hardware Section applies to all Hardware Products provided by Varian to the Customer under this Agreement.

#### 1. Transportation and Risk of Loss

All shipments are per the Incoterms (Incoterms 2010) set forth in the Quotation with Varian selecting the transportation company. Title shall pass at the same time that risk of loss shifts. Unless otherwise expressly agreed in writing, Varian will ship linear accelerator, simulator Products, and any other Products that Varian determines such transportation is advisable, as well as any other items that it determines would be efficiently transported by inclusion with such Products, to Customer's site in "air ride" vans, and Varian shall insure to full value of Products shipped at Customer's expense or shall declare full value of the Products to the transportation company at time of shipment. Within three (3) days of delivery, Customer shall examine fully the packaging of the Product delivered for damage and make all applicable complaints and claims arising out of such delivery to the carrier in writing, and shall provide a copy to Varian.

#### 2. Bill and Hold

This Section shall apply only to linear accelerators, simulators, and HDR BrachyTherapy afterloaders. If shipment is delayed due to unavailability of Customer facilities or any other cause, Customer may request and authorize Varian to hold the Product(s) in storage upon completion of manufacturing. Varian shall invoice Customer for, and Customer shall pay, eighty percent (80%) of the purchase price for such Product(s), which shall include any down payments or deposits. Varian will select a suitable storage facility and pay for the costs of storage and insurance for up to ninety (90) days. Title to the Product(s) shall pass when the Product(s) are placed into storage. The Product(s) shall be insured in Customer's name. If Customer has not requested shipment of the Product(s) within such ninety (90)-day period, then Varian shall ship the Product(s) to the site designated in the applicable Quotation(s). When storage is required, the provisions of this Section shall prevail over any inconsistent provisions of this Agreement.

#### 3. Architecture

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

#### 4. Installation

A linear accelerator is delivered in three (3) or four (4) separate sections which Varian will assemble in Customer's vault. Varian also will provide standard installation of the pieces and final positioning for the linear accelerator and testing. Customer will be responsible for the grouting of the subbase frame and the connection of such Products to the utilities and for any non-standard installation services (such as the shorting of floors, the widening of doorways, and second floor delivery), and Varian will notify Customer approximately ninety (90) days prior to scheduled Products shipment to allow Customer to provide for and coordinate such services. Except as otherwise agreed by the parties, Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, and access to the rooms completed on the estimated delivery date and ready for installation of the Products. Upon agreement of the parties, Varian may review quotes from and pay the subcontractor directly for connection to utilities, power, air, and grouting of the base frame. Where Varian is installing a Product for Customer, Customer will reimburse Varian at Varian's standard service rates for any extra time and/or

travel by Varian made necessary by any delays not caused by Varian. Varian shall have no obligation to operate Products to complete installation or testing unless Customer has provided adequate radiation shielding protection and other site preparations for the safety and protection of Customer's and Varian's personnel and Products. Upon completion of installation, Varian's representatives will demonstrate proper Product operation by performing the applicable Varian Customer Acceptance Procedure ("VCAP"). Customer shall provide a representative who shall be present at all times during installation (including interfaces) and be capable of assisting where necessary or waiving installation of interfaces to the extent that Customer has decided not to install products requiring such interfaces. When no representative is present or assistance from Customer is not available when required by Varian, Varian may discontinue installation and shall charge Customer for any additional costs incurred including Varian's standard service rates. If union action or influence requires union labor to complete any installation of Products, then such installation shall be completed at Customer's expense under the engineering supervision of Varian.

## 5. Acceptance of Hardware Product

For Non-Varian Hardware Varian shall invoice when such Product is shipped. For Varian Hardware, acceptance shall occur upon the earlier of (1) Customer's execution of Varian's acceptance form, which is the final step in the VCAP for each Product, (2) completion of the applicable VCAP, (3) use of any such Product by Customer, its agents, employees, or licensees, for any purpose other than testing after its receipt, or (4) six months after delivery of the Product. Prior to acceptance Varian may repair or, at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity. After acceptance Customer's remedies shall be solely as provided in the warranty. After six (6) months after delivery of the Product Varian shall no longer be required to provide installation services.

## 6. Calibration and Radiation Surveys

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

## 7. Warranty

- 7.1 **Warranty for Varian Hardware.** Unless otherwise provided in this Agreement or the Quotation, Varian warrants that Varian Hardware and any Firmware and Operating System loaded on such Varian Hardware, except where such Firmware or Operating System is owned by a third party which licenses it directly to Customer, to be free from defects in material and workmanship and in substantial compliance with operational features of Varian's published specifications for the applicable Product at the time of sale ("Specifications"). This warranty shall begin upon completion of installation and continue for a period of one year from such date, but not to exceed two (2) years from date of shipment from Varian to Customer. In lieu of the foregoing periods, specific components of Varian Hardware may have different warranty periods, prorated replacement credits, and return policies, as stated on the applicable Varian warranty forms supplied by Varian to Customer with this Agreement. Weights and dimensions in the Specifications are approximations. Clerical and typographical errors are subject to correction. Occasionally, upon agreement of the parties, Varian may substitute remanufactured parts and components that meet the same quality standards as new materials and are covered by the same warranty. Parts for which Varian has provided replacements shall, at Varian's option, become the property of Varian.
- 7.2 **Parts Warranty.** Varian warrants parts to be free from defects in material and workmanship for a period of the greater of ninety (90) days from the date of shipment to Customer or, if applicable, the unexpired portion of the original warranty period for the Product. All warranty repair or replacement of parts shall be limited to product malfunctions which are, as determined by Varian, due and traceable to defects in original material and workmanship. Components that carry separate warranties based upon use are not covered by this warranty. Parts that are expendable in normal use and service are not covered by this warranty. Parts for third party products, such as computer hardware provided with software products, are not covered by this warranty, except when applicable option has been purchased. Unused parts returned to Varian are subject to a restocking fee of fifteen percent (15%), and, if applicable, an additional testing fee.
- 7.3 **Disclaimer for Parts Not Supplied by Varian.** If Customer requests Varian to install parts not purchased from Varian, then: (i) Varian reserves the discretionary right to refuse to install any part; (ii) if Varian agrees to install the part, no warranty, expressed or implied, is provided for the part or installation services, nor does installation by Varian imply that Varian certifies such part or vendor from whom such part is obtained; (iii) labor to install the part will be provided on an hourly basis as set forth in Form MGM 1582 (Labor Rates and Working Hours); and (iv) if additional damage is caused by such part, Varian assumes no responsibility for such damage. If the Varian Product is under any level Varian Service agreement, Varian will not be obligated to repair such damage under such Service agreement, and such repairs will be performed under Form MGM 1582.
- 7.4 **Warranty Remedies.** Customer's sole and exclusive remedy for any failure of Varian Hardware or Firmware or Operating System under this Section to perform shall be repair or, at Varian's option, replacement of such defective Products in whole or in part during Varian's normal business hours. If in Varian's sole opinion such repair or replacement is not feasible, or if such remedy fails of its essential purpose, Varian shall refund or credit a portion of any sums paid by Customer for the defective Product less reasonable depreciation. In-warranty repair or replacement parts are warranted only for the unexpired portion of the original warranty period.



## SOFTWARE SECTION

(Formerly Form RAD 2750 Software Schedule)

This Software Section shall apply to all Varian Software licensed by Varian to Customer under this Agreement, excluding Firmware and Operating Systems, which are shall be governed by General Terms, Section 6 (Firmware and Operating Systems) and Hardware Section, Section 7 (Warranty)

### 1. Additional Definitions

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

### 2. License Grant

Subject to and for so long as Customer is in compliance with the terms and conditions of this Agreement, Varian grants to Customer a limited, personal, non-exclusive, non-transferable (subject to General Terms Section 21 (Assignment)) license for:

- (a) server modules of Software Products, as follows:
  - (i) for server components of a server module of a Software Product, to install and use a single copy of the object code version of such server module on a single server (or single database server and single imaging server for imaging applications) and to Access the server modules from a workstation; and
  - (ii) for workstation components of a server module of a Software Product, if any, to install and use copies of the object code version of such workstation components on such workstations as necessary;
- (b) workstation applications of Software Products, as follows:
  - (i) for a workstation application of a Software Product intended for installation on a workstation for which no license manager is used or for which a fixed license manager is used, to install and use the object code version of such workstation application on the number of workstations for which licenses have been purchased;
  - (ii) for a workstation application of a Software Product pre-installed by Varian on a workstation (such as a console) prior to its delivery to Customer, to use the object code version of such workstation application on the workstation on which such application is installed;
  - (iii) for a workstation application of a Software Product intended for a floating license, to install the object code version of such workstation application on any number of workstations and to permit concurrent users up to the number of licenses purchased to use such workstation application; and
  - (iv) for a workstation application of a Software Product intended for a site license, to install and use the object code version of such workstation application on any number of workstations at the Customer site(s) identified in the Quotation as to such Software Product; and
- (c) to copy the Software Products for back up and archival purposes only, except to the extent that such restriction on copying is void under applicable law; and
- (d) to use (but not make copies of) the Documentation to assist in Customer's use of the Software Products pursuant to the terms of this Agreement except that Customer may make an electronic copy on each workstation of the Documentation applicable to the Software Products installed or used on such workstation.

Each such license shall be valid until termination under this Agreement or expiration. Software Products may be licensed as server modules or as workstation applications as may be indicated in the applicable Quotation or Documentation. Unless otherwise indicated, Maintenance Releases, Mandatory Safety Releases, Upgrades, and Purchase Options (as defined in the Datasheet) are hereby licensed in the same way that their underlying Products are licensed under this Section. Customer shall not be entitled to receive or use any source code of the Software Product under this Agreement except as otherwise stated in this Agreement. Varian shall have the right to conduct and/or direct an independent accounting firm to conduct, during normal business hours, an audit of the appropriate records of Customer to verify Customer's compliance with the licenses granted under this Software Section.

### 3. Title

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

### 4. Integration

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

## 5. Acceptance

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

## 6. Support and Warranties

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

Varian agrees as follows:

- (a) for Software Products licensed to Customer for the first time, as opposed to expansions of pre-existing configurations, in lieu of any warranty Varian will provide Customer with technical support Services for a period of one year from the date of installation of the Software Product by Varian (or the date of delivery where the Software Product will be installed by Customer), or such other period set forth in the Quotation, under the terms of the Datasheet and Support Section, at no additional charge to Customer;
- (b) for Software Products licensed to Customer that adds a module to, upgrades, or increases the number of licenses purchased under a pre-existing configuration:
  - (i) for which the Support Section of a service agreement, or a service agreement is then in effect between Customer and Varian and is not scheduled to expire within thirty (30) days of the execution of this Agreement, upon expiration of the applicable warranty period for such additional licenses, Varian will provide Customer with technical support Services for the balance of the then-current one-year support period, at a pro-rated charge that will be calculated and invoiced based on the number of months remaining until the anniversary (or renewal) date for support on the pre-existing configuration, to Customer under the terms of the Datasheet, Support Section, or agreement for such pre-existing configuration; and
  - (ii) for which Support Section of a service agreement, or a service agreement is then in effect between Customer and Varian but is scheduled to expire within thirty (30) days of the execution of this Agreement or for which no Support Section or service agreement is then in effect between Customer and Varian, excluding BradyTherapy products, Varian warrants, for a period of thirty (30) days from the date of installation of the Varian Software by Varian (or the date of delivery where the Varian Software will be installed by Customer), that the Software Product, will, when used in accordance with the Documentation, substantially conform to the Documentation. Where Customer reports a nonconformity to Varian during the warranty period, Varian will provide workarounds, patches, bug fixes, or other corrections or will replace the affected Software Products, at Varian's option, and such remedy will be Customer's sole and exclusive remedy for breach of this warranty. If in Varian's sole and exclusive opinion any such workaround, patch, bug fix, correction, or replacement is not commercially reasonable, or if any such remedy fails of its essential purpose, Varian shall negotiate with Customer with respect to a refund of any equitable portion of any sums paid by Customer for the affected Software Products.

Varian's provision of Mandatory Safety Releases, Maintenance Releases, and, if applicable, Upgrade Releases, under the warranty or support in lieu of warranty in this Section and pursuant to the Datasheet and/or the Support Section shall not extend the original period for such warranty or support.

### 6.2. Disclaimer.

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

### 6.3. Limitations.

Except as specifically stated in the Documentation, Varian does not make any representations or warranty regarding the compatibility of the Software Products with software or hardware not supplied by Varian. Varian will in its sole and exclusive discretion, use reasonable efforts to assist Customer with the use of Software Products with third party products. Such assistance is limited to telephone and service support regarding compatibility or interface questions. Varian does not make any representation or warranty

regarding the clinical use of the Software Products and/or Varian beam data by Customer for the treatment of patients in performing any medical procedure. Customer acknowledges that the Software Products and Varian beam data are tools to assist Customer to determine the proper course of treatment that may be needed by a particular patient, and Customer assumes all risks associated with such treatment. Import, export, or distribution of any data or information Customer may develop or use in cooperation with the Software Products ("Data Related Activities") is Customer's sole responsibility, and Customer agrees to defend, indemnify, and hold Varian harmless from any and all claims by Customer and/or third parties, regardless of the nature of such claims, arising either directly or indirectly out of Data Related Activities. The foregoing sentence shall not be construed to limit Varian's obligation to provide warranty work or support under Section 6.1.

**7. [Intentionally Omitted. Formerly Government Rights. Now covered in General Terms, new Section 24.]**

**PROFESSIONAL SERVICES SECTION**

(Formerly Form RAD 10020 Professional Services Schedule)

This Professional Services Section shall apply only to development of interfaces for Varian medical oncology software installation and any customized services provided under an SOW.

**1. Additional Definitions**

- 1.1. "Change Order" shall mean any proposed change to the SOW requested by Customer and agreed to in writing by Varian.
- 1.2. "Professional Services" shall mean the services identified in each individual SOW, including, but not be limited to, analysis and performance of integration of Varian's standard software applications with Customer's information systems and business practices, development of interfaces between Varian's standard software applications and Customer's computer systems, customized training, and other services available from Varian.
- 1.3. "Schedule" shall mean any timetable or milestones for the Professional Services that is set forth in the SOW.
- 1.4. "SOW" shall mean a statement of work or work order agreement, either in the Quotation or as separately agreed upon by the Parties describing the Professional Services to be performed by Varian for Customer.

**2. Term**

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

**3. Professional Services**

- 3.1. **Generally.** In consideration of Customer's timely payment, Varian shall perform the Professional Services set forth in each SOW attached to or referencing this Agreement.
- 3.2. **Software.** Where Varian provides Customer with other software under an SOW to this Professional Services Section, including but not limited to interface engines and interfaces, then such software shall be governed by the Software Section. The interface engine, interface, or other software will be licensed under the Software Section in the same manner as the underlying application software which requires such interface engine, interface, or other software.
- 3.3. **Actual and Potential Delays.** Varian shall use commercially reasonable efforts to perform the Professional Services according to the Schedule. Whenever any event delays or threatens the timely performance of the Professional Services, Varian will make commercially reasonable efforts to notify Customer of such event and furnish all relevant details. If Varian is unable to meet the Schedule for any Professional Services, Varian and Customer shall meet in good faith to discuss possible solutions including revising the Schedule at no additional cost to Customer, provided that such revision does not add new Professional Services to the SOW.
- 3.4. **[Intentionally Omitted. Formerly Customer Hours, Holidays, and Site Rules. Now covered in Datasheet.]**
- 3.5. **[Intentionally Omitted. Formerly Office Space, Services, and Equipment. Now covered in Datasheet.]**
- 3.6. **Exclusions from Professional Services.** Except to the extent expressly set forth in an SOW, Professional Services shall not include, and Varian will have no approval or other responsibility for, any matter affecting or related to the adequacy of Customer's operating permit, architectural design, the radiation protection walls and barriers, patient viewing devices, compliance with all facility personnel safety devices and related inspections, utility service design and location, Customer's obligations to comply with applicable laws, and other details pertaining to Customer's site.

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

**4.1. Rates.**

- 4.1.1. **Time and Materials Rates.** Varian shall bill Customer for Professional Services at the time and materials rates set forth in the applicable Quotation or, if no rate is set forth in the Quotation, at Varian's then-current standard rates for such Professional Services. Varian shall bill for actual time expended and materials used in providing the Professional Services, and any preliminary estimate of time and materials provided by Varian to Customer for the Professional Services is for budgetary purposes only and shall not be binding on either party. Varian's standard work day is eight (8) hours. Varian shall bill Customer in units of billable hours, with minimum billable increments of eight (8) hours for Professional Services being performed at Customer's site or one

hour for Professional Services being provided off-site. Where Varian can perform any portion of the Professional Services remotely rather than on Customer's site, Varian shall bill for such off-site Professional Services in accordance with the terms of this Agreement as if such Professional Services were performed at Customer's site.

- 4.1.2 **Firm Fixed Price Rates.** Varian may also provide Customer with some pre-packaged Professional Services or other specially negotiated Professional Services on a firm fixed price basis, provided that such Professional Services will be clearly identified as being offered on a fixed price basis. Where the parties agree upon a firm fixed price, the Professional Services included within such price shall be limited to those specifically identified as being covered by such price, and Customer agrees to make payments according to the Schedule, including any applicable milestones. Where Professional Services are not expressly identified as being covered by a firm fixed price, they shall be provided on a time and materials basis.
- 4.2. **Expenses.** Varian shall submit a monthly time and expense summary to Customer by letter, fax, e-mail, or in person for the Professional Services performed during the prior month. Varian may bill Customer for its reasonable expenses, including, but not limited to, travel, lodging, and meals, required to perform the Professional Services for Customer.
- 4.3. **Invoices.** For Professional Services performed on a time and materials basis, Varian shall submit invoices to Customer for labor, materials, and expenses in providing the Professional Services in the immediately preceding month. For Professional Services performed on a firm fixed price basis, Varian shall submit invoices to Customer pursuant to the Schedule set forth in the SOW. Upon request by Customer, Varian shall provide receipts or other documentation supporting reimbursable expenses to Customer.
- 4.4. **Payment.** Except to the extent that a special payment arrangement has been agreed to by the parties in the Quotation or SOW, Customer shall pay each invoice within thirty (30) days from the date of the invoice.

## 5. Change Orders

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

## 6. Warranty

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

## 7. Insurance

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

- 7.1. **Commercial General Liability** – including products/completed operations, broad form property damage, contractor's protective liability, blanket contractual, advertising injury, and personal injury liability. Minimum limits – \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- 7.2. **Business Auto Liability** – including coverage for all owned, non-owned, and hired vehicles. Minimum limits – \$500,000 combined single limit per accident for bodily injury and property damage.
- 7.3. **Worker's Compensation Insurance and Employer's Liability Insurance** – including a waiver of subrogation on behalf of Customer, its shareholders, employees, and agents. Minimum limits – statutory limits and \$500,000 employer's liability applicable in jurisdictions of contract performance.

## 8. 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 and discoveries newly developed in performing the Professional Services.

## SUPPORT SECTION

(Formerly Form MGM 1580 Support Schedule)

This Support Section applies to all initial warranty and support for the Varian Products provided by Varian to the Customer under this Agreement, as well as support services agreed to by the parties for periods after such initial warranty or support.

1. **[Intentionally Omitted. Formerly Additional Definitions. This information now resides in the Datasheet accompanying the quotation.]**
2. **[Intentionally Omitted. Formerly Invoicing and Additional Payment Terms, now covered in General Terms Section 3 (Payment).]**
3. **[Intentionally Omitted. Formerly Mandatory Safety Releases. Now covered in Datasheet.]**

4. [Intentionally Omitted. Formerly Maintenance Releases. Now covered in Datasheet.]
5. [Intentionally Omitted. Formerly Upgrade Releases and Purchase Options. Now covered in Datasheet.]
6. [Intentionally Omitted. Formerly Telephone Support. Now covered in Datasheet.]
7. [Intentionally Omitted. Formerly Remote Diagnostic and Remedial Support. Now covered in Datasheet.]
8. [Intentionally Omitted. Formerly On Site Support. Now covered in Datasheet.]
9. [Intentionally Omitted. Formerly Periodic Maintenance Inspections. Now covered in Datasheet.]
10. [Intentionally Omitted. Formerly Severity Levels and Response Times. Now covered in Datasheet.]
11. [Intentionally Omitted. Formerly Training. Now covered in Datasheet.]

## 12. Customer Responsibilities

- 12.1 **Authorized Representatives.** Customer shall request Varian Services on a time and materials basis and order parts only through its authorized representatives and will provide a list of such authorized personnel upon request by Varian.
- 12.2 **Access to Premises.** Customer shall provide Varian with sufficient access to the Covered Products and Customer's premises and personnel to perform its obligations and to install all Mandatory Safety Releases, including access for both remote diagnostics and onsite Services.
- 12.3 **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 to perform Service responsibilities.

## 13. [Intentionally Omitted. Formerly Failure to Maintain. Now covered in General Terms, Section 4.2.3 (Cancellations, Modifications, and Termination).]

## 14. [Intentionally Omitted. Formerly Parts. 14.1-14.3 are now covered in Datasheet. 14.4 and 14.5 are now covered in Hardware Section, Section 7 (Warranty).]

## 15. Software Provided Pursuant to Services

Any firmware and operating systems provided by Varian pursuant to Services is provided pursuant to General Terms, Section 6 ("Firmware and Operating Systems"), and any Varian Software provided pursuant to Services is provided pursuant to the terms set forth in the Software Section, provided, however, that Varian's provision of such software shall not extend existing warranty periods, if any, nor create any new ones.

## 16. Limitations and Exclusions. [Former last two paragraphs regarding system requirements and delays are now covered in Datasheet.]

**Exclusions from Services.** The Services provided shall be limited to support of Covered Products. Products not covered 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 with which the Covered Products interface; however, these restrictions shall not apply to the extent that such networks, hardware, interfaces, or products are included as Covered Products. In addition, Varian shall not be required to provide Services for any Products if, in Varian's reasonable opinion, they are required because of Customer's failure to install Mandatory Safety Releases or Maintenance Releases made available to Customer or because of causes other than defects or errors in the Covered Products.

Varian shall not be required to render Services at locations other than the Customer site(s) listed in the Quotation.

## 17. [Intentionally Omitted. Formerly Termination. Now covered in General Terms, Section 4.2.1 (Cancellations, Modifications, and Termination).]



## Service Support Datasheet

Form RAD 10205 12/11

### 1. Definitions

- 1.1 "Covered Product" means a Varian Product for which the parties have agreed in writing to provide Services under warranty or service agreement.
- 1.2 "Maintenance Releases" 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.
- 1.3 "Mandatory Safety Release" means updates, error corrections, or modifications to a Software Product 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.
- 1.4 "Purchase Options" means software applications or modules not included in the software Product or releases of the Software Product that include new features or functionality and that are released and marketed by Varian as Purchase Options.
- 1.5 "Upgrade Release" means upgrades, enhancements, and improvements to the features or functionality of Software Product that are released and marketed by Varian as Upgrade Releases.

The terms "Covered Product" and "Software Product" shall include all Maintenance Releases and Mandatory Safety Releases, as well as Purchase Options and Upgrade Releases, if any, licensed by Varian to Customer.

### 2. Mandatory Safety Releases

Varian shall provide Customer with and install Mandatory Safety Releases at no additional cost until the later of (1) the end of life of the Product specified in a notice by Varian, or (2) such later date as required by any regulatory agency.

### 3. Maintenance Releases

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

### 4. Upgrade Releases and Purchase Options

Varian shall offer Upgrade Releases and Purchase Options 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 at no additional cost through (1) help desk telephone support and (2) technical telephone support.

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

### 6. Remote Diagnostic and Remedial Support

Where available and elected by Customer, Varian may provide diagnostic and remedial support Services for Covered Products remotely during standard hours through SmartConnect™ technology or other remote access program at no additional cost.

### 7. On-Site Support

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 Varian can offer on-site support outside of Varian's standard hours and such support is requested by Customer during such hours, Customer agrees to pay for non-standard hours coverage at the hourly rates set forth in Form 1582 (Labor Rates and Working Hours); 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 Service agreement.

### B. Periodic Maintenance Inspections

Varian shall provide Periodic Maintenance Inspections ("PMI's") for hardware Covered 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 the hourly rates set forth in Form 1582 (Labor Rates and Working Hours), provided, however, that such after-hours PMI's 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 program functions, 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 program functions, 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 program functions, 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 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 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 issue.

## 10. Training and Professional Services – General Guidelines

### 10.1 Entitled Training.

- a. Classroom training must be attended at the nearest Varian education location, where the class is offered.
- b. The suitable delivery mode of "Associated Training" for an upgrade will be determined by Varian. This may include web based digital streaming media or Microsoft® Office Live Meeting.
- c. The standard mode of delivering training and training material will be via electronic media.

### 10.2 Purchased Classroom Training.

- a. Where applicable, travel allowance package that is purchased as part of the Service Level Agreement ("SLA"), is applicable only to the "Pre-packaged Training Credits" or the "Technical Maintenance Training". This package must be used within the contract period. No refunds are allowed for unused portions of this package. Travel and lodging must be booked via a Varian authorized travel agent and must comply with Varian's travel and lodging policy.
- b. A training event that is part of an SLA 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 when this training is associated with a software upgrade.
- c. Annual flex credits, purchased as a part of SLA, expire at the end of each SLA year and unused credits do not roll over. Flex credits purchased separately expire after a year if unused. It is recommended to schedule Flex credit classes eight (8) to twelve (12) weeks in advance.

### 10.3 On-Site Training at Customer's Facility.

- a. 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.
- b. Varian employees and agents shall observe the statutory holiday schedules for both Varian and the Customer, and Customer's site rules while working on the Customer's premises. The Customer shall provide, in advance, a copy of the schedule and rules to Varian.
- c. On-site training or professional services requires that the equipment or software to be used for training is available and in good working order. Customer shall provide, at no cost to Varian, the use of office space, services and equipment (such as copiers, fax, machines, modems, and Internet access) as Varian reasonably requires to perform the training or professional services. The customer staff that is to be trained shall be available during the scheduled time of the training event.
- d. On-site training, when part of a Service Level Agreement, is in lieu of the "Associated Training" defined in the context of upgrades to the system, and it is not a separate or additional training entitlement. "On-site" applies to the mode of training being on-site as opposed to being delivered by other means, such as via digital media.

## 11. Parts

- 11.1 **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 Form 1652 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.
- 11.2 **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.
- 11.3 **Parts Inventory.** Spare parts that the Customer has on hand shall be available to the Varian Customer Support Representative. If the Covered Product is under warranty or under a service agreement, the part will be replaced by Varian at no additional cost. If the Covered Product is not under warranty or under a service agreement, it is the responsibility of the Customer to replenish the spare parts stock.

## 12. Customer Responsibilities

Customer is responsible for purchasing any additional hardware, network capacity, or other system components required to operate any Upgrade Releases or Purchase Options. Varian shall not be required to provide or support any Upgrade Release or Purchase Option under warranty or an agreement to provide Services if Customer has not obtained the required hardware, network capacity, or other system components.

Varian shall have no responsibility or liability for delays caused by Customer.





### Supplemental Terms and Conditions

Notwithstanding anything to the contrary set forth in Form RAD 1652 (Terms and Conditions of Sale), the Quotation shall be governed by the following supplemental terms and conditions. To the extent there is a conflict between Form RAD 1652 and these Supplemental Terms and Conditions ("**Supplemental Terms**"), these Supplemental Terms will prevail.

### Term and Termination of Services Agreements

If Customer is ordering post-warranty maintenance Services ("**PW Services**") before the expiration of: the hardware warranty; the initial software support or warranty period; or a prior agreement for maintenance Services (collectively, the "**Prior Support Agreements**"); then the initial term for the PW Services ("**Initial Term**") shall begin immediately upon the expiration or termination of the support obligations under the Prior Support Agreement. If Customer is ordering PW Services for Products that are not currently covered under Prior Support Agreements, then the Initial Term shall begin when Customer signs the PW Services Quotation for those Products or issues a purchase order referencing it.

PW Services agreements shall automatically renew for successive periods of one year ("**PW Renewal Agreements**"), unless either party provides the other with a written notice of its intention not to renew sixty (60) days prior to the time that the PW Services agreement expires. The PW Renewal Agreement price shall be adjusted based on the increase in the Consumer Price Index table published by the U.S. Bureau of Labor Statistics for all Urban Consumers ("**CPI**") for the most recently published percentage change for the twelve (12)-month period preceding the PW Services Agreement anniversary date.

Customer may terminate any PW Services agreement for convenience by: (1) notifying Varian of its intention to terminate in writing one hundred twenty (120) days prior to expiration of the then current term; and (2) paying Varian: (a) the amount that the costs of upgrades, updates, installation, and training provided by Varian to Customer for the time period measured retroactively from the termination date to the start of Service coverage under the PW Services agreement, up to a maximum of twelve (12) months, exceeds the amount of PW Service fees paid for that period for such costs; plus (b) an early termination fee of fifty percent (50%) of the PW Service fees that would have been due to Varian, if the PW Services agreement had not been terminated and had instead continued for the remainder of its then current term. Customer must pay the compensation and early termination fee invoice within thirty (30) days of its receipt of an invoice from Varian.

### Invoices

Varian may invoice Customer thirty (30) days prior to the start of Services coverage for the Products and Services shown on a Services agreement or, if the agreement states that the Services will be billed in increments (such as annual or quarterly payments), then Varian may invoice Customer thirty (30) days prior to the start of the increment identified on the Services agreement.

### Customer Changes Prior to Installation

The Products, Services, and prices listed on the Quotation are based on Customer's software, hardware, and information technology infrastructure (e.g., servers, networks, and workstations) that either (a) exist at Customer's facility at the time the Quotation is prepared, or (b) will exist on the Product installation date as communicated by Customer to Varian at that time the Quotation is prepared ("**Customer IT Environment**"). If Customer changes its Customer IT Environment prior to Product installation or delivery of the Services, the Products, Services, and prices listed on the Quotation may no longer be valid. Customer agrees that if it changes its Customer IT Environment prior to installation of a Product on the Quotation, then Customer must pay: (1) any price difference between the Product version or model listed on the Quotation and the version or model available at the time of actual installation ("**Current Version**"); (2) the price of any new hardware or software prerequisites then necessary for the Current Version of the Product to operate in the changed Customer IT Environment; and (3) any price difference between the Services listed on the Quotation and the Services needed to fully install the Current Version.

**Hardware Prerequisites for Software Upgrades and Updates**

If Customer has purchased upgrades or updates to Varian Software Products or is otherwise entitled to them under a Quotation, Customer is responsible for purchasing any additional hardware, software or information technology infrastructure products that are necessary in order to operate those upgrades or updates, unless Customer has also purchased a hardware refresh option for that Varian Software from Varian.

**Third Party Products and Services**

The combination or use of Varian Products with products or services that Customer has created or purchased from third parties ("Third Party Purchases") may: cause adulteration of those Varian Products which are medical devices; degrade the performance of Varian Products; create new cybersecurity risks for Customer's facility; or otherwise impair the safe, effective, and efficient use of Varian Products. Varian shall have no responsibility for any service or warranty work required due to Third Party Purchases, and Customer shall remain wholly responsible for any negative consequences to it or to others that result from those Third Party Purchases.

**Varian Hardware Removal Service**

Varian has a no-charge removal service for Varian hardware products that complies with all disposal procedures and regulations that apply to the electrical and electronic components contained in Varian's hardware products. Whenever Customer decides that it will no longer use a Varian hardware product at its facility, Customer must notify Varian promptly and in writing, so that Varian may evaluate whether or not to remove the Varian hardware product under Varian's removal service at no charge to Customer. The no-charge removal shall be subject to the availability of personnel of Varian and, if applicable, its riggers or other subcontractors. If Varian approves the no-cost removal, Varian will make arrangements with Customer to pick-up the Varian hardware product at a time that is convenient to Customer and to Varian. Varian shall have no obligation for environmental or radiation safety issues already existing at the location where the Varian hardware product is installed. Varian shall not compensate Customer in cash, credit, or any other means for the removed Varian hardware products. This service shall not apply to non-Varian hardware products.

**Hall, Andrew**

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**From:** Jeff Boone <Jeffrey.Boone@varian.com>  
**Sent:** Wednesday, July 05, 2017 2:14 PM  
**To:** Sintay, Benjamin  
**Cc:** Shearer, Melissa; Kubida, Kristy; Houston, Emily; Hall, Andrew; Singleton, Mario  
**Subject:** Re: ARMC Linac Replacement

You have permission to send the linac quote to the state for CON submission.

Best,  
Jeff

Jeff Boone  
District Sales Manager  
704-737-9395

> On Jul 5, 2017, at 1:38 PM, Sintay, Benjamin <Benjamin.Sintay@conehealth.com> wrote:  
>  
> BJ

**Attachment 3**  
**Capital Cost Worksheet**

**PROJECT CAPITAL COST**

**A. Site Costs**

(1)	Full Purchase Price of Land		\$	-	
	# of Acres _____ Price per Acre	\$	-		
(2)	Closing Costs		\$	-	
(3)	Site Inspection and Survey		\$	-	
(4)	Legal fees and subsoil investigation		\$	-	
(5)	Site Preparation Costs [Include]		\$	-	
	Soil Borings				
	Clearing and Grading				
	Road and Parking				
	Sidewalks				
	Water and Sewer				
	Excavation and Backfill				
	Termite Treatment				
	<b>Sub-Total Site Preparation Costs</b>		\$	-	
(6)	Other (specify)		\$	-	
(7)	<b>Sub-Total Site Costs</b>				\$ -

**B. Construction Contract**

(8)	Cost of Materials [Include]				
	General Requirements				
	Concrete/Masonry				
	Woods/Doors & Windows/Finishes				
	Thermal and Moisture Protection				
	Equipment/Specialty Items				
	Mechanical/Electrical				
	<b>Sub-Total Cost of Materials</b>				
(9)	Cost of Labor		\$	-	
(10)	Other (Construction Contract)		\$	785,000	
(11)	<b>Sub-Total Construction Contract</b>				\$ 785,000

**C. Miscellaneous Project Costs**

(12)	Building Purchase		\$	-	
(13)	Fixed Equipment Purchase/Lease		\$	3,665,187	
(14)	Moveable Equipment Purchase/Lease		\$	-	
(15)	Furniture		\$	-	
(16)	Landscaping		\$	-	
(17)	Consultant Fees				
	A&E Fees and Reimbursables	\$	-		
	Legal Fees	\$	-		
	Market Analysis	\$	-		
	Other (Radiation Testing)	\$	10,000		
	<b>Total Consultant Fees</b>		\$	10,000	
(18)	Financing Costs				
	(e.g. Bond, Loan, etc.)		\$	-	
(19)	Interest During Construction		\$	-	
(20)	Other (specify)		\$	-	
(21)	<b>Sub-Total Miscellaneous</b>				\$ 3,675,187

**D. Total Capital Cost of Project (Sum A-C above)** \$ 4,460,187

**Attachment 4**

**Alamance Regional Medical Center 2017 Hospital License Renewal  
Application**

North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Acute and Home Care Licensure and Certification Section  
Regular Mail: 2712 Mail Service Center  
Raleigh, North Carolina 27699-2712  
Overnight UPS and FedEx only: 1205 Umstead Drive  
Raleigh, North Carolina 27603  
Telephone: (919) 855-4620 Fax: (919) 715-3073

**For Official Use Only**  
License # H0272 Medicare # 340070  
FID #: 954565

PC \_\_\_\_\_ Date \_\_\_\_\_

License Fee: \$4,715.00

**2017  
HOSPITAL LICENSE  
RENEWAL APPLICATION**

Legal Identity of Applicant: Alamance Regional Medical Center, Inc.  
(Full legal name of corporation, partnership, individual, or other legal entity owning the enterprise or service.)

Doing Business As  
(d/b/a) name(s) under which the facility or services are advertised or presented to the public:

PRIMARY: Alamance Regional Medical Center  
Other: \_\_\_\_\_  
Other: \_\_\_\_\_

Facility Mailing Address: PO Box 202  
Burlington, NC 27216-0202

Facility Site Address: 1240 Huffman Mill Rd  
Burlington, NC 27215  
County: Alamance  
Telephone: (336)538-7450  
Fax: (336)538-7425

**Administrator/Director:** Preston Hammock  
**Title:** President  
(Designated agent (individual) responsible to the governing body (owner) for the management of the licensed facility)

**Chief Executive Officer:** Terrence B. Akin **Title:** CEO  
(Designated agent (individual) responsible to the governing body (owner) for the management of the licensed facility)

Name of the person to contact for any questions regarding this form:

**Name:** James Roskelly **Telephone:** 336-832-8199

**E-Mail:** jim.roskelly@conehealth.com

All responses should pertain to October 1, 2015 through September 30, 2016.

**11. Linear Accelerator Treatment Data (including Cyberknife® & Similar Equipment)**

CPT Code	Description	# of Procedures
<b>Simple Treatment Delivery</b>		
77401	Radiation treatment delivery	0
77402	Radiation treatment delivery (<=5 MeV)	137
77403	Radiation treatment delivery (6-10 MeV)	0
77404	Radiation treatment delivery (11-19 MeV)	0
77406	Radiation treatment delivery (>=20 MeV)	0
<b>Intermediate Treatment Delivery</b>		
77407	Radiation treatment delivery (<=5 MeV)	0
77408	Radiation treatment delivery (6-10 MeV)	0
77409	Radiation treatment delivery (11-19 MeV)	0
77411	Radiation treatment delivery (>=20 MeV)	0
<b>Complex Treatment Delivery</b>		
77412	Radiation treatment delivery (<=5 MeV)	5,057
77413	Radiation treatment delivery (6-10 MeV)	0
77414	Radiation treatment delivery (11-19 MeV)	0
77416	Radiation treatment delivery (>= 20 MeV)	0
<b>Other Treatment Delivery Not Included Above</b>		
77418	Intensity modulated radiation treatment (IMRT) delivery and/or CPT codes 77385 and/or 77386	2,774
77372	Radiation treatment delivery, stereotactic radiosurgery (SRS), complete course of treatment of cranial lesion(s) consisting of 1 session; linear accelerator	0
77373	Stereotactic body radiation therapy, treatment delivery, per fraction to 1 or more lesions, including image guidance, entire course not to exceed 5 fractions	89
G0339	(Image-guided) robotic linear accelerator-based stereotactic radiosurgery in one session or first fraction	0
G0340	(Image-guided) robotic linear accelerator-based stereotactic radiosurgery, fractionated treatment, 2nd-5th fraction	0
	Intraoperative radiation therapy (conducted by bringing the anesthetized patient down to the LINAC)	0
	Pediatric Patient under anesthesia	0
	Neutron and proton radiation therapy	0
	Limb salvage irradiation	0
	Hemibody irradiation	0
	Total body irradiation	0
<b>Imaging Procedures Not Included Above</b>		
77417	Additional field check radiographs	969
<b>Total Procedures – Linear Accelerators</b>		<b>9,026</b>
<b>Gamma Knife® Procedures</b>		
77371	Radiation treatment delivery, stereotactic radiosurgery (SRS), complete course of treatment of cranial lesion(s) consisting of one session; multisource Cobalt 60 based (Gamma Knife®)	0
<b>Total Procedures – Gamma Knife®</b>		<b>0</b>



All responses should pertain to October 1, 2015 through September 30, 2016.

**11. Linear Accelerator Treatment Data *continued***

<p>a. Number of <u>patients</u> who received a course of radiation oncology treatments on linear accelerators (not the Gamma Knife®). Patients shall be counted once if they receive one course of treatment and more if they receive additional courses of treatment. For example, one patient who receives one course of treatment counts as one, and one patient who receives three courses of treatment counts as three.                  # Patients <u>447</u> (This number should match the number of patients reported in the Linear Accelerator Patient Origin Table on page 34.)</p>
<p>b. Linear Accelerators</p> <ol style="list-style-type: none"> <li>1. TOTAL number of Linear Accelerator(s) <u>2</u></li> <li>2. Of the TOTAL number above, number of Linear Accelerators configured for stereotactic radiosurgery <u>1</u></li> <li>3. Of the TOTAL number above, Number of CyberKnife® Systems: <u>0</u></li> <li>4. Of the TOTAL number above, -other specialized linear accelerators <u>0</u></li> </ol>
<p>c. Number of Gamma Knife® units <u>0</u></p> <p>d.</p>
<p>e. Number of <u>treatment</u> simulators ("machine that produces high quality diagnostic radiographs and precisely reproduces the geometric relationships of megavoltage radiation therapy equipment to the patient."(GS 131E-176(24b))) <u>1</u></p>

**12. Additional Services:**

a) Check if Service(s) is provided: (for dialysis stations, show number of stations)

	Check		Check
1. Cardiac Rehab Program (Outpatient)	X	5. Rehabilitation Outpatient Unit	X
2. Chemotherapy	X	6. Podiatric Services	X
3. Clinical Psychology Services	X	7. Genetic Counseling Service	X
4. Dental Services	X	7. Inpatient Dialysis Services. If checked, number of stations: <u>3</u>	X

**Attachment 5**  
**Alamance Regional Medical Center Campus Map**

# Map of Alamance Regional Medical Center



**Attachment 6**  
**CON for Project ID# G-6590-02**

# STATE OF NORTH CAROLINA

Department of Health and Human Services  
Division of Facility Services

## CERTIFICATE OF NEED

for

Project Identification Number G-6590-02  
FID #954565

ISSUED TO: Alamance Regional Medical Center  
1240 Huffman Mill Road  
Burlington, NC 27215

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16). The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Alamance Regional Medical Center shall acquire a second linear accelerator/Alamance County

CONDITIONS: See Reverse Side

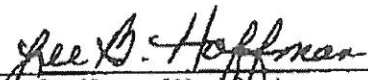
PHYSICAL LOCATION: Alamance Regional Medical Center  
1240 Huffman Mill Road  
Burlington, NC 27215

MAXIMUM CAPITAL EXPENDITURE: \$3,145,244

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: December 1, 2002

This certificate is effective as of the 24<sup>th</sup> day of August, 2002.

  
\_\_\_\_\_  
Chief, Certificate of Need Section  
Division of Facility Services

### CONDITIONS

1. Alamance Regional Medical Center, Inc. shall materially comply with all representations made in its certificate of need application.
2. Alamance Regional Medical Center, Inc. shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application and which would otherwise require a certificate of need.
3. Prior to the issuance of the certificate of need, Alamance Regional Medical Center, Inc. shall acknowledge in writing to the CON Section acceptance and compliance with all conditions stated herein.

A letter acknowledging acceptance and compliance with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on August 7, 2002.

### TIMETABLE

#### Construction

Contract Award	October 10, 2002
25% completion of construction	December 1, 2002
50% completion of construction	February 1, 2003
75% completion of construction	April 15, 2003
Completion of construction	June 15, 2003
Occupancy/offering of service(s)	July 1, 2003

#### Acquisition of medical equipment

Ordering equipment	December 15, 2002
Arrival of equipment	April 1, 2003
Operation of equipment	July 1, 2003

#### Other milestones

Licensure of facility	July 1, 2003
NC Department of Radiation Protection Inspection	July 1, 2003